Authorised Version No. 002

Mental Health and Wellbeing Act 2022

No. 39 of 2022

Authorised Version incorporating amendments as at
1 September 2024

TABLE OF PROVISIONS

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Preamble

The Parliament recognises the importance of the people of Victoria achieving the highest attainable standard of mental health and wellbeing.

The Parliament intends that this Act lay the foundation for the vision of the Royal Commission into Victoria's Mental Health System to transform the mental health and wellbeing system and to support the delivery of person-centred services that are responsive to the needs and preferences of Victorians.

The Parliament recognises the dedication, perseverance and important work of the mental health and wellbeing workforce as the mental health and wellbeing system develops. The Parliament also recognises people with lived and living experiences of mental illness and psychological distress and their commitment to working in partnership to achieve the vision of the Royal Commission.

The Parliament of Victoria therefore enacts:

Chapter 1—Preliminary

Part 1.1—Purposes and commencement

1 Purposes

The main purposes of this Act are—

(a) to restate, with amendments, the law relating to the treatment of persons living with mental illness or experiencing psychological distress; and

(b) to reform the system for the provision of mental health and wellbeing services; and

(c) to improve the administration of the system for mental health and wellbeing services; and

(d) to establish the Mental Health Tribunal; and

(e) to establish the Mental Health and Wellbeing Commission; and

(f) to establish the Victorian Institute of Forensic Mental Health; and

(g) to establish the Victorian Collaborative Centre for Mental Health and Wellbeing; and

(h) to establish Youth Mental Health and Wellbeing Victoria; and

(i) to repeal the **Mental Health Act 2014** and the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**; and

(j) to consequentially amend other Acts.

2 Commencement

(1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.

(2) If a provision of this Act does not come into operation before 1 September 2023, it comes into operation on that day.

Part 1.2—Interpretation

3 Definitions

(1) In this Act—

acceptance form, in relation to a nominated support person, means the form signed by the person under section 63;

acting chairperson means, in relation to the Centre Board, the acting chairperson appointed under section 654;

acting Director means, in relation to the Centre, an acting Director appointed under section 660;

Adult Parole Board means the Adult Parole Board established by section 61 of the **Corrections Act 1986**;

advance statement of preferences means a statement of a kind referred to in section 57;

Ambulance Service*—*Victoria has the same meaning as in the **Ambulance Services Act 1986**;

appropriate supports has the meaning given by section 6;

assessment change means a change of assessment under a community court assessment order in accordance with section 170(1) or an inpatient court assessment order in accordance with section 170(2);

assessment order means an order made under section 144;

assessment patient means a person who is subject to an assessment order;

authorised investigator means a person authorised by the Mental Health and Wellbeing Commission under section 493;

authorised mental health practitioner means—

(a) a person who is employed or engaged by a designated mental health service as a—

(i) registered psychologist; or

(ii) registered nurse; or

(iii) social worker; or

(iv) registered occupational therapist; or

(b) a member of a prescribed class of person;

authorised officer means a person appointed by the chief psychiatrist under section 275;

authorised person means—

(a) a police officer; or

(b) a registered paramedic employed by an ambulance service as defined in section 3(1) of the **Ambulance Services Act 1986**; or

(c) a protective services officer; or

(d) a registered medical practitioner employed or engaged by a designated mental health service; or

(e) an authorised mental health practitioner; or

(f) a member of a prescribed class of person;

authorised psychiatrist means a person appointed by the governing body of a designated mental health service under section 328;

bodily restraint means physical restraint, or mechanical restraint, of a person;

capacity to give informed consent has the meaning given by section 87;

carer has the same meaning as in section 3 of the **Carers Recognition Act 2012** but does not include a parent if the person to whom care is provided is under the age of 16 years;

Centre means the Victorian Collaborative Centre for Mental Health and Wellbeing established by section 640;

Centre Board means the Board of the Centre established under section 647;

Chair of the Mental Health and Wellbeing Commission means the Chair of the Mental Health and Wellbeing Commission appointed under section 420;

chairperson, in relation to the Centre Board, means the chairperson appointed under section 653;

chemical restraint means the giving of a drug to a person for the primary purpose of controlling the person's behaviour by restricting their freedom of movement but does not include the giving of a drug to a person for the purpose of treatment or medical treatment;

Chief Officer means the Chief Officer for Mental Health and Wellbeing employed under section 260;

chief psychiatrist means the psychiatrist employed as the chief psychiatrist under section 265;

clinical mental health service provider means—

(a) a designated mental health service; or

(b) a mental health and wellbeing service provider that provides mental health and wellbeing services in a custodial setting; or

(c) any other prescribed entity or prescribed class of entity;

clinical review report means a report prepared by the chief psychiatrist under section 288;

Code of Practice means a Code of Practice under Division 2 of Part 17.5;

community advisory committee means a community advisory committee established by a regional mental health and wellbeing board under section 316;

community assessment order means an assessment order referred to in section 145(1)(a);

community court assessment order has the meaning given by section 90(2) of the **Sentencing Act 1991**;

community temporary treatment order means a temporary treatment order referred to in section 181(1)(a);

community treatment order means a treatment order referred to in section 194(1)(a);

community visitor means a community visitor appointed under section 395;

Community Visitors Mental Health Board means the Community Visitors Mental Health Board established by section 404;

complainant means a person who makes a complaint;

complaint means a complaint made to the Mental Health and Wellbeing Commission under Part 9.2;

complaint data review means a review conducted under section 528;

complaint data review report means a report prepared under section 530;

complaint handling standards means the standards made under section 465;

complaint resolution process means a process referred to in section 451(1)(a) that the Mental Health and Wellbeing Commission may use to resolve a complaint;

compliance notice means a compliance notice served under section 502;

compulsory assessment criteria means the criteria set out in section 142;

compulsory treatment criteria means the criteria set out in section 143;

conciliation means a conciliation under Division 3 of Part 9.2;

consumer means a person who—

(a) has received mental health and wellbeing services from a mental health and wellbeing service provider; or

(b) is receiving mental health and wellbeing services from a mental health and wellbeing service provider; or

(c) was assessed by an authorised psychiatrist and was not provided with treatment; or

(d) sought or is seeking mental health and wellbeing services from a mental health and wellbeing service provider and was not or is not provided with those services;

corresponding law means—

(a) in Chapter 13, a law that is declared to be a corresponding law for the purposes of that Chapter by an Order under section 593; or

(b) in Chapter 17, the law of another State or a Territory corresponding, or substantially corresponding, to this Act;

corresponding order, in Chapter 13, means an order that is declared to be a corresponding order for the purposes of that Chapter by an Order under section 593;

court assessment order has the same meaning as in section 3(1) of the **Sentencing Act 1991**;

court assessment patient means a person who is subject to a court assessment order;

court secure treatment order means an order within the meaning of section 94A of the **Sentencing Act 1991**;

custodial setting means a place where a person is held—

(a) in a prison within the meaning of the **Corrections Act 1986**; or

(b) in a remand centre, youth residential centre or youth justice centre; or

(c) in a police gaol within the meaning of the **Corrections Act 1986**; or

(d) in a prescribed location;

decision making principles for treatment and interventions means the principles set out in Part 3.1;

declared operator means an entity declared to be a declared operator under section 704;

Department means the Department of Health;

Deputy President means the Deputy President of the Mental Health Tribunal appointed under section 338;

S. 3(1) def. of *designated mental health service* amended by No. 20/2023 s. 3(1).

designated mental health service means—

(a) a prescribed public hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(b) a prescribed public health service within the meaning of section 3(1) of the **Health Services Act 1988**; or

(c) a prescribed denominational hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(d) a prescribed privately-operated hospital within the meaning of section 3(1) of the **Health Services Act 1988**; or

(e) a prescribed private hospital within the meaning of section 3(1) of the **Health Services Act 1988** that is registered as a health service establishment under Part 4 of that Act; or

(f) the Institute; or

* * * * *

(h) a service temporarily declared to be a designated mental health service under section 257; or

(i) a declared operator;

designated place has the same meaning as in the **Victoria Police Act 2013**;

device includes belt, screen, bed rails, tray table and furniture;

DFFH Secretary means the Secretary to the Department of Families, Fairness and Housing;

Director means, in relation to the Centre, a Director employed under section 659;

domestic partner of a person means—

(a) a person who is in a registered domestic relationship with a person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

duty of candour, in relation to the provision of mental health and wellbeing services—

(a) by a mental health and wellbeing service provider other than the Institute, is the duty of candour specified in Division 9 of Part 5A of the **Health Services Act 1988**; and

(b) by the Institute, is the duty of candour specified in Part 14.4;

electroconvulsive treatment means the application of electric current to specific areas of a person's head to produce generalised seizure;

electronic health information system means the system referred to in section 727;

eligible patient means—

(a) a temporary treatment patient; or

(b) a treatment patient; or

(c) a security patient; or

(d) a forensic patient;

emergency service provider means—

(a) Ambulance Service—Victoria; and

(b) any other prescribed entity or prescribed class of entity;

enrolled nurse means a person who is registered in Division 2 of the Register of Nurses kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law (other than as a student);

family violence has the same meaning as in section 5 of the **Family Violence Protection Act 2008**;

follow up investigation means an investigation conducted under section 484;

follow up investigation report means a report prepared under section 487;

Forensic Leave Panel has the meaning given in section 569;

forensic patient has the meaning given in section 569;

guardian has the same meaning as in the **Guardianship and Administration Act 2019**;

health information has the same meaning as in section 3(1) of the **Health Records Act 2001**;

health information statement means a statement prepared under section 740;

Health Secretary means the Secretary to the Department;

health service provider has the same meaning as in the **Health Records Act 2001**;

health services has the same meaning as in the **Health Records Act 2001**;

HPP has the same meaning as in the **Health Records Act 2001**;

HPV means Health Purchasing Victoria established by section 129 of the **Health Services Act 1988**;

HPV direction has the same meaning as in the **Health Services Act 1988**;

identifier has the same meaning as in the **Health Records Act 2001**;

information sharing agreement, other than in Chapter 9, means an agreement entered into under section 258;

information sharing principles means the principles set out in Division 1 of Part 17.1;

inpatient means a patient who is detained in a designated mental health service;

inpatient assessment order means an assessment order referred to in section 145(1)(b);

inpatient court assessment order means an order within the meaning of section 90(3) of the **Sentencing Act 1991**;

inpatient temporary treatment order means a temporary treatment order referred to in section 181(1)(b);

inpatient treatment order means a treatment order referred to in section 194(1)(b);

inquiry means an inquiry conducted under section 505;

inquiry report means a report prepared under section 507;

Institute means the Victorian Institute of Forensic Mental Health established by section 610;

Institute Board means the board of directors of the Institute;

instructional directive has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

intensive monitored supervision means providing mental health and wellbeing services to a person while—

(a) confining the person to a supervision unit from which the person cannot leave; and

(b) limiting the person's contact with others;

intensive monitored supervision order means an order referred to in section 577;

interim clinical review report means a written report prepared by the chief psychiatrist under section 289;

interim funding statement has the same meaning as in the **Health Services Act 1988**;

interstate authority, for an interstate mental health facility, means a person performing a similar or corresponding function to an authorised psychiatrist in relation to that facility;

interstate mental health facility, in Chapter 13, means a hospital or other facility to which a person in a participating State or Territory may be compulsorily admitted under a corresponding law in that State or Territory;

interstate transfer of treatment order means an order made by the Mental Health Tribunal under section 601;

interstate transfer order means an order made by the Mental Health Tribunal under section 602;

investigation of a complaint means an investigation conducted under section 476;

investigation hearing means a hearing of the Mental Health and Wellbeing Commission conducted under section 490(2);

investigation notice means a notice given under section 480(1);

investigation report means a report prepared under section 481;

Justice Secretary means the Secretary to the Department of Justice and Community Safety;

mechanical restraint means the use of a device to prevent or restrict a person's movement;

medical treatment has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**, but does not include treatment within the meaning of this Act;

medical treatment decision maker has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

Note

See section 48 of the **Medical Treatment Planning and Decisions Act 2016** which provides that Part 4 (Medical treatment decisions) of that Act does not apply in relation to treatment for mental illness (if the person being treated is a patient) or neurosurgery for mental illness.

mental health advocate means a person who is employed or engaged by a non-legal mental health advocacy service provider to perform the role described in section 45;

Mental Health and Wellbeing Commission means the Mental Health and Wellbeing Commission established by section 411;

Mental Health and Wellbeing Commissioner means a Mental Health and Wellbeing Commissioner appointed under section 420;

mental health and wellbeing principles means the principles set out in Part 1.5;

mental health and wellbeing professional means a person who performs duties in connection with the provision of mental health and wellbeing services and who is—

(a) a registered medical practitioner; or

(b) a registered psychologist; or

(c) a registered nurse or enrolled nurse; or

(d) a registered paramedic; or

(e) a registered occupational therapist; or

(f) a social worker of a prescribed class; or

(g) a counsellor of a prescribed class; or

(h) a person employed or engaged in a prescribed role that requires the person to have personal experience with mental illness or experience as a carer of a person who is living with mental illness; or

(i) a psychosocial support worker of a prescribed class; or

(j) an allied health professional of a prescribed class;

mental health and wellbeing service means—

S. 3(1) def. of *mental health and wellbeing service* substituted by No. 20/2023 s. 3(2).

(a) a service performed for the primary purpose of—

(i) improving or supporting a person's mental health and wellbeing; or

(ii) assessing, or providing treatment, care or support to, a person for mental illness or psychological distress; or

(iii) providing care or support to a person who is a family member, carer, or supporter, of a person with mental illness or psychological distress; or

(b) a service, or a service belonging to a class of service, that is prescribed to be a mental health and wellbeing service—

but does not include—

(c) a non-legal mental health advocacy service; or

(d) a service, or a service belonging to a class of service, that is prescribed not to be a mental health and wellbeing service;

mental health and wellbeing service provider means an entity (other than an individual) that—

S. 3(1) def. of *mental health and wellbeing service provider* substituted by No. 20/2023 s. 3(3).

(a) receives funding from—

(i) the State for the primary purpose of providing mental health and wellbeing services; or

(ii) another entity (other than an individual), being funding that—

(A) was received by the other entity from the State for the primary purpose of providing mental health and wellbeing services; and

(B) is provided to the entity for a purpose that is consistent with the funding arrangement or agreement between the State and the other entity; and

(b) employs or engages a mental health and wellbeing professional in connection with providing the mental health and wellbeing services—

but does not include—

(c) an entity, or an entity belonging to a class of entity, that is prescribed not to be a mental health and wellbeing service provider;

Mental Health Tribunal means the Mental Health Tribunal established under section 330;

Mental Health Workforce Safety and Wellbeing Committee means the Mental Health Workforce Safety and Wellbeing Committee established by the Health Secretary under section 327A;

mental illness has the meaning given by section 4;

Ministerial agreement, in Chapter 13, means an agreement made under section 594;

National Board has the same meaning as in the Health Practitioner Regulation National Law;

neurosurgery for mental illness means—

(a) any surgical technique or procedure by which a lesion is created in a person's brain for the purpose of treatment; or

(b) the use of intracerebral electrodes to create a lesion in a person's brain for the purpose of treatment; or

(c) the use of intracerebral electrodes to stimulate a person's brain without creating a lesion for the purpose of treatment;

nominated support person means a nominated support person under Part 2.6;

non-legal advocacy protocols for mental health and wellbeing service providers means the protocols referred to in section 42(2);

non-legal mental health advocacy services means services provided by a non-legal mental health advocacy service provider;

non-legal mental health advocacy service provider includes—

(a) the primary non-legal mental health advocacy service provider; and

(b) any non-legal mental health advocacy service provider designated under section 41(1)(b);

nurse in charge has the same meaning as in the **Safe Patient Care (Nurse to Patient and Midwife to Patient Ratios) Act 2015**;

nurse practitioner means a registered nurse who is endorsed under the Health Practitioner Regulation National Law to practise as a nurse practitioner;

objectives of this Act means the objectives set out in Part 1.3;

opt-out register means the register established by the primary non-legal mental health advocacy service provider under section 51;

outcome report means a report prepared by the chief psychiatrist under section 280;

own initiative investigation means an investigation conducted under section 478;

S. 3(1) def. of *parent* inserted by No. 20/2023 s. 3(4).

parent, in relation to a person under the age of 18 years, includes the following—

(a) a person who has custody or daily care and control of the person;

(b) a person who has all of the duties, powers, responsibilities and authority (whether conferred by a court or otherwise) which by law parents have in relation to their children;

(c) any other person who has the legal right to make decisions about medical treatment of the person;

participating State or Territory, in Chapter 13, means a State or a Territory—

(a) in which a corresponding law is in force; and

(b) a Minister of which has made an agreement with the Minister under section 594;

party for the purposes of Part 9.2, in relation to a complaint, means—

(a) the complainant; or

(b) the consumer in relation to the complaint if the consumer—

(i) is not the complainant; and

(ii) has not notified the Mental Health and Wellbeing Commission that the consumer does not wish to be a party to the complaint; or

(c) the mental health and wellbeing service provider in relation to which the complaint is made;

patient means—

(a) an assessment patient; or

(b) a court assessment patient; or

(c) a temporary treatment patient; or

(d) a treatment patient; or

(e) a security patient; or

(f) a forensic patient;

personal information has the same meaning as in section 3 of the **Privacy and Data Protection Act 2014**;

physical restraint means the use by a person of their body to prevent or restrict another person's movement but does not include the giving of physical support or assistance to a person in the least restrictive way that is reasonably necessary to—

(a) enable the person to be supported or assisted to carry out daily activities; or

(b) redirect the person because they are disoriented;

prescribed premises, in Chapter 8, means the premises of—

(a) a designated mental health service; or

(b) a mental health and wellbeing service provider that provides residential services and 24 hour nursing care to persons who have mental illness; or

(c) a prescribed mental health and wellbeing service provider or a prescribed class of mental health and wellbeing service provider that provides residential services to persons who have mental illness;

President means the President of the Mental Health Tribunal appointed under section 337;

primary non-legal mental health advocacy service provider means the non-legal mental health advocacy service provider designated by the Health Secretary under section 41(1)(a);

principal registrar means the principal registrar of the Mental Health Tribunal employed under section 351(b);

protective services officer means a protective services officer within the meaning of the **Victoria Police Act 2013** who is on duty at, or in the vicinity of, a designated place;

psychiatrist means a person who is registered under the Health Practitioner Regulation National Law as a medical practitioner in the specialty of psychiatry (other than as a student);

Public Advocate has the same meaning as in the **Guardianship and Administration Act 2019**;

public entity means—

(a) the Mental Health and Wellbeing Commission; or

(b) a regional mental health and wellbeing board; or

(c) a regional multiagency panel; or

(d) the Institute; or

(e) the Community Visitors Mental Health Board; or

(f) the Centre, to the extent that it performs functions and exercises powers under this Act;

(g) Youth Mental Health and Wellbeing Victoria;

public sector body has the same meaning as in the **Public Administration Act 2004**;

public sector employee has the same meaning as in the **Public Administration Act 2004**;

public service body has the same meaning as in the **Public Administration Act 2004**;

purchasing policy has the same meaning as in the **Health Services Act 1988**;

referred investigation means an investigation conducted under section 477;

regional mental health and wellbeing board means a board established under section 305;

regional multiagency panel means a panel appointed under section 318;

registered nurse means a person who is registered in Division 1 of the Register of Nurses kept by the Nursing and Midwifery Board of Australia under the Health Practitioner Regulation National Law (other than as a student);

registered occupational therapist means a person who is registered under the Health Practitioner Regulation National Law to practise in the occupational therapy profession (other than as a student);

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

registered psychologist means a person who is registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);

relevant child protection order means—

(a) a therapeutic treatment (placement) order within the meaning of the **Children, Youth and Families Act 2005**; or

(b) a family reunification order within the meaning of the **Children, Youth and Families Act 2005**; or

(c) a care by Secretary order within the meaning of the **Children, Youth and Families Act 2005**; or

(d) a long-term care order within the meaning of the **Children, Youth and Families Act 2005**;

remand centre has the same meaning as in the **Children, Youth and Families Act 2005**;

responsible designated mental health service means a designated mental health service that is specified in—

(a) an assessment order as being responsible for assessing the person who is subject to the order; or

(b) a temporary treatment order as being responsible for treating the person who is subject to the order; or

(c) a treatment order as being responsible for treating the person who is subject to the order;

restrictive intervention means seclusion, bodily restraint or chemical restraint;

Royal Commission into Victoria's Mental Health System means the Royal Commission into Victoria's Mental Health System established by Her Excellency the Honourable Linda Dessau AC, the Governor of the State of Victoria on 22 February 2019;

Rules Committee means the Rules Committee of the Mental Health Tribunal established under section 389;

seclusion means the sole confinement of a person to a room or any other enclosed space from which it is not within the control of the person confined to leave;

secure treatment order means an order within the meaning of section 534;

security patient means a person who is not subject to an assessment order, a court assessment order, a temporary treatment order or a treatment order but is—

(a) detained in a designated mental health service irrespective of whether the person is absent with or without leave from the designated mental health service; and

(b) subject to—

(i) a court secure treatment order; or

(ii) a secure treatment order;

senior available next of kin means—

(a) in relation to a deceased child—

(i) if a parent of the child is available, a parent of the child; or

(ii) if a parent of the child is not available, a brother or sister of the child who has attained 18 years of age and who is available; or

(iii) if no person referred to in subparagraph (i) or (ii) is available, a person who was the guardian of the child immediately before the death of the child and who is available;

(b) in relation to any other deceased person—

(i) if the person, immediately before the person's death, had a spouse or domestic partner and that spouse or domestic partner is available, that spouse or domestic partner; or

(ii) if the person, immediately before the person's death, did not have a spouse or domestic partner or the spouse or domestic partner is not available, a son or daughter of the person who has attained 18 years of age and who is available; or

(iii) if no person referred to in subparagraph (i) or (ii) is available but a parent of the person is available, that parent; or

(iv) if no person referred to in subparagraph (i), (ii) or (iii) is available, a brother or sister of the person who has attained 18 years of age and is available;

service agreement means an agreement referred to in section 703;

specified service provider means—

(a) the provider of alcohol and drug treatment services funded by the State; or

(b) the provider of public or community housing services funded by the State; or

(c) a prescribed service provider or entity;

statement of rights has the meaning given by section 36;

statewide panel means the panel appointed under section 324;

supervision unit means a space that includes—

(a) bathroom facilities; and

(b) a space for sleeping; and

(c) a separate space for sitting; and

(d) any other prescribed kind of feature, furnishing or space;

support person has the same meaning as it has in the **Medical Treatment Planning and Decisions Act 2016**;

temporary treatment order means an order made under section 180;

temporary treatment patient means a person who is subject to a temporary treatment order;

S. 3(1) def. of *transfer order* inserted by No. 20/2023 s. 3(4).

transfer order means—

(a) an interstate transfer order; or

(b) an interstate transfer of treatment order—

as the case may be;

treatment has the meaning given by section 5;

treatment order means an order made under section 192(2)(a);

treatment patient means a person who is subject to a treatment order;

Tribunal member means a member of the Mental Health Tribunal;

unique identifier has the same meaning as in the **Victorian Data Sharing Act 2017**;

values directive has the same meaning as in the **Medical Treatment Planning and Decisions Act 2016**;

Victoria Police has the same meaning as in the **Victoria Police Act 2013**;

witness summons means a summons issued under section 385;

young patient means a patient who is under the age of 18 years;

young person means—

(a) in Chapter 3, a person under 18 years of age; and

(b) in Chapter 16, means a person who is at least 12, but not more than 25 years of age;

youth justice centre has the same meaning as in the **Children, Youth and Families Act 2005**;

Youth Mental Health and Wellbeing Board in relation to Youth Mental Health and Wellbeing Victoria, means the Board of directors of Youth Mental Health and Wellbeing Victoria established by section 679;

youth mental health and wellbeing service, in Chapter 16, means a mental health and wellbeing service that provides mental health and wellbeing services to young persons;

Youth Mental Health and Wellbeing Victoria means Youth Mental Health and Wellbeing Victoria established by section 673;

youth residential centre has the same meaning as in the **Children, Youth and Families Act 2005**.

(2) For the purposes of the definition of ***domestic partner*** in subsection (1)—

(a) registered domestic relationship has the same meaning as in the **Relationships Act 2008**; and

(b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or

more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

4 Meaning of mental illness in this Act

(1) Mental illness is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.

(2) A person is not to be considered to have mental illness by reason only of any one or more of the following—

(a) that the person expresses or refuses or fails to express a particular political opinion or belief;

(b) that the person expresses or refuses or fails to express a particular religious opinion or belief;

(c) that the person expresses or refuses or fails to express a particular philosophy;

(d) that the person expresses or refuses or fails to express a particular sexual preference, gender identity or sexual orientation;

(e) that the person engages in or refuses or fails to engage in a particular political activity;

(f) that the person engages in or refuses or fails to engage in a particular religious activity;

(g) that the person has engaged in a certain pattern of sexual behaviour;

(h) that the person engages in conduct that is contrary to community standards of acceptable conduct;

(i) that the person engages in illegal conduct;

(j) that the person engages in antisocial behaviour;

(k) that the person is intellectually disabled;

(l) that the person uses drugs or alcohol;

(m) that the person has a particular economic or social status or is a member of a particular cultural or racial group;

(n) that the person is or has previously been involved in family conflict;

(o) that the person is experiencing or has experienced psychological distress;

(p) that the person has previously been diagnosed with, or treated for, mental illness.

(3) Subsection (2)(l) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of using drugs or alcohol from being regarded as an indication that a person has mental illness.

5 What is treatment?

(1) A person receives treatment for mental illness if professional skill is used—

(a) to remedy or alleviate the person's mental illness; or

(b) to alleviate the symptoms and reduce the ill effects of the person's mental illness.

(2) Treatment includes electroconvulsive treatment and neurosurgery.

(3) Detention is not treatment.

(4) To avoid doubt, treatment means treatment for mental illness.

6 What are appropriate supports?

Appropriate supports are measures which can reasonably be provided to a person to assist the person to—

(a) make decisions and participate in decision making; or

(b) understand information and their rights; or

(c) communicate their views, preferences, questions, or decisions.

Example

The following are examples of appropriate supports—

(a) communicating with the person in the person's preferred language including with the assistance of interpreters;

(b) communicating in an accessible format, style or mode, including with the use of technology;

(c) communicating with the person in a way that is tailored to the person's needs including their literacy, developmental needs or cultural needs;

(d) communicating with the person in an appropriate physical or sensory environment;

(e) allowing and enabling the person's family member, carer, supporter or advocate to be present either in person or by the use of technology;

(f) providing appropriate spaces for communication between the person and the person's family members, carers, supporters or advocates.

7 Communicating under this Act

(1) This section applies if an entity is required by this Act to communicate with—

(a) a consumer; or

(b) a consumer's family; or

(c) a consumer's carer; or

(d) a consumer's guardian; or

(e) a consumer's nominated support person or support person; or

(f) a complainant.

(2) The entity must take reasonable steps—

(a) to provide appropriate supports; and

(b) to explain the content of the communication and answer any questions as clearly and as completely as possible.

(3) For the purposes of subsection (2), the entity must take reasonable steps to determine what appropriate supports would assist the person the entity is communicating with.

Example

Reasonable steps may include the following—

(a) asking the person what supports would assist them to communicate and participate in decisions;

(b) in the case of a patient, having regard to the patient's advance statement of preferences (if any);

(c) in the case of a patient, asking their nominated support person what supports would assist the patient to communicate and participate in decision making; and

(d) providing a consumer with information about the types of supports that are available to them so that they can identify what would assist them.

(4) If a person is incapable of understanding information or any oral explanation at the time when it would otherwise be provided, the entity who is to give the information being communicated must ensure that reasonable further attempts are made to provide the information or explanation at a time when the person is able to understand the information or explanation.

(5) In this section—

communicate includes—

(a) giving or providing any advice, notice or information; or

(b) asking for, receiving or hearing, any advice, notice, information, views, preferences, consent or other decisions.

Note

See definition of ***entity*** in section 38 of the **Interpretation of Legislation Act 1984** which includes a person and an unincorporated body.

8 Examining under this Act

(1) If a provision of this Act or the regulations requires that a person be examined, the person must be examined—

(a) if it is practicable—in person; or

(b) if it is not practicable—remotely.

(2) For the purposes of determining whether it is not practicable to conduct an examination in person, regard must be had to any relevant guidelines issued by the chief psychiatrist.

9 Avoiding unnecessary duplication

In performing a function or exercising a power under this Act, a public entity, the Health Secretary, chief officer, chief psychiatrist and Mental Health and Wellbeing Commission must liaise with other authorities and bodies so as to—

(a) avoid unnecessary duplication of inquiries, administration, reporting obligations or other actions; and

(b) facilitate the coordination and expedition of those inquiries or actions.

10 Interpretation of this Act and the mental health and wellbeing principles

(1) In interpreting this Act, a construction that would promote the mental health and wellbeing principles is to be preferred to a construction that would not promote those principles.

(2) The mental health and wellbeing principles, the decision making principles for treatment and interventions and the information sharing principles do not create a legal right in any person.

(3) Contravention of the mental health and wellbeing principles, the decision making principles for treatment and interventions and the information sharing principles—

(a) does not give rise to any civil cause of action merely because of contravention of the principle; and

(b) no damages may be awarded in respect of contravention of any of the principles.

(4) For the avoidance of doubt, nothing in this section limits any right to judicial review, the power to commence a proceeding, any cause of action or any right to damages a person may have under this Act or any other Act or law other than by operation of this section.

11 Act binds the Crown

(1) This Act binds the Crown in right of Victoria and, to the extent that the legislative power of the Parliament permits, the Crown in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

Part 1.3—Objectives

12 Objectives

In pursuit of the highest attainable standard of mental health and wellbeing for the people of Victoria, this Act has the following objectives—

(a) to promote conditions in which people can—

(i) experience good mental health and wellbeing; and

(ii) recover from mental illness or psychological distress;

(b) to reduce inequities in access to, and the delivery of, mental health and wellbeing services;

(c) to provide for comprehensive, compassionate, safe and high-quality mental health and wellbeing services that promote the health and wellbeing of people living with mental illness or psychological distress and that—

(i) are accessible; and

(ii) respond in a timely way to people's needs and recognise that these needs may vary over time; and

(iii) are consistent with a person's treatment, care, support and recovery preferences wherever possible; and

(iv) are available early in life, early in onset and early in episode; and

(v) recognise and respond to the diverse backgrounds and needs of the people who use them; and

(vi) provide culturally safe and responsive services to Aboriginal and Torres Strait Islander people in order to support and strengthen connection to culture, family, community and Country; and

(vii) connect and coordinate with other support services to respond to the broad range of circumstances that influence mental health and wellbeing including alcohol and other drug support services and treatment; and

(viii) include a broad range of treatment options with the aim of providing access to the same treatment and support irrespective of whether a person is receiving voluntary or compulsory treatment; and

(ix) include a broad and accessible range of voluntary treatment and support options—

(A) to enable a reduction in the use of compulsory assessment and treatment; and

(B) to enable a reduction in the use of seclusion and restraint with the aim of eliminating its use within 10 years;

(d) 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 mental illness or psychological distress, and the people receiving treatment, their carers, families and supporters, are at the centre of changes in practices and service delivery and the design and evaluation of systems;

(e) to protect and promote the human rights and dignity of people living with mental illness by providing them with assessment and treatment in the least restrictive way possible in the circumstances;

(f) to recognise and respect the right of people with mental illness or psychological distress to speak and be heard in their own voices, from their own experiences and from within their own communities and cultures;

(g) to recognise, promote and actively support the role of families, carers and supporters in the care, support and recovery of people living with mental illness or psychological distress;

(h) to promote and support the health and wellbeing of families, carers and supporters of people living with mental illness or psychological distress;

(i) to recognise and value the critical role of the clinical and non-clinical mental health and wellbeing workforce and to support and promote the health and wellbeing of members of that workforce;

(j) to promote the mental health and wellbeing principles.

Part 1.4—Statement of recognition and acknowledgement of treaty process

13 Statement of Recognition

(1) The Parliament recognises that Aboriginal people in Victoria are First Nations people of Australia and acknowledges their enduring connection to Country, kin, land and culture.

(2) The Parliament acknowledges the following—

(a) that Aboriginal self-determination serves as a foundational principle to improve mental health and wellbeing outcomes of Aboriginal people in Victoria;

(b) the lasting impact of laws, practices and policies on the mental health and wellbeing outcomes of Aboriginal and Torres Strait Islander people since colonisation and enduring to this day;

(c) cultural dislocation, oppression, intergenerational trauma, lack of healing, systemic racism, institutionalised inequality and the loss of land, lore and language continue to harm the mental health and wellbeing of Aboriginal people in Victoria today;

(d) the strength of Aboriginal people, culture, kinship and communities in the face of historical and ongoing injustices;

(e) Aboriginal people's ongoing connection to culture, community and Country and the importance of this connection for the mental health and wellbeing of Aboriginal people in Victoria.

(3) It is the intention of Parliament that the mental health system recognises, respects and supports the distinct cultural rights of Aboriginal people and their right to receive culturally safe holistic mental health and wellbeing services throughout Victoria.

(4) The Parliament supports initiatives which address the ongoing mental health inequalities experienced by Aboriginal people in Victoria.

(5) The Parliament recognises the essential role of Aboriginal community controlled health organisations in meeting the mental health and wellbeing and care needs of Aboriginal people in Victoria.

(6) The Parliament supports the development of future reforms which further Aboriginal self-determination within mental health and wellbeing services in Victoria.

14 Acknowledgement of treaty process

The Parliament acknowledges Victoria's treaty process and the aspiration of Aboriginal people to achieve increased autonomy, Aboriginal decision making and control of planning, funding and administration of services for Aboriginal people, including through self-determined Aboriginal representative bodies established through treaty.

Part 1.5—Mental health and wellbeing principles

15 Mental health and wellbeing principles

This Part sets out the mental health and wellbeing principles.

16 Dignity and autonomy principle

The rights, dignity and autonomy of a person living with mental illness or psychological distress is to be promoted and protected and the person is to be supported to exercise those rights.

17 Diversity of care principle

A person living with mental illness or psychological distress is to be provided with access to a diverse mix of care and support services. This is to be determined, as much as possible, by the needs and preferences of the person living with mental illness or psychological distress including their accessibility requirements, relationships, living situation, any experience of trauma, level of education, financial circumstances and employment status.

18 Least restrictive principle

Mental health and wellbeing services are to be provided to a person living with mental illness or psychological distress with the least possible restriction of their rights, dignity and autonomy with the aim of promoting their recovery and full participation in community life. The views and preferences of the person should be key determinants of the nature of this recovery and participation.

19 Supported decision making principle

Supported decision making practices are to be promoted. Persons receiving mental health and wellbeing services are to be supported to make decisions and to be involved in decisions about their assessment, treatment and recovery including when they are receiving compulsory treatment. The views and preferences of the person receiving mental health and wellbeing services are to be given priority.

20 Family and carers principle

Families, carers and supporters (including children) of a person receiving mental health and wellbeing services are to be supported in their role in decisions about the person's assessment, treatment and recovery.

21 Lived experience principle

The lived experience of a person with mental illness or psychological distress and their carers, families and supporters is to be recognised and valued as experience that makes them valuable leaders and active partners in the mental health and wellbeing service system.

22 Health needs principle

The medical and other health needs of people living with mental illness or psychological distress are to be identified and responded to, including any medical or health needs that are related to the use of alcohol or other drugs. In doing so, the ways in which a person's physical and mental health needs may intersect should be considered.

23 Dignity of risk principle

A person receiving mental health and wellbeing services has the right to take reasonable risks in order to achieve personal growth, self-esteem and overall quality of life. Respecting this right in providing mental health and wellbeing services involves balancing the duty of care owed to all people experiencing mental illness or psychological distress with actions to afford each person the dignity of risk.

24 Wellbeing of young people principle

The health, wellbeing and autonomy of children and young people receiving mental health and wellbeing services are to be promoted and supported, including by providing treatment and support in age and developmentally appropriate settings and ways. It is recognised that their lived experience makes them valuable leaders and active partners in the mental health and wellbeing service system.

25 Diversity principle

(1) The diverse needs and experiences of a person receiving mental health and wellbeing services are to be actively considered noting that such diversity may be due to a variety of attributes including any of the following—

(a) gender identity;

(b) sexual orientation;

(c) sex;

(d) ethnicity;

(e) language;

(f) race;

(g) religion, faith or spirituality;

(h) class;

(i) socioeconomic status;

(j) age;

(k) disability;

(l) neurodiversity;

(m) culture;

(n) residency status;

(o) geographic disadvantage.

(2) Mental health and wellbeing services are to be provided in a manner that—

(a) is safe, sensitive and responsive to the diverse abilities, needs and experiences of the person including any experience of trauma; and

(b) considers how those needs and experiences intersect with each other and with the person's mental health.

26 Gender safety principle

People receiving mental health and wellbeing services may have specific safety needs or concerns based on their gender. Consideration is therefore to be given to these needs and concerns and access is to be provided to services that—

(a) are safe; and

(b) are responsive to any current experience of family violence and trauma or any history of family violence and trauma; and

(c) recognise and respond to the ways gender dynamics may affect service delivery, treatment and recovery; and

(d) recognise and respond to the ways in which gender intersects with other types of discrimination and disadvantage.

27 Cultural safety principle

(1) Mental health and wellbeing services are to be culturally safe and responsive to people of all racial, ethnic, faith-based and cultural backgrounds.

(2) Treatment and care is to be appropriate for, and consistent with, the cultural and spiritual beliefs and practices of a person living with mental illness or psychological distress. Regard is to be given to the views of the person's family and, to the extent that it is practicable and appropriate to do so, the views of significant members of the person's community. Regard is to be given to Aboriginal and Torres Strait Islander people's unique culture and identity, including connections to family and kinship, community, Country and waters.

(3) Treatment and care for Aboriginal and Torres Strait Islander peoples is, to the extent that it is practicable and appropriate to do so, to be decided and given having regard to the views of elders, traditional healers and Aboriginal and Torres Strait Islander mental health workers.

28 Wellbeing of dependents principle

The needs, wellbeing and safety of children, young people and other dependents of people receiving mental health and wellbeing services are to be protected.

Part 1.6—Application of mental health and wellbeing principles and family violence limitation

29 Mental health and wellbeing service providers to make all reasonable efforts

A mental health and wellbeing service provider must—

(a) when exercising a function to which this Act applies, make all reasonable efforts to comply with the mental health and wellbeing principles; and

(b) when making a decision under this Act, give proper consideration to the mental health and wellbeing principles; and

(c) provide safe, person-centred mental health and wellbeing services; and

(d) foster continuous improvement in the quality and safety of the care and mental health and wellbeing services they provide.

30 Mental health and wellbeing service providers to address one or more mental health and wellbeing principles in annual report

A mental health and wellbeing service provider that is required to prepare an annual report must include in that annual report information about actions taken during the reporting period that relate to giving effect to one or more of the mental health and wellbeing principles.

31 Information sharing limitation if there may be a risk of family violence or other serious harm

(1) This section applies if a person (***first person***) is required or authorised under this Act to give or disclose the personal information or health information of a person and the first person

reasonably believes that by doing so there is a risk that a person may be subjected to family violence or other serious harm.

(2) The first person must not give or disclose the personal information or health information of a person to another person if the first person reasonably believes that by doing so there is a risk that a person may be subjected to family violence or other serious harm.

(3) To avoid doubt, this section applies regardless of whether the person has consented to the disclosure of their personal information or health information.

Chapter 2—Protection of rights

Part 2.1—Supporting patient rights

32 Designated mental health service must determine if patient has an advance statement of preferences or a nominated support person

A designated mental health service, as soon as practicable after becoming responsible for a patient's assessment or treatment, must take all reasonable steps to find out whether—

(a) the patient has an advance statement of preferences or a nominated support person; and

(b) the statement or nomination is in effect.

33 Duty to ensure all reasonable efforts are made to give effect to patient's advance statement of preferences

Subject to Chapters 4, 10 and 11, if a designated mental health service finds that a patient has an advance statement of preferences that is in effect, the designated mental health service must ensure that all reasonable efforts are made to give effect to the patient's statement.

34 Designated mental health service must take reasonable steps

(1) A designated mental health service must take all reasonable steps to support a nominated support person to perform their role under this Act.

(2) Without limiting subsection (1), and subject to this Act, steps a designated mental health service may take include the following—

(a) allowing the nominated support person to view documents relevant to the patient's care and treatment at the service including—

(i) the patient's treatment plan; and

(ii) any known advance statement of preferences; and

(b) providing the nominated support person with information about the patient's care and treatment at the service; and

(c) providing the nominated support person with reasonable opportunities to attend any meetings between the patient and the persons responsible for their treatment.

35 Taking reasonable steps

(1) An entity required by or under this Act to consider an advance statement of preferences or consult with a nominated support person, before making a decision that requires consideration of the patient's preferences, must take all reasonable steps to find out whether—

(a) a patient has an advance statement of preferences or a nominated support person; and

(b) the statement or nomination is in effect.

Note

See definition of ***entity*** in section 38 of the **Interpretation of Legislation Act 1984** which includes a person and an unincorporated body.

(2) An entity to whom subsection (1) applies may take a statement or nomination to be in effect for the purposes of this Act if—

(a) the patient is unable to provide information or confirmation that the statement or nomination is in effect; and

(b) the information available to the entity indicates that—

(i) the patient has a statement or nomination; and

(ii) it has not been revoked.

Part 2.2—Statement of rights

36 What is a statement of rights?

A ***statement of rights*** is a document for each of the following persons that sets out the rights of that person under this Act and the processes that apply while that person is receiving a mental health and wellbeing service—

(a) a person admitted to a bed-based service at a designated mental health service;

(b) an assessment patient;

(c) a court assessment patient;

(d) a temporary treatment patient;

(e) a treatment patient;

(f) a security patient who is subject to a secure treatment order;

(g) a security patient who is subject to a court secure treatment order;

(h) a forensic patient;

(i) a person whose informed consent in relation to electroconvulsive treatment is sought;

(j) a person whose informed consent in relation to neurosurgery for mental illness is sought;

(k) a person who is subject to an order made by the Mental Health Tribunal for the performance of electroconvulsive treatment on that person;

(l) a person who is subject to an order made by the Mental Health Tribunal for the performance of neurosurgery for mental illness on that person;

(m) a person who is subject to an intensive monitored supervision order.

37 Requirement to provide a statement of rights

A registered medical practitioner, authorised mental health practitioner, authorised psychiatrist or psychiatrist (as the case may be) must take all reasonable steps to ensure that a person in circumstances referred to in section 36 is given a statement of rights.

38 Form of statement of rights

A statement of rights must—

(a) be in the form approved by the Chief Officer; and

(b) contain the information approved by the Chief Officer for each person referred to in section 36.

39 Explanation of statement of rights

A registered medical practitioner, authorised mental health practitioner, authorised psychiatrist or psychiatrist (as the case may be) must take all reasonable steps to ensure that a person specified in section 36 who receives a statement of rights understands their rights as set out in the statement.

40 Statement of rights to be given to support persons

If a statement of rights is given to a person under this Act, the registered medical practitioner, authorised mental health practitioner, authorised psychiatrist or psychiatrist (as the case may be) must take all reasonable steps to ensure that a statement of rights is also given to the following persons—

(a) if the person is a patient, any nominated support person of the patient;

(b) any guardian of the person;

(c) any carer of the person if the carer has been notified of any of the following because it directly affects the carer and the care relationship—

(i) circumstances, an event or a decision that has occurred in relation to the person under this Act;

(ii) an order to which the person has been made subject to under this Act;

(d) any parent of the person, if the person is under 16 years of age;

(e) in the case of an order made by the Mental Health Tribunal for the performance of electroconvulsive treatment on a person who is not a patient—

(i) the person's medical treatment decision maker; and

(ii) the person's support person;

(f) the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

Part 2.3—Non-legal mental health advocacy services

41 Primary non-legal mental health advocacy service provider and other providers

(1) The Health Secretary—

(a) must designate a suitable non-legal mental health advocacy service provider to be the primary non-legal mental health advocacy service provider of non-legal mental health advocacy services under this Act; and

(b) may designate other suitable non-legal mental health advocacy service providers to be non-legal mental health advocacy service providers of non-legal mental health advocacy services under this Act.

Note

See also section 254 for the Health Secretary's functions in relation to non-legal mental health advocacy services generally.

(2) For the purposes of subsection (1), a non-legal mental health advocacy service provider is suitable to be designated by the Health Secretary if—

(a) the provider is a body corporate;

(b) having regard to the following, the Health Secretary is satisfied the provider—

(i) has mental health advocates and other staff with experience of receiving requests for support and notifications from consumers of mental health and wellbeing services and care;

(ii) is independent from mental health and wellbeing service providers;

(iii) has independent legal consultation and advice available for mental health advocates and referral pathways for legal assistance for consumers;

(iv) has in place adequate systems to ensure the secure management of information that may be obtained in the course of providing non-legal mental health advocacy services.

(3) The Health Secretary must publish the name, and contact details, of the primary non-legal mental health advocacy service provider and any other non-legal mental health advocacy service providers designated under subsection (1) on the Department's website.

42 Chief Officer to issue protocols to non-legal mental health advocacy service providers and mental health and wellbeing service providers

(1) The Chief Officer must prepare written protocols for non-legal mental health advocacy service providers in relation to the following—

(a) any information or records to be maintained and reported to the Health Secretary or the Mental Health and Wellbeing Commission, including how often it is to be reported;

(b) if providers are designated under section 41(1)(b), how all providers designated under section 41 should work together;

(c) the provision of non-legal mental health advocacy services to children and young persons;

(d) the management of the opt-out register including with respect to notifications received in respect of persons named in the register;

(e) any other prescribed matters.

(2) The Chief Officer must prepare written protocols for mental health and wellbeing service providers in relation to the process under this Act for the making, and form, of notifications to the primary non-legal mental health advocacy service provider.

(3) In preparing protocols under subsection (1) or (2), the Chief Officer must consult—

(a) non-legal mental health advocacy service providers; and

(b) mental health and wellbeing service providers; and

(c) consumers; and

(d) family, carers and supporters of consumers.

(4) The Chief Officer must ensure that protocols are—

(a) published on the Department's website;

(b) in the case of protocols prepared under subsection (1), given to non-legal mental health advocacy service providers; and

(c) in the case of protocols prepared under subsection (2), given to mental health and wellbeing service providers.

(5) The Chief Officer must not prepare any protocols under subsection (1)—

(a) in respect of a specific consumer, mental health advocate or non-legal mental health advocacy service provider unless the only

designated non-legal mental health advocacy service provider is the primary non-legal mental health advocacy service provider; or

(b) to require a mental health advocate or non-legal mental health advocacy service provider—

(i) to take any action in respect of a specific consumer; or

(ii) to provide information about an individual consumer that could identify the consumer.

43 Notifications

Any notifications required to be made to the primary non-legal mental health service provider under this Act must be made in accordance with the non-legal advocacy protocols for mental health and wellbeing service providers.

44 Role of non-legal mental health advocacy service providers

(1) The primary non-legal mental health advocacy service provider is responsible for—

(a) receiving notifications or requests for support from or on behalf of consumers; and

(b) receiving notifications from entities required to notify the primary non-legal mental health advocacy service provider of matters relating to consumers under this Act; and

(c) coordinating the provision of non-legal mental health advocacy services by any non-legal mental health advocacy service providers designated under section 41(1)(b); and

(d) maintaining the opt-out register.

(2) The primary non-legal mental health advocacy service provider and any non-legal mental health advocacy service provider designated under section 41(1)(b) is expected to—

(a) employ, contract or otherwise engage persons to be mental health advocates; and

(b) provide services to consumers in accordance with the protocols issued by the Chief Officer under section 42; and

(c) provide information to, and educate consumers and the community generally about—

(i) the role of non-legal mental health advocacy service providers and mental health advocates; and

(ii) the operation of this Act including the mental health and wellbeing principles and the rights and safeguards for people under this Act; and

(iii) other relevant Acts including the **Charter of Human Rights and Responsibilities Act 2006** and how they apply to this Act.

45 Role of a mental health advocate

The role of a mental health advocate is—

(a) to provide non-legal assistance to a consumer in accordance with any instructions given to the advocate by the consumer, including to assist the consumer—

(i) to understand information regarding their assessment, treatment, care and recovery; or

(ii) to make decisions regarding their assessment, treatment and care; or

(iii) to understand and exercise their rights under this Act; or

(iv) to make an advance statement of preferences; or

(v) to appoint a nominated support person; or

(vi) to seek a second psychiatric opinion; or

(vii) to seek legal advice; or

(viii) to apply to the Mental Health Tribunal; or

(ix) to understand and access the mental health and wellbeing service system; or

(x) to express their decisions, views and preferences to a member of the mental health and wellbeing workforce and other relevant parties; or

(xi) to make a complaint; and

(b) to represent the views of the consumer to staff of a mental health and wellbeing service provider in accordance with any instructions given to the advocate by the consumer.

46 Role of a mental health advocates in relation to a child or young person

(1) If a consumer is 15 years of age or younger, the role of a mental health advocate is—

(a) to promote the views and preferences of the consumer; and

(b) to work with the family, carers and supporters of the consumer to ensure that the consumer's best interests are protected.

(2) In performing the role under subsection (1), a mental health advocate must—

(a) provide advocacy services in accordance with the protocols issued under section 42(1)(c); and

(b) if the DFFH Secretary has parental responsibility for a consumer under a relevant child protection order, consult that Secretary.

47 What can a mental health advocate do?

(1) In accordance with the instructions of a consumer who is at least 16 years of age, a mental health advocate may do any of the following—

(a) access the personal information or health information of the consumer, including the consumer's advance statement of preferences, held by a mental health and wellbeing service provider;

(b) attend meetings with the consumer and any registered medical practitioner or staff of a mental health and wellbeing service provider involved in the assessment, treatment and care of the consumer;

(c) seek information on behalf of the consumer from the staff of a mental health and wellbeing service provider;

(d) contact, seek information or provide advice to a consumer's nominated support person, family, carer or supporters;

(e) advocate for the rights of a family member, carer or supporter if those rights relate to the treatment, care, support or recovery of the consumer.

(2) If a consumer is a patient who is at least 16 years of age and a mental health advocate is unable to obtain instructions from the patient, the mental health advocate may do the following to ensure the rights of the patient are upheld—

(a) attend a relevant designated mental health service to observe and meet the patient;

(b) obtain from the designated mental health service—

(i) information about the patient's treatment and welfare, including accessing the personal information or health information of the patient; and

(ii) any advance statement of preferences made by the person that is known to the designated mental health service; and

(iii) the contact details of any nominated support person of the consumer or other primary support person of the consumer if the consumer does not have a nominated support person;

(c) contact and liaise with the patient's nominated support person or carer to ascertain the patient's views and preferences regarding their treatment and recovery;

(d) represent the likely views and preferences of the patient to the mental health and wellbeing service provider and advocate for those views and preferences to be given effect;

(e) advocate for the rights of the consumer under this Act or any other Act.

48 Consumer instructions to mental health advocate

(1) A consumer who has instructed a mental health advocate to assist them may withdraw their instructions at any time.

(2) A withdrawal of instructions under subsection (1) may be—

(a) oral or written; and

(b) given to the mental health advocate or to the primary non-legal mental health advocacy service provider.

49 Mental health and wellbeing service provider to give reasonable assistance

A mental health and wellbeing service provider must give any reasonable assistance to any mental health advocate for the purposes of enabling the advocate to perform and carry out their functions, duties and responsibilities with respect to a consumer.

50 Consideration of mental health and wellbeing principles

In the performance of a function or duty under this Act, a non-legal mental health advocacy service provider must give proper consideration to the mental health and wellbeing principles.

51 Opt-out register

(1) The primary non-legal mental health advocacy service provider must establish, maintain and manage a register to be known as the opt-out register—

(a) to record the details of consumers who do not wish to be offered or provided with non-legal mental health advocacy services; and

(b) to manage notifications made in respect of consumers who have instructed that they do not want to receive non-legal mental health advocacy services.

(2) The primary non-legal mental health advocacy service provider must publish on its website information regarding how a consumer may indicate their preferences regarding the provision of non-legal mental health advocacy services.

(3) The Chief Office must publish the information referred to in subsection (2) on the Department's website.

Part 2.4—Right to communicate

52 Definition

In this Part—

communicate, in relation to an inpatient, means—

(a) sending from, or receiving at, a designated mental health service uncensored private communication which may include communication by letter, telephone or electronic communication; or

(b) receiving visitors at a designated mental health service at reasonable times, including an Australian legal practitioner, mental health advocate or nominated support person of the inpatient.

53 Right to communicate

(1) Subject to this Part, an inpatient has a right to communicate lawfully with any person, including by electronic communication.

Note

See definition of ***electronic communication*** in the **Interpretation of Legislation Act 1984** and see the **Electronic Transactions (Victoria) Act 2000**.

(2) Without limiting subsection (1), an inpatient has a right to communicate with any person for the purpose of—

(a) seeking legal advice or legal representation; or

(b) seeking the services of a mental health advocate.

(3) The members of staff of a designated mental health service must ensure that reasonable steps are taken to assist an inpatient to communicate lawfully with any person.

54 Restriction on right to communicate

(1) Subject to subsection (2), an authorised psychiatrist in writing may direct staff at a designated mental health service to restrict an inpatient's right to communicate.

(2) A direction under subsection (1) may be made only if the authorised psychiatrist is satisfied that the restriction is reasonably necessary to protect the health, safety and wellbeing of the inpatient or of another person.

(3) A direction cannot be made under subsection (1) which restricts an inpatient's right to communicate with—

(a) a legal representative; or

(b) the chief psychiatrist; or

(c) the Mental Health and Wellbeing Commission; or

(d) the Mental Health Tribunal; or

(e) a community visitor; or

(f) a non-legal mental health advocacy service provider or a mental health advocate; or

(g) the DFFH Secretary, if that Secretary has parental responsibility for the inpatient under a relevant child protection order; or

(h) a prescribed person or body.

(4) An authorised psychiatrist must ensure that if the authorised psychiatrist directs that an inpatient's right to communicate be restricted, those restrictions are the least restrictive possible to

protect the health, safety and wellbeing of the inpatient or of another person.

55 Persons to be notified of restriction on inpatient's right to communicate

(1) An authorised psychiatrist who makes a direction under section 54 to restrict an inpatient's right to communicate must ensure that reasonable steps are taken to inform the inpatient and the following persons about the restriction, and the reason for it—

(a) the inpatient's nominated support person;

(b) a guardian of the inpatient;

(c) a carer of the inpatient, if the authorised psychiatrist is satisfied that the restriction will directly affect the carer and the care relationship;

(d) a parent of the inpatient, if the inpatient is under the age of 16 years;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the inpatient under a relevant child protection order.

(2) An authorised psychiatrist who makes a direction under section 54 to restrict an inpatient's right to communicate must ensure that reasonable steps are taken to inform the primary non-legal mental health advocacy service provider about the restriction and the reason for it.

56 Restriction on right to communicate to be monitored regularly

(1) An authorised psychiatrist who makes a direction under section 54 to restrict an inpatient's right to communicate must review that direction on a regular basis to determine whether the restriction needs to be continued.

(2) If the authorised psychiatrist is satisfied that it is no longer necessary to restrict the inpatient's right to communicate, the authorised psychiatrist must immediately end the restriction.

Part 2.5—Advance statements of preferences

57 What is an advance statement of preferences?

An advance statement of preferences is a document that sets out a person's preferences in relation to their treatment, care and support in the event that they become a patient.

58 Making an advance statement of preferences

(1) An advance statement of preferences may be made at any time.

(2) An advance statement of preferences must—

(a) be signed and dated by the person making it; and

(b) specify any or all of the following in relation to the person making it—

(i) their preferences relating to treatment;

(ii) their preferences relating to care and support including appropriate supports to assist them to communicate and participate in decision making;

(iii) their preferences as to whom may be provided with their health information;

(iv) the name and contact details of their nominated support person or advocate;

(v) the name and contact details of any person or organisation to be informed that the person is a patient; and

Note

See also section 33.

(c) be witnessed by an adult; and

(d) include a statement signed by the witness stating that—

(i) in the witness' opinion, the person making the statement understands what it is, the consequences of making it and how to revoke it; and

(ii) in the witness' opinion, the person making the statement appears to have done so of their own free will; and

(iii) the witness observed the person making the statement sign it; and

(iv) the witness is an adult; and

(e) include any other prescribed information.

(3) An advance statement of preferences is in effect from the time it is made until it is revoked.

59 Revoking an advance statement of preferences

(1) An advance statement of preferences is revoked if the person who made it—

(a) makes a new advance statement of preferences; or

(b) revokes the advance statement of preferences.

(2) A revocation of an advance statement of preferences must—

(a) state that the advance statement of preferences is revoked; and

(b) be signed and dated by the person revoking the statement; and

(c) be witnessed by an adult; and

(d) include a statement signed by the witness stating that—

(i) in the witness' opinion, the person revoking the statement understands the consequences of revoking it including that it will no longer be in effect for the purposes of this Act; and

(ii) in the witness' opinion, the person revoking the statement appears to have done so of their own free will; and

(iii) the witness observed the person revoking the statement sign it; and

(iv) the witness is an adult; and

(e) include any other prescribed information.

60 Advance statement of preferences must not be amended

(1) An advance statement of preferences must not be amended.

(2) A person who wishes to change the preferences expressed in their advance statement of preferences must make a new advance statement of preferences.

Part 2.6—Nominated support persons

61 Role of nominated support person

(1) The role of a nominated support person in relation to a patient is—

(a) to advocate for the views and preferences expressed by the patient, including preferences provided in the advance statement of preferences; and

(b) to support the patient to make and participate in decisions; and

(c) to advocate for any appropriate supports that would assist the patient to communicate and participate in decision making; and

(d) to support the patient to understand information and decisions; and

(e) to support the patient to communicate their views, preferences, decisions, questions or concerns; and

(f) to receive information, and be consulted, about the patient in accordance with this Act; and

(g) to support the patient to exercise any rights the patient has under this Act.

(2) A nominated support person is to perform their role in a manner that supports a constructive relationship between—

(a) the patient; and

(b) the authorised psychiatrist and any other person employed or engaged, or volunteering, at a designated mental health service.

62 Nomination of a nominated support person

(1) A person may nominate another person to be their nominated support person at any time.

(2) The nomination of a nominated support person must—

(a) be in writing; and

(b) be signed and dated by the person making the nomination; and

(c) specify the name and contact details of the person nominated; and

(d) be witnessed by an adult; and

(e) include a statement by the witness that—

(i) in the witness' opinion, the person making the nomination understands what a nomination is and that the person may revoke it; and

(ii) in the witness' opinion, the person making the nomination appears to be making it of their own free will; and

(iii) the witness observed the person making the nomination sign it; and

(iv) the witness is an adult.

(3) The person nominated to be the nominated support person must not be the person who witnesses the nomination.

63 Acceptance

(1) A nomination is made when the nominated support person signs an acceptance form.

(2) The acceptance form must include a statement by the person nominated that they agree to being a nominated support person.

(3) A nomination under this Part is in effect from the time it is made until the time it is revoked.

64 When is a nomination revoked?

A nomination is revoked if—

(a) the person who made the nomination—

(i) makes a new nomination; or

(ii) revokes the nomination; or

(b) the nominated support person resigns from their role as a nominated support person.

65 How may a person who made a nomination revoke it?

(1) A person who has made a nomination under this Part may revoke it at any time.

(2) A revocation must—

(a) state that the nomination is revoked; and

(b) be signed and dated by the person revoking the nomination; and

(c) be witnessed by an adult; and

(d) include a statement signed by the witness that—

(i) in the witness' opinion, the person revoking the nomination understands what a revocation is; and

(ii) the witness observed the person revoking the nomination sign it; and

(iii) in the witness' opinion, the person revoking the nomination understands the consequences of the revocation including that the nominated support person will no longer have the responsibilities, or perform the role, of a nominated support person; and

(iv) in the witness' opinion, the person revoking the nomination appears to have done so of their own free will; and

(v) the witness is an adult; and

(e) include any other prescribed information.

(3) A person who revokes a nomination must—

(a) take reasonable steps to inform the nominated support person of the revocation; and

(b) if the person is a patient, inform the authorised psychiatrist.

66 How may a nominated support person resign?

(1) A nominated support person may resign from their role as a nominated support person at any time.

(2) A resignation must—

(a) be in writing; and

(b) state the person's full name; and

(c) state that the person resigns from the role of nominated support person; and

(d) be signed by the person.

(3) A nominated support person who resigns must—

(a) take reasonable steps to inform the person who appointed them of their resignation; and

(b) if the person who appointed them is a patient, inform the authorised psychiatrist.

Part 2.7—Second psychiatric opinions in relation to compulsory treatment and certain orders

67 Right to a second psychiatric opinion

(1) An eligible patient may seek a second psychiatric opinion at any time.

Note

See section 3(1) for the meaning of ***eligible patient***.

(2) The following may seek a second psychiatric opinion—

(a) any person, at the request of the eligible patient;

(b) a guardian of the eligible patient;

(c) a parent of the eligible patient, if the eligible patient is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the eligible patient under a relevant child protection order.

(3) If an eligible patient seeks a second psychiatric opinion and requests assistance to obtain that opinion, the authorised psychiatrist must ensure that reasonable steps are taken to assist the patient with that request.

68 Who may give a second psychiatric opinion?

A second psychiatric opinion under this Part may be sought from any psychiatrist.

69 Functions of a psychiatrist giving a second opinion

(1) The functions of a psychiatrist giving a second psychiatric opinion are—

(a) to assess the eligible patient (other than a forensic patient) and to provide an opinion as to whether the criteria for the relevant order apply to the patient; and

(b) to review the treatment provided to the eligible patient under the relevant order and to recommend any changes that the psychiatrist giving the second opinion is satisfied are appropriate in the circumstances to the treatment provided under that order.

(2) A psychiatrist who is asked to give a second psychiatric opinion under this Part cannot override the treatment prescribed by the authorised psychiatrist.

70 Powers of a psychiatrist giving a second psychiatric opinion

A psychiatrist giving a second psychiatric opinion—

(a) may examine the eligible patient; and

(b) may access any health information that is held by the designated mental health service that is treating the eligible patient and is relevant to the treatment of the patient; and

(c) may consult the authorised psychiatrist and any other staff of the designated mental health service about the treatment of the eligible patient; and

(d) in deciding whether to recommend any changes to the treatment and the nature of those changes—

(i) must have regard to the eligible patient's views and preferences about—

(A) treatment; and

(B) any beneficial alternative treatments that are reasonably available; and

(C) the reasons for these views and preferences, including any recovery outcomes that the patient would like to achieve; and

(ii) must have regard to the views and preferences of the eligible patient expressed in their advance statement of preferences; and

(iii) to the extent that is reasonable in the circumstances, must have regard to the following—

(A) the views of the eligible patient's nominated support person;

(B) the views of a guardian of the eligible patient;

(C) the views of a carer of the eligible patient, if the psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship;

(D) the views of a parent of the eligible patient, if the eligible patient is under the age of 16 years;

(E) the views of the DFFH Secretary, if that Secretary has parental responsibility for the eligible patient under a relevant child protection order.

71 Reasonable assistance must be provided

A member of staff of a designated mental health service must provide a psychiatrist giving a second psychiatric opinion with any reasonable assistance that the psychiatrist requires in order to perform a function or exercise a power under this Part.

72 Second psychiatric opinion report

(1) A psychiatrist who gives a second psychiatric opinion must prepare a written report that includes—

(a) the psychiatrist's opinion as to whether the criteria for the relevant order apply to the patient (other than a forensic patient); and

(b) the psychiatrist's opinion regarding—

(i) the treatment provided to the patient while subject to the relevant order; and

(ii) any recommended changes to the treatment that the second opinion psychiatrist is satisfied are appropriate in the circumstances.

(2) The psychiatrist must ensure that reasonable steps are taken to give, in a timely manner, a copy of the report prepared under subsection (1) to—

(a) the eligible patient; and

(b) the person who requested the second psychiatric opinion on behalf of the eligible patient; and

(c) the authorised psychiatrist; and

(d) the eligible patient's nominated support person; and

(e) a guardian of the eligible patient; and

(f) a carer of the eligible patient, if the psychiatrist is satisfied that the second opinion will directly affect the carer and the care relationship; and

(g) a parent of the eligible patient, if the eligible patient is under the age of 16 years; and

(h) the DFFH Secretary, if that Secretary has parental responsibility for the eligible patient under a relevant child protection order.

73 Authorised psychiatrist must examine eligible patient (other than forensic patient) again in specified circumstances

(1) If a report under section 72 (other than a report in relation to a forensic patient) expresses the opinion that the criteria for the relevant order do not apply to the eligible patient, the authorised psychiatrist must—

(a) examine the eligible patient as soon as practicable after receiving a copy of the report; and

(b) determine whether the criteria for the relevant order apply to the eligible patient.

(2) If the authorised psychiatrist determines that the criteria for an order to which the eligible patient (other than a forensic patient) is subject apply, the authorised psychiatrist must—

(a) give the eligible patient the reasons for the determination; and

(b) advise the eligible patient that they have the right to apply to the Mental Health Tribunal—

(i) for a determination as to whether the criteria for the order apply to the eligible patient; or

(ii) for revocation of the order.

(3) For the purposes of subsection (2), the authorised psychiatrist must do so—

(a) orally as soon as practicable after the determination is made; and

S. 73(3)(b) amended by No. 20/2023 s. 4(1).

(b) in writing within 10 business days after the determination is made.

S. 73(4) amended by No. 20/2023 s. 4(2).

(4) The authorised psychiatrist must give written reasons for the determination within 10 business days after the determination is made to—

(a) the person who requested the second psychiatric opinion on behalf of the eligible patient; and

(b) the eligible patient's nominated support person; and

(c) a guardian of the eligible patient; and

(d) a carer of the eligible patient, if the psychiatrist is satisfied that the second opinion will directly affect the carer and the care relationship; and

(e) a parent of the eligible patient, if the eligible patient is under the age of 16 years; and

(f) the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

74 Authorised psychiatrist must review eligible patient's treatment in specified circumstances

(1) If a report under section 72 recommends changes to the eligible patient's current treatment, the authorised psychiatrist, as soon as practicable, must—

(a) review the patient's treatment; and

(b) decide whether to adopt any of the recommendations made in the report.

(2) If the authorised psychiatrist decides to adopt any of the recommendations, the authorised psychiatrist must revise the eligible patient's treatment.

(3) If the authorised psychiatrist decides to adopt none or to adopt only some of the recommendations, the authorised psychiatrist must—

(a) give the psychiatrist's reasons to the eligible patient; and

(b) advise the eligible patient that the patient has the right to apply to the chief psychiatrist for a review of the patient's treatment.

(4) For the purposes of subsection (3), the authorised psychiatrist must do so—

(a) orally as soon as practicable after the decision is made; and

(b) in writing within 10 business days after the decision is made.

S. 74(4)(b) amended by No. 20/2023 s. 5(1).

S. 74(5) amended by No. 20/2023 s. 5(2).

(5) The authorised psychiatrist must give written reasons for the decision within 10 business days after the decision is made to—

(a) the person who requested the second psychiatric opinion on behalf of the eligible patient; and

(b) the eligible patient's nominated support person; and

(c) a guardian of the eligible patient; and

(d) a carer of the eligible patient, if the psychiatrist is satisfied that the decision will directly affect the carer and the care relationship; and

(e) a parent of the eligible patient, if the eligible patient is under the age of 16 years; and

(f) the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

75 Application to chief psychiatrist for review of treatment

(1) If the authorised psychiatrist decides to adopt none or only some of the recommended changes made in the report under section 72, the eligible patient or a person specified in section 67(2) may apply to the chief psychiatrist to review the treatment of the patient.

(2) The person seeking the review must give the chief psychiatrist any other information that the chief psychiatrist requests in relation to the treatment of the eligible patient.

(3) A member of staff of the designated mental health service must provide an eligible patient with any reasonable assistance in making an application under subsection (1) if the eligible patient requests such assistance.

(4) The authorised psychiatrist may continue to administer treatment to an eligible patient during the conduct of a review under section 76.

76 Review by chief psychiatrist

(1) The chief psychiatrist must review the treatment of an eligible patient within 10 business days after receiving an application under section 75(1).

(2) For the purposes of the review, the chief psychiatrist may—

(a) examine the eligible patient; and

(b) access any health information that—

(i) is held by the designated mental health service treating the eligible patient; and

(ii) is relevant to the treatment of the eligible patient; and

(c) consult the authorised psychiatrist and any other staff of the designated mental health service about the treatment of the eligible patient.

(3) For the purposes of the review, the designated mental health service must provide the chief psychiatrist with any reasonable assistance the chief psychiatrist requires to conduct the review.

(4) In deciding whether to recommend any changes to the treatment and the nature of those changes, the chief psychiatrist, to the extent that is reasonable in the circumstances, must have regard to—

(a) the eligible patient's views and preferences about—

(i) treatment of their mental illness; and

(ii) any beneficial alternative treatments that are reasonably available; and

(iii) the reasons for those views and preferences, including any recovery outcomes that the eligible patient would like to achieve; and

(b) the views and preferences of the eligible patient expressed in their advance statement of preferences; and

(c) the views of the eligible patient's nominated support person; and

(d) the views of a guardian of the eligible patient; and

(e) the views of a carer of the eligible patient, if the chief psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship; and

(f) the views of a parent of the eligible patient, if the eligible patient is under the age of 16 years; and

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the eligible patient under a relevant child protection order.

(5) The chief psychiatrist, if appropriate in the circumstances, may direct the authorised psychiatrist to change the treatment of the eligible patient.

(6) A direction under subsection (5) is not limited to the recommendations made in any report prepared under section 72.

(7) The chief psychiatrist, as soon as practicable, must ensure that reasonable steps are taken to notify the following in writing of the outcome of a review—

(a) the eligible patient;

(b) any person, other than the eligible patient, who applied for the review under section 75;

(c) the authorised psychiatrist;

(d) the eligible patient's nominated support person;

(e) a guardian of the eligible patient;

(f) a carer of the eligible patient, if the chief psychiatrist is satisfied that the recommended changes will directly affect the carer and the care relationship;

(g) a parent of the eligible patient, if the eligible patient is under the age of 16 years;

(h) the DFFH Secretary, if that Secretary has parental responsibility for the eligible patient under a relevant child protection order.

77 Application for review may be withdrawn

(1) An eligible patient or a person specified in section 67(2) who applies to the chief psychiatrist to review the treatment of the eligible patient may withdraw the application at any time.

(2) The patient or person may—

(a) advise the chief psychiatrist of a withdrawal made under subsection (1); or

(b) request the authorised psychiatrist to advise the chief psychiatrist of the withdrawal made under subsection (1).

Chapter 3—Treatment and interventions

Part 3.1—Decision making principles for treatment and interventions

78 Application of Part

(1) This Part sets out the decision making principles for treatment and interventions.

(2) This Part applies to this Chapter and Chapter 4.

79 Care and transition to less restrictive support principle

Compulsory assessment and treatment is to be provided with the aim of promoting the person's recovery and transitioning them to less restrictive treatment, care and support. To this end, a person who is subject to compulsory assessment or treatment is to receive comprehensive, compassionate, safe and high-quality mental health and wellbeing services.

80 Consequences of compulsory assessment and treatment and restrictive interventions principle

The use of compulsory assessment and treatment or restrictive interventions significantly limits a person's human rights and may cause possible harm including—

(a) serious distress experienced by the person; and

(b) the disruption of the relationships, living arrangements, education or employment of the person.

81 No therapeutic benefit to restrictive interventions principle

The use of restrictive interventions on a person offers no inherent therapeutic benefit to the person.

82 Balancing of harm principle

Compulsory assessment and treatment or restrictive interventions are not to be used unless the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use.

83 Autonomy principle

The will and preferences of a person are to be given effect to the greatest extent possible in all decisions about assessment, treatment, recovery and support, including when those decisions relate to compulsory assessment and treatment.

84 Chief psychiatrist may prepare guidelines in relation to the decision making principles for treatment and interventions

(1) A person who has authority to make a decision or exercise a power in respect of the care or treatment of a patient under this Chapter or Chapter 4 must give proper consideration to the decision making principles for treatment and interventions in the making of that decision or exercise of that power.

(2) The chief psychiatrist may prepare guidelines to assist a person who has authority to make a decision or exercise a power in respect of the care or treatment of a patient under this Chapter or Chapter 4 to make decisions in accordance with subsection (1).

(3) Before making guidelines under subsection (2), the chief psychiatrist must consult with—

(a) consumers; and

(b) carers; and

(c) the Mental Health and Wellbeing Commission; and

(d) the mental health and wellbeing workforce; and

(e) any other person or body the chief psychiatrist considers must be consulted.

(4) The chief psychiatrist must ensure that—

(a) designated mental health services are given reasonable notice of any guidelines prepared under subsection (2) before the guidelines come into operation; and

(b) the guidelines are published on the Department's website as soon as practicable after they come into operation.

(5) If a person who has authority to make a decision or exercise a power in respect of the care or treatment of a patient under this Chapter or Chapter 4 makes a decision or exercises a power of that kind in accordance with any relevant guidelines prepared under subsection (2), the person is taken to have given proper consideration to the decision making principles for treatment and interventions.

(6) For the avoidance of doubt, the Mental Health Tribunal is not required to comply with this section.

Part 3.2—Capacity and informed consent

85 Presumption that person has capacity to give informed consent

(1) Before treatment or medical treatment is given to a person under this Act, the person's informed consent must be sought.

(2) The person seeking the informed consent must presume that the person whose consent is sought has the capacity to give it.

(3) However, the person's informed consent does not have to be sought if the person seeking consent reasonably considers that the person does not have capacity to give informed consent.

86 When does a person give informed consent?

(1) Informed consent may be given by a person if the person—

(a) has capacity to give informed consent; and

(b) has been given adequate information to enable the person to make an informed decision; and

(c) has been given a reasonable opportunity to decide whether or not to consent; and

(d) has given consent freely without undue pressure or coercion by any other person; and

(e) has not withdrawn their consent or indicated their intention to withdraw their consent.

(2) A person has been given adequate information to make an informed decision if the person has been given—

(a) an explanation of the proposed treatment or medical treatment including—

(i) the purpose of the treatment or medical treatment; and

(ii) the type, method and likely duration of the treatment or medical treatment; and

(b) an explanation of the advantages and disadvantages of the treatment or medical treatment, including information about the associated discomfort, risks and common or expected side effects of the treatment or medical treatment; and

(c) an explanation of any beneficial alternative treatments that are reasonable available, including any information about the advantages and disadvantages of these alternatives; and

(d) answers to any relevant questions that the person has asked; and

(e) an explanation of the advantages and disadvantages of not undergoing the treatment;

(f) any other relevant information that is likely to influence the person's decision; and

(g) in the case of proposed treatment, a statement of rights relevant to the person's situation.

(3) A person has been given a reasonable opportunity to make a decision if, in the circumstances, the person has been given—

(a) a reasonable period of time in which to consider the matters involved in the decision; and

(b) a reasonable opportunity to discuss these matters with the registered medical practitioner or other health practitioner who is proposing the treatment or medical treatment; and

(c) the appropriate supports to make the decision; and

(d) a reasonable opportunity to obtain any other advice or assistance in relation to the decision.

(4) Without limiting subsections (1), (2) or (3), for the purposes of medical treatment that is given under this Act, a person may give informed consent by instructional directive.

Note

See also section 17.

87 When does a person have capacity to give informed consent?

(1) A person has capacity to give informed consent if the person—

(a) is able to understand the information they are given for the purpose of deciding whether or not to consent; and

(b) is able to remember that information; and

(c) is able to use or weigh that information in deciding whether or not to consent; and

(d) is able to communicate the decision the person makes by speech, gestures or any other means.

(2) The following must be considered in deciding whether a person has capacity to give informed consent—

(a) the person's capacity to give informed consent is specific to the particular decision that the person is making;

(b) the person's capacity to give informed consent may change over time;

(c) it should not be assumed that the person does not have capacity to give informed consent only because of the person's age, appearance, disability, condition or behaviour;

(d) it should not be assumed that the person does not have capacity to give informed consent only because the person makes a decision that could be considered unwise;

(e) whether the person may be enabled to give informed consent by providing the person with appropriate supports.

(3) In assessing whether a person has capacity to give informed consent, the person carrying out the assessment must take all reasonable steps to ensure that—

(a) the assessment is carried out at a time, and in an environment, that the capacity of the person being assessed can be determined most accurately; and

(b) the person being assessed is provided with appropriate supports to enable the person to give informed consent.

Part 3.3—Treatment

88 Patients to be treated for mental illness

A patient is to be given treatment for their mental illness in accordance with this Act.

89 When a patient does not have capacity to give informed consent or does not give informed consent to treatment

(1) This section applies if—

(a) a patient (other than an assessment patient or a court assessment patient)—

(i) does not have capacity to give informed consent to treatment proposed by an authorised psychiatrist; or

(ii) has capacity to give informed consent but does not give informed consent to treatment proposed by an authorised psychiatrist; and

(b) the treatment proposed by the authorised psychiatrist is not electroconvulsive treatment or neurosurgery for mental illness.

Note

See Parts 3.5 and 3.6 for relevant provisions regarding electroconvulsive treatment and neurosurgery for mental illness.

(2) For the purposes of determining whether this section applies to a person, it is only the patient not giving informed consent that is relevant and not the refusal to give consent of any other person or body authorised by law to make decisions for the patient.

(3) An authorised psychiatrist may make a treatment decision for a patient under this section if the authorised psychiatrist is satisfied that—

(a) the treatment is clinically appropriate; and

(b) there is no less restrictive way for the patient to be treated other than the treatment proposed by the authorised psychiatrist.

(4) In deciding whether there is no less restrictive way for the patient to be treated, the authorised psychiatrist, to the extent that is reasonable in the circumstances, must have regard to the following—

(a) the patient's views and preferences regarding the treatment and the reasons for those views and preferences including any recovery outcomes the patient would like to achieve;

(b) any beneficial alternative treatment that is reasonably available;

(c) the views and preferences of the patient expressed in the patient's advance statement of preferences;

(d) the views of the patient's nominated support person;

(e) the views of the patient's guardian;

(f) if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship, the views of the patient's carer;

(g) if the patient is under the age of 16 years, the views of the patient's parent;

(h) if the DFFH Secretary has parental responsibility for the patient under a relevant child protection order, the views of the DFFH Secretary;

(i) the likely consequences for the patient if the treatment is not administered;

(j) the likely consequences if the treatment is provided to the patient without the patient's consent;

(k) any second psychiatric opinion that has been given to the authorised psychiatrist.

90 Circumstances in which patient's advance statement of preferences may be overridden by an authorised psychiatrist

(1) An authorised psychiatrist may only make a treatment decision for a patient under section 89(3) that is not in accordance with the preferred treatment specified in the patient's advance statement of preference if the authorised psychiatrist is satisfied that the patient's preferred treatment—

(a) is not clinically appropriate; or

(b) is clinically appropriate but is unable to be provided to the patient by the designated mental health service despite the designated mental health service making all reasonable efforts to do so.

(2) If an authorised psychiatrist decides to override a patient's advance statement of preferences under this section, the authorised psychiatrist, as soon as practicable but no later than within 10 business days after the decision is made, must provide the patient and the patient's nominated support person with written reasons for the authorised psychiatrist's decision.

(3) In addition, the authorised psychiatrist must orally inform the patient of the decision and provide reasons as soon as practicable.

Part 3.4—Medical treatment

91 Giving informed consent to medical treatment

If a patient gives informed consent to medical treatment, the medical treatment may be given to the patient.

Note

Patient is defined in section 3 to mean an assessment patient, a court assessment patient, a temporary treatment patient, a treatment patient, a security patient or a forensic patient.

92 Who may consent to medical treatment if patient does not have capacity to give informed consent?

(1) If a patient who is of or over the age of 18 years does not have capacity to give informed consent to medical treatment, the medical treatment may be given to the patient with the consent of the first of the following persons who is reasonably available, willing and able to make a decision about the proposed medical treatment—

(a) the patient's medical treatment decision maker;

(b) a person appointed by VCAT to make decisions about the proposed medical treatment;

(c) a person appointed under a guardianship order within the meaning of the **Guardianship and Administration Act 2019** with power to make decisions concerning the proposed medical treatment;

(d) subject to section 93, the authorised psychiatrist.

(2) If a patient who is under the age of 18 years does not have capacity to give informed consent to medical treatment, the medical treatment may be given to the patient with the consent of—

(a) a person who has the legal authority to consent to the medical treatment for the patient and who is reasonably available, willing and able to make a decision about the proposed medical treatment; or

(b) if a person referred to in paragraph (a) is not reasonably available or is not willing and able to make a decision about the proposed medical treatment, subject to section 93, the authorised psychiatrist.

Note

See section 53 of the **Medical Treatment Planning and Decisions Act 2016** in respect of medical treatment in an emergency.

93 Matters authorised psychiatrist must consider in consenting to medical treatment for a patient

(1) An authorised psychiatrist may consent to medical treatment being given to a patient who does not have capacity to give informed consent if the authorised psychiatrist is satisfied that the medical treatment would benefit the patient.

(2) In deciding whether the medical treatment would benefit the patient, the authorised psychiatrist, to the extent that is reasonable in the circumstances, must have regard to the following—

(a) the patient's views and preferences regarding the medical treatment and the reasons for those views and preferences including any recovery outcomes the patient would like to achieve;

(b) any beneficial alternative medical treatment that is reasonably available;

(c) any relevant values directive given by the patient;

(d) the views of the patient's nominated support person;

(e) the views of the patient's guardian;

(f) if the authorised psychiatrist is satisfied that decision will directly affect the carer and the care relationship, the views of the patient's carer;

(g) if the patient is under the age of 16 years, the views of the patient's parent;

(h) if the DFFH Secretary has parental responsibility for the patient under a relevant child protection order, the views of that Secretary;

(i) if the medical treatment is likely to remedy the condition or lessen the symptoms of the condition;

(j) the likely consequences for the patient if the medical treatment is not administered;

(k) any second opinion of a registered medical practitioner that has been given to the authorised psychiatrist.

(3) If the authorised psychiatrist is of the opinion that the patient does not currently have capacity to give informed consent to medical treatment but is likely to have that capacity within a reasonable period of time, the authorised psychiatrist must not give consent to the medical treatment.

(4) Despite subsection (3), the authorised psychiatrist may give consent to the medical treatment if the delay in giving the medical treatment to the patient could result in serious harm to, or deterioration in, the mental or physical health of the patient.

Part 3.5—Electroconvulsive treatment

Division 1—General

94 Electroconvulsive treatment must not be performed other than in accordance with this Part

Electroconvulsive treatment must not be performed on a person other than in accordance with this Part.

95 What is a course of electroconvulsive treatment?

For the purposes of this Part, a course of electroconvulsive treatment means treatment specified by the Mental Health Tribunal in an order under this Part that is—

(a) up to 12 electroconvulsive treatments; and

(b) performed within a period of time that does not exceed 6 months.

96 Mental Health Tribunal order authorising course of electroconvulsive treatment

(1) If the Mental Health Tribunal makes an order authorising a course of electroconvulsive treatment, the Tribunal must specify in the order—

(a) the duration of the order and the date on which it will expire, which must be no more than 6 months after the date on which the order is made; and

(b) the maximum number of electroconvulsive treatments authorised to be performed over the duration of the order, which must be no more than 12 treatments.

(2) Nothing in this Part requires a course of electroconvulsive treatment to be completed.

97 Listing and completion of applications to the Mental Health Tribunal under this Part

(1) The Mental Health Tribunal must list and complete the hearing of an application under this Part within 5 business days after receiving the application.

(2) An authorised psychiatrist or a psychiatrist who applies under this Part may request an urgent hearing of the application if satisfied that the course of electroconvulsive treatment is necessary as a matter of urgency—

(a) to save the life of the person in respect of whom the application is made; or

(b) to prevent serious damage to the health of the person in respect of whom the application is made; or

(c) to prevent the person in respect of whom the application is made from suffering or continuing to suffer significant pain or distress.

(3) The Mental Health Tribunal must list and complete the hearing of an application under this Part in respect of which a request under subsection (2) is made as soon as practicable after receiving the request.

Division 2—Adult patients

98 Authority to perform electroconvulsive treatment on an adult patient

Electroconvulsive treatment may be performed on an adult patient if—

(a) the adult patient has personally given informed consent in writing to receiving the electroconvulsive treatment; or

(b) the Mental Health Tribunal has made an order authorising a course of electroconvulsive treatment in respect of the adult patient.

99 Application to Mental Health Tribunal for course of electroconvulsive treatment—adult patient

(1) An authorised psychiatrist may apply to the Mental Health Tribunal for authority to perform a course of electroconvulsive treatment on an adult patient if—

(a) the patient does not have capacity to give informed consent to receiving the electroconvulsive treatment; and

(b) the authorised psychiatrist is satisfied that in the circumstances there is no less restrictive way for the patient to be treated.

(2) In deciding whether there is a less restrictive way for the patient to be treated, the authorised psychiatrist must have regard to the following—

(a) the patient's views and preferences regarding electroconvulsive treatment, and any beneficial alternative treatment that is reasonably available, and the reasons for those views and preferences, including any recovery outcomes the patient would like to achieve;

(b) any of the patient's relevant views and preferences specified in their advance statement of preferences (if any);

(c) any of the patient's relevant views and preferences expressed by the patient's nominated support person;

(d) the views of the patient's guardian;

(e) if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship, the views of the patient's carer;

(f) whether the electroconvulsive treatment is likely to remedy or lessen the symptoms of mental illness;

(g) the likely consequences for the patient if the electroconvulsive treatment is not administered;

(h) any second psychiatric opinion that has been given to the authorised psychiatrist.

(3) An authorised psychiatrist may make a further application under subsection (1) during or after the course of electroconvulsive treatment.

100 Determination of an application for an order—adult patient

On receiving an application under this Division, the Mental Health Tribunal must determine the application and—

(a) make an order authorising a course of electroconvulsive treatment if the Tribunal is satisfied that—

(i) the patient does not have capacity to give informed consent to the electroconvulsive treatment; and

(ii) there is no less restrictive way for the patient to be treated; or

(b) make an order refusing the treatment.

101 Notification of the making of an order—adult patient

(1) The Mental Health Tribunal must notify the following persons of its decision to make an order authorising the course of treatment or refusing to authorise the course of treatment under this Division—

(a) the adult patient in respect of whom the order is made; and

(b) the authorised psychiatrist who made the application for the order; and

(c) the adult patient's guardian; and

(d) the adult patient's nominated support person; and

(e) a carer of the adult patient, if the Tribunal is satisfied that the treatment will directly affect the carer and the care relationship.

(2) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the Tribunal must take reasonable steps to give a copy of the order to the persons to be notified under subsection (1).

(3) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the authorised psychiatrist who applied for the order must take reasonable steps to ensure that a statement of rights is given to the persons notified under subsection (1)(a), (c), (d), and (e).

102 When does a course of electroconvulsive treatment begin and end?

(1) The course of electroconvulsive treatment begins on the date that the Mental Health Tribunal authorises the treatment.

(2) The course of electroconvulsive treatment ends at the earliest of the following—

(a) all the electroconvulsive treatments for the course of electroconvulsive treatment have been performed;

(b) the date by which the course of electroconvulsive treatment must be completed is reached;

(c) the adult patient ceases to be a patient;

(d) the adult regains the capacity to give informed consent to the electroconvulsive treatment;

(e) the authorised psychiatrist determines that the electroconvulsive treatment is no longer the least restrictive treatment available;

(f) a new order under this Part is made in respect of the adult patient.

Division 3—Use of electroconvulsive treatment on adults who are not patients

103 Authority to perform electroconvulsive treatment on an adult who is not a patient

Electroconvulsive treatment may be performed on an adult who is not a patient if—

(a) the adult has personally given informed consent in writing to receiving the electroconvulsive treatment; or

(b) the Mental Health Tribunal has made an order authorising the course of electroconvulsive treatment.

Note

See definition of ***patient*** in section 3(1).

104 Application to Mental Health Tribunal for course of electroconvulsive treatment—person who is an adult and not a patient

(1) A psychiatrist may apply to the Mental Health Tribunal for authority to perform a course of electroconvulsive treatment on a person who is an adult and not a patient if—

(a) the person does not have capacity to give informed consent to receiving the treatment; and

(b) the psychiatrist is satisfied in the circumstances that there is no less restrictive way for the person to be treated; and

(c) the person—

(i) has an instructional directive giving informed consent to electroconvulsive treatment; or

(ii) does not have an instructional directive giving consent to electroconvulsive treatment and the person's medical treatment decision maker gives informed consent in writing to a course of electroconvulsive treatment.

(2) In deciding whether there is a less restrictive way for the person who is an adult and not a patient to be treated, the psychiatrist must have regard to the following—

(a) the person's views and preferences regarding electroconvulsive treatment, and any beneficial alternative treatment that is reasonably available, and the reasons for those views and preferences, including any recovery outcomes the person would like to achieve;

S. 104(2)(a) substituted by No. 20/2023 s. 6.

(b) any relevant values directive given by the person;

(c) the views of the person's medical treatment decision maker;

(d) the views of the person's guardian (if any);

(e) the views of the person's support person (if any);

(f) if the psychiatrist is satisfied that decision will directly affect the carer and the care relationship, the views of the person's carer;

(g) whether the electroconvulsive treatment is likely to remedy or lessen the symptoms of mental illness;

(h) the likely consequences for the person if the electroconvulsive treatment is not performed;

(i) any psychiatric opinion given by another psychiatrist that has been given to the psychiatrist making the application.

(3) A psychiatrist may make a further application under subsection (1) during or after the course of electroconvulsive treatment.

105 Determination of an application for an order—adult who is not a patient

On receiving an application under this Division, the Mental Health Tribunal must determine the application and—

(a) make an order authorising a course of electroconvulsive treatment if the Tribunal is satisfied that—

(i) the person who is an adult and not a patient does not have capacity to give informed consent; and

(ii) there is no less restrictive way for the person to be treated; and

(iii) either—

(A) the person has an instructional directive giving informed consent to electroconvulsive treatment; or

(B) the person does not have an instructional directive giving consent to electroconvulsive treatment and the person's medical treatment decision maker gives informed consent in writing to the course of electroconvulsive treatment; or

(b) make an order refusing the treatment.

106 Notification of the making of an order—adult who is not a patient

(1) The Mental Health Tribunal must notify the following persons of its decision to make an order authorising the course of treatment or refusing to authorise the course of treatment under this Division—

(a) the person who is an adult and not a patient in respect of whom the application is made;

(b) the psychiatrist who made the application for the order;

(c) any medical treatment decision maker who gave informed consent under section 105(1)(a)(iii)(B);

(d) the person's carer, if the Tribunal is satisfied that the treatment will directly affect the carer and the care relationship;

(e) the person's guardian;

(f) the person's support person.

(2) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the Tribunal must take reasonable steps to give a copy of the order to the persons to be notified under subsection (1).

(3) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the authorised psychiatrist who applied for the order must take reasonable steps to ensure that a statement of rights is given to the persons notified under subsection (1)(a), (c), (d), (e) and (f).

107 When does a course of electroconvulsive treatment begin and end?

(1) The course of electroconvulsive treatment begins on the date that the Mental Health Tribunal authorises the treatment.

(2) The course of electroconvulsive treatment ends at the earliest of the following—

(a) all the electroconvulsive treatments for the course of electroconvulsive treatment have been performed;

(b) the date by which the course of electroconvulsive treatment must be completed is reached;

(c) the person who is an adult and not a patient becomes a patient;

(d) the person regains the capacity to give informed consent to the electroconvulsive treatment;

(e) the person's medical decision maker withdraws consent to the course of electroconvulsive treatment;

(f) the psychiatrist determines that the electroconvulsive treatment is no longer the least restrictive treatment available;

(g) a new order under this Part is made in respect of the person.

Division 4—Young patients

108 Authority to perform electroconvulsive treatment on a young patient

Electroconvulsive treatment may be performed on a young patient if the Mental Health Tribunal has made an order under section 110 in respect of the person authorising the course of electroconvulsive treatment.

Note

See definition of ***young patient*** in section 3(1).

109 Application to Mental Health Tribunal for course of electroconvulsive treatment—young patient

(1) An authorised psychiatrist may apply to the Mental Health Tribunal for an order authorising a course of electroconvulsive treatment on a young patient if—

(a) the young patient has personally given informed consent in writing to receiving the course of electroconvulsive treatment; or

(b) the young patient does not have capacity to give informed consent the course of electroconvulsive treatment and the authorised psychiatrist is satisfied that in the circumstances there is no less restrictive way for the young patient to be treated.

(2) In deciding whether there is a less restrictive way for the young patient to be treated, the authorised psychiatrist must have regard to the following—

(a) the young patient's views and preferences regarding electroconvulsive treatment, and any beneficial alternative treatment that is reasonably available, and the reasons for

S. 109(2)(a) substituted by No. 20/2023 s. 7.

those views and preferences, including any recovery outcomes the young patient would like to achieve;

(b) any of the young patient's relevant views and preferences specified in their advance statement of preferences (if any);

(c) any of the young patient's relevant views and preferences expressed by the young patient's nominated support person;

(d) if the authorised psychiatrist is satisfied that decision will directly affect the carer and the care relationship, the views of the young patient's carer;

(e) if the young patient is under the age of 16 years, the views of the young patient's parent;

(f) if the DFFH Secretary has parental responsibility for the young patient under a relevant child protection order, the views of that Secretary;

(g) whether the electroconvulsive treatment is likely to remedy or lessen the symptoms of mental illness;

(h) the likely consequences for the young patient if the electroconvulsive treatment is not administered;

(i) any psychiatric opinion given by another psychiatrist that has been given to the authorised psychiatrist making the application.

(3) An authorised psychiatrist may make a further application under subsection (1) during or after the course of electroconvulsive treatment.

110 Determination of an application for an order—young patient

On receiving an application under this Division, the Mental Health Tribunal must determine the application and—

(a) make an order authorising a course of electroconvulsive treatment if the Tribunal is satisfied that—

(i) the young patient has given their informed consent in writing to receiving the course of electroconvulsive treatment; or

(ii) the young patient does not have capacity to give informed consent to receiving the course of electroconvulsive treatment and there is no less restrictive way for the young person to be treated; or

(b) make an order refusing to authorise the treatment.

111 Notification of the making of an order—young patient

(1) The Mental Health Tribunal must notify the following persons of its decision to make an order authorising the course of treatment or refusing to authorise the course of treatment under this Division—

(a) the young patient in respect of whom the order is made;

(b) the authorised psychiatrist who made the application for an order under section 109;

(c) a parent, if the young patient is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the young patient under a relevant child protection order;

(e) the young patient's nominated support person;

(f) a carer of the young patient, if the Tribunal is satisfied that the treatment will directly affect the carer and the care relationship.

(2) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the Tribunal must take reasonable steps to give a copy of the order to the persons to be notified under subsection (1).

(3) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the authorised psychiatrist must take reasonable steps to ensure that a statement of rights is given to the persons notified under subsection (1)(a), (c), (d), (e) and (f).

112 When does a course of electroconvulsive treatment begin and end?

(1) The course of electroconvulsive treatment begins on the date the Mental Health Tribunal authorises the treatment.

(2) The course of electroconvulsive treatment ends at the earliest of the following—

(a) all the electroconvulsive treatments for the course of electroconvulsive treatment have been performed;

(b) the date by which the course of electroconvulsive treatment must be completed is reached;

(c) in the case of the treatment being authorised on the basis that the Mental Health Tribunal was satisfied of the matter referred to in section 110(a)(i), the young patient withdraws their consent to the course of electroconvulsive treatment;

(d) in the case of the treatment being authorised on the basis that the Mental Health Tribunal was satisfied of the matter referred to in section 110(a)(ii), the authorised psychiatrist—

(i) determines that the young patient has regained the capacity to give informed consent to the course of electroconvulsive treatment; or

(ii) is no longer satisfied that electroconvulsive therapy is the least restrictive treatment;

(e) the young patient reaches 18 years of age;

(f) the young patient is no longer a patient;

(g) a new order under this Part is made in respect of the young patient.

Division 5—Use of electroconvulsive treatment on young persons who are not patients

113 Authority to perform course of electroconvulsive treatment on a young person who is not a patient

A course of electroconvulsive treatment may be performed on a young person who is not a patient if the Mental Health Tribunal has made an order under section 115 authorising the treatment.

114 Application to Mental Health Tribunal for course of electroconvulsive treatment—young person who is not a patient

(1) A psychiatrist may apply to the Mental Health Tribunal for an order authorising a course of electroconvulsive treatment on a young person who is not a patient if—

(a) the young person has personally given informed consent in writing to receiving the course of electroconvulsive treatment; or

(b) the young person does not have capacity to give informed consent to the course of electroconvulsive treatment but—

(i) the young person's medical treatment decision maker has given informed consent in writing to the young person receiving the course of electroconvulsive treatment; and

(ii) the psychiatrist is satisfied that in the circumstances there is no less restrictive way for the young person to be treated.

(2) In deciding whether there is a less restrictive way for the young person to be treated, the psychiatrist must have regard to the following—

S. 114(2)(a) substituted by No. 20/2023 s. 8.

(a) the young person's views and preferences regarding electroconvulsive treatment, and any beneficial alternative treatment that is reasonably available, and the reasons for those views and preferences, including any recovery outcomes the young person would like to achieve;

(b) the views of the young person's support person (if any);

(c) any relevant values directive given by the young person;

(d) the views of the young person's medical treatment decision maker;

(e) if the psychiatrist is satisfied that decision will directly affect the carer and the care relationship, the views of the young person's carer;

(f) if the young person is under the age of 16 years, the views of the young person's parent;

(g) the DFFH Secretary, if that Secretary has parental responsibility for the young person under a relevant child protection order;

(h) whether the electroconvulsive treatment is likely to remedy or lessen the symptoms of mental illness;

(i) the likely consequences for the young person if the electroconvulsive treatment is not administered;

(j) any psychiatric opinion given by another psychiatrist that has been given to the psychiatrist making the application.

(3) A psychiatrist may make a further application under subsection (1) during or after the course of electroconvulsive treatment.

115 Determination of an application for an order—young person who is not a patient

On receiving an application under this Division, the Mental Health Tribunal must determine the application and—

(a) make an order authorising a course of electroconvulsive treatment if the Tribunal is satisfied that—

(i) the young person who is not a patient has given their informed consent in writing to receiving the course of electroconvulsive treatment; or

(ii) the young person does not have capacity to give informed consent to receiving the course of electroconvulsive treatment; and

(A) the young person's medical treatment decision maker has given informed consent in writing to the course of electroconvulsive treatment; and

(B) there is no less restrictive way for the young person to be treated; or

(b) make an order refusing to authorise the treatment.

116 Notification of the making of an order—young person who is not a patient

(1) The Mental Health Tribunal must notify the following persons of its decision to make an order authorising the course of treatment or refusing to authorise the course of treatment under this Division—

(a) the young person who is not a patient in respect of whom the order is made;

(b) the psychiatrist who made the application for an order under section 114;

(c) the young person's medical treatment decision maker;

(d) the young person's support person;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the young person under a relevant child protection order;

(f) the young person's carer, if the Tribunal is satisfied that the treatment will directly affect the carer and the care relationship;

(g) a parent, if the young person is under the age of 16 years.

(2) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the Tribunal must take reasonable steps to give a copy of the order to the persons to be notified under subsection (1).

(3) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the psychiatrist who applied for the order must take reasonable steps to ensure that a statement of rights is given to the persons notified under subsection (1)(a), (c), (d), (e), (f) and (g).

117 When does a course of electroconvulsive treatment begin and end?

(1) The course of electroconvulsive treatment begins on the date the Mental Health Tribunal authorises the treatment.

(2) The course of electroconvulsive treatment ends at the earliest of the following—

(a) all the electroconvulsive treatments for the course of electroconvulsive treatment have been performed;

(b) the date by which the course of electroconvulsive treatment must be completed is reached;

(c) in the case of the treatment being authorised on the basis that the Mental Health Tribunal was satisfied of the matter referred to in section 115(a)(i), the young person who is not a patient withdraws their consent to the course of electroconvulsive treatment;

(d) in the case of the treatment being authorised on the basis that the Mental Health Tribunal was satisfied of the matters referred to in section 115(a)(ii)—

(i) the psychiatrist determines that the young person has regained capacity to give informed consent to the course of electroconvulsive treatment; or

(ii) the psychiatrist is no longer satisfied that electroconvulsive treatment is the least restrictive treatment; or

(iii) the medical treatment decision maker withdraws their consent to the course of electroconvulsive treatment;

(e) the young person reaches 18 years of age;

(f) the young person becomes a patient;

(g) a new order under this Part is made in respect of the young person.

Division 6—Reporting

118 Reporting to the chief psychiatrist

An authorised psychiatrist treating a person under this Part at a designated mental health service must give a written report to the chief psychiatrist—

(a) containing the matters requested by the chief psychiatrist; and

(b) within the time requested by the chief psychiatrist.

Part 3.6—Neurosurgery for mental illness

119 Mental Health Tribunal must approve all neurosurgery for mental illness

Neurosurgery for mental illness must not be performed on a person unless the Mental Health Tribunal has approved the neurosurgery by order under section 121.

120 Psychiatrist may apply to Mental Health Tribunal for approval to perform neurosurgery for mental illness

A psychiatrist may apply to the Mental Health Tribunal for approval to have neurosurgery for mental illness performed on a person if the person has personally given informed consent in writing to the neurosurgery.

121 Powers of Mental Health Tribunal in respect of application for neurosurgery for mental illness

(1) After hearing an application made under this Part, the Mental Health Tribunal may by order—

(a) grant the application and approve the neurosurgery; or

(b) refuse the application and not approve the neurosurgery.

(2) The Mental Health Tribunal must not approve neurosurgery under subsection (1) unless it is satisfied that—

(a) the person in respect of whom the application is made has given informed consent in writing to the neurosurgery; and

(b) the neurosurgery for mental illness will benefit the person.

(3) In determining whether the neurosurgery for mental illness will benefit the person, the Mental Health Tribunal must have regard to the following—

(a) whether the neurosurgery for mental illness is likely to remedy the mental illness or alleviate the symptoms and reduce the ill effects of the mental illness;

(b) the likely consequences for the person if neurosurgery for mental illness is not performed;

(c) any beneficial alternative treatments that are reasonably available and the person's views and preferences about those treatments;

(d) the nature and degree of any discomfort, risks and common or expected side effects associated with the proposed neurosurgery for mental illness, including the person's views and preferences about any such discomfort, risks or common or expected side effects.

122 Notice of decision

(1) The Mental Health Tribunal must give written notice of an order made under this Part to the following persons—

(a) the psychiatrist who made the application;

(b) the person in respect of whom the application was made;

(c) the chief psychiatrist.

(2) The Mental Health Tribunal must give a copy of the order to the person in respect of whom the order was made.

(3) As soon as practicable after the Mental Health Tribunal makes an order under this Division, the psychiatrist who applied for the order must take reasonable steps to ensure that a statement of rights is given to the person notified under subsection (1)(b).

123 Report to chief psychiatrist

(1) If neurosurgery for mental illness is performed, the psychiatrist who made the application under this Part, or the psychiatrist treating the person following the surgery, must give the chief psychiatrist a written report.

(2) A report under subsection (1)—

(a) must describe the procedure and outcome of the neurosurgery for mental illness; and

(b) must be given—

(i) within 3 months after the surgery is performed; and

(ii) within 9 to 12 months after the surgery is performed.

(3) After receiving a report under subsection (1), the chief psychiatrist may require the psychiatrist who gave the report to provide further information relating to the neurosurgery for mental illness and the results of that surgery.

124 Hearing of application to perform neurosurgery for mental illness

The Mental Health Tribunal must hear and determine an application made under section 120 within 30 business days after receipt of the application.

Part 3.7—Restrictive interventions

Division 1—Use of restrictive interventions under this Act

125 Responsibilities of service providers and others to aim to reduce and eliminate the use of restrictive interventions

Mental health and wellbeing service providers and persons who perform functions and exercise powers under this Act should aim to—

(a) reduce the use of restrictive interventions; and

(b) eventually eliminate the use of restrictive interventions in mental health treatment.

126 Restrictive intervention must not be used on certain persons other than in accordance with this Part

(1) A restrictive intervention must not be used on a person who is receiving mental health and wellbeing services in a designated mental health service other than in accordance with this Division and Division 2.

(2) Chemical restraint must not be used on a person who is being transported in accordance with section 139 other than in accordance with this Division and Division 3.

Note 1

Restrictive intervention is defined in section 3(1) to mean seclusion, bodily restraint (physical restraint or mechanical restraint) or chemical restraint.

Note 2

The use of bodily restraint by an authorised person on a person taken into care and control under Part 5.2 or Part 5.3 is regulated under Part 5.6.

127 Restrictive intervention for permitted purpose only

A restrictive intervention may be used on a person specified in section 126 for the following purposes only—

(a) to prevent imminent and serious harm to that person or another person;

(b) in the case of bodily restraint—to administer treatment or medical treatment to the person.

128 Restrictive intervention only if necessary and if all reasonable and less restrictive options have been tried or considered

(1) For the purposes of this Part, a restrictive intervention may only be used on a person specified in section 126 if it is necessary to achieve a purpose specified in section 127.

(2) A restrictive intervention must not be used on a person specified in section 126 unless all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable.

129 Ending a restrictive intervention

(1) The authority to use a restrictive intervention under this Part ends if a person who may authorise the use of a restrictive intervention under this Part is satisfied that the use of the restrictive intervention is no longer necessary for the purpose for which it was authorised.

(2) If a person referred to in subsection (1) is satisfied that the use of the restrictive intervention is no longer necessary for the purpose for which it was authorised, the person must immediately take steps to release the person from the restrictive intervention.

Division 2—Use of restrictive interventions in a designated mental health service

130 Application of Division

This Division applies in respect of a person receiving mental health and wellbeing services in a designated mental health service.

131 Matters to be considered if authorising restrictive intervention

(1) In determining under section 128(2) whether there is no less restrictive option available, a person authorising a restrictive intervention, to the greatest extent possible in the circumstances, must have regard to the following—

S. 131(1)(a) amended by No. 20/2023 s. 9.

(a) the likely impact on the person, considering the person's views and preferences, and any past experience of trauma;

(b) the person's views of, and preferences relating to, the use of restrictive interventions;

(c) the person's culture, beliefs, values and personal characteristics.

(2) For the purposes of subsection (1)(b), the person authorising the restrictive intervention must have regard to—

(a) the views and preferences expressed in any advance statement of preferences of the person; and

(b) the views of any nominated support person of the person.

132 Use of restrictive intervention must be authorised

(1) The use of seclusion or bodily restraint under this Division must be authorised by—

(a) an authorised psychiatrist; or

(b) if an authorised psychiatrist is not reasonably available, a registered medical practitioner or a nurse in charge.

(2) The use of chemical restraint under this Division must be authorised by—

(a) an authorised psychiatrist; or

(b) if an authorised psychiatrist is not reasonably available, a registered medical practitioner or a nurse practitioner acting within their ordinary scope of practice.

(3) An authorised psychiatrist, registered medical practitioner, nurse in charge or a nurse practitioner acting within their ordinary scope of practice (as the case requires) may authorise the use of a restrictive intervention on a person only if satisfied that it is necessary to achieve a purpose specified in section 127.

Note

See section 128 for when a restrictive intervention is necessary.

(4) Despite subsection (1), a registered nurse may authorise the use of physical restraint on a person only if—

(a) an authorised psychiatrist, registered medical practitioner or nurse in charge is not immediately available to authorise the use of physical restraint; and

(b) the registered nurse is satisfied that the use of physical restraint is necessary to achieve a purpose specified in section 127(a).

(5) For the purposes of subsection (4), in determining whether the use of bodily restraint is necessary to achieve a purpose specified in section 127(a), a registered nurse is not required to have regard to the matters set out in section 131(1) and (2).

(6) A registered nurse who authorises the use of physical restraint under subsection (4) must notify the use to an authorised psychiatrist, a registered medical practitioner or a nurse in charge as soon as practicable after it is authorised.

(7) Subject to this Division, if the physical restraint is continuing at the time an authorised psychiatrist, registered medical practitioner or nurse in charge receives a notification under subsection (6), the authorised psychiatrist, registered medical practitioner or nurse in charge must—

(a) authorise the continued use of physical restraint; or

(b) refuse to authorise the continued use of physical restraint and release the person from restraint.

133 Considerations and reasons for using restrictive intervention must be documented

For the purposes of section 128(2), the authorised psychiatrist, registered medical practitioner, nurse practitioner, nurse in charge or registered nurse must ensure the following are documented as soon as practicable after authorising the restrictive intervention—

(a) the reason why the restrictive intervention is necessary; and

(b) all the other less restrictive means tried or considered for the person in seeking to achieve the purpose of the restrictive intervention; and

Example

Administering medication.

(c) the reasons why those less restrictive means were found to be unsuitable.

134 Notification to, and initial examination by, authorised psychiatrist

(1) An authorised psychiatrist who authorises the use of a restrictive intervention, as soon as practicable after authorising the intervention, must examine the person and determine if the continued use of the restrictive intervention is necessary to achieve a purpose specified in section 127.

(2) If the person who authorises the use of a restrictive intervention is not an authorised psychiatrist, the person must notify the authorised psychiatrist of the authorisation as soon as practicable after it is authorised unless a notification under section 132(6) has been made.

(3) As soon as practicable after the authorised psychiatrist is notified under subsection (2), the authorised psychiatrist must examine the person and determine if the continued use of the restrictive intervention is necessary to achieve a purpose specified in section 127.

(4) If the authorised psychiatrist is not reasonably available to examine the person, the authorised psychiatrist must ensure—

(a) that the person is examined by a registered medical practitioner as soon as practicable; and

(b) that the registered medical practitioner determines if the continued use of the restrictive intervention is necessary to achieve a purpose specified in section 127.

135 Notification of use of restrictive intervention—other persons

(1) An authorised psychiatrist must take reasonable steps to ensure that, as soon as practicable after commencement of the use of restrictive intervention on a person, the persons specified in subsection (2) are notified of its use, the nature of the restrictive intervention and the reason for using it.

(2) The following persons are specified—

(a) the person's nominated support person;

(b) a guardian of the person;

(c) a carer of the person, if the authorised psychiatrist is satisfied that the restrictive intervention will directly affect the carer and the care relationship;

(d) a parent of the person, if the person is under the age of 16 years;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

(3) An authorised psychiatrist must ensure that, as soon as practicable after the commencement of the use of a restrictive intervention on a person, the primary non-legal mental health advocacy service provider is notified of its use, the nature of the restrictive intervention and the reason for using it.

136 Facilities and supplies to be provided to person subject to restrictive intervention

(1) A person who under this Division authorises the use of a restrictive intervention on a person must ensure that the person is provided with facilities and supplies that—

(a) meet the person's needs; and

(b) maintain the person's dignity.

(2) For the purposes of subsection (1), the person who authorises the use of a restrictive intervention on a person must, to the greatest extent possible in the circumstances, have regard to the following—

(a) the person's views and preferences, and any past experience of trauma;

S. 136(2)(a) amended by No. 20/2023 s. 10.

(b) the person's views of, and preferences relating to, the use of restrictive interventions;

(c) the person's culture, beliefs, values and personal characteristics.

(3) For the purposes of subsection (2)(b), the person authorising the restrictive intervention must have regard to—

(a) the views and preferences expressed in any advance statement of preferences of the person; and

(b) the views of any nominated support person of the person.

137 Monitoring of person subject to restrictive intervention

(1) A person who is subject to a restrictive intervention must be monitored in accordance with this section.

(2) A person who authorises the use of a restrictive intervention on a person must—

(a) in the case of a person who is subject to bodily restraint, ensure that the person is continuously observed by a registered nurse or a registered medical practitioner for the entire period of the restraint; and

(b) in the case of a person who is subject to chemical restraint, ensure that the person is continuously observed by a registered nurse or a registered medical practitioner for not less than one hour after the chemical restraint is administered.

(3) A registered nurse or registered medical practitioner must clinically review a person subject to a restrictive intervention as often as is appropriate, having regard to the person's condition, but not less frequently than every 15 minutes.

(4) Subject to subsection (5), an authorised psychiatrist must examine a person subject to a restrictive intervention as often as the authorised psychiatrist is satisfied is appropriate in the circumstances to do so, but not less frequently than every 4 hours.

(5) If it is not practicable for an authorised psychiatrist to conduct an examination at the frequency that the authorised psychiatrist is satisfied is appropriate, the person must be examined by a registered medical practitioner when so directed by the authorised psychiatrist.

138 Review of use of restrictive intervention and report to chief psychiatrist following use of restrictive interventions

(1) Following the use of a restrictive intervention, the authorised psychiatrist must ensure that—

(a) the use of the restrictive intervention is reviewed as soon as practicable after it ends; and

(b) the person who was subject to the restrictive intervention is offered an opportunity to review the intervention with the designated mental health service.

(2) A person who accepts an offer under subsection (1)(b) may have their nominated support person, mental health advocate, family member, carer or other supporter to support the person to participate in the review.

(3) A review referred to in subsection (1) must be completed in a timely manner.

(4) The authorised psychiatrist must provide written reports to the chief psychiatrist on the use of restrictive interventions in a designated mental health service.

(5) A report under subsection (4) must—

(a) contain the details required by the chief psychiatrist; and

(b) be given to the chief psychiatrist within the time specified by the chief psychiatrist.

Division 3—Chemical restraint during transport

139 Use of chemical restraint during transport

(1) A registered medical practitioner may use chemical restraint on a person for the purposes of transporting the person to or from a designated mental health service or any other place as provided under Parts 5.2 and 5.3 only if the registered medical practitioner is satisfied it is necessary to achieve a purpose specified in section 127.

(2) A registered medical practitioner may direct a person specified in subsection (3) to use chemical restraint on a person for the purposes of transporting the person to or from a designated mental health service or any other place as provided under Parts 5.2 and 5.3 only if the registered medical practitioner is satisfied it is necessary to achieve a purpose specified in section 127.

(3) For the purposes of subsection (2), the following persons are specified—

(a) a registered nurse;

(b) a registered paramedic employed by an ambulance service as defined in section 3(1) of the **Ambulance Services Act 1986**;

(c) a member of a prescribed class of person.

(4) Subsection (2) does not limit the power of the following persons to administer sedation within the ordinary scope of that person's practice—

(a) a registered nurse;

(b) a registered paramedic employed by an ambulance service as defined in section 3(1) of the **Ambulance Services Act 1986**;

(c) a member of a prescribed class of person.

Division 4—Immunity

140 Immunity

(1) Any person exercising a power or performing a function under this Part is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of that power or the performance of that function; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Part.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to the person referred to in that subsection attaches instead to the State.

Chapter 4—Compulsory assessment and treatment

Part 4.1—Preliminary

141 Immunity

(1) Any person exercising a power or performing a function under this Chapter is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of that power or the performance of that function; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Chapter.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to the person referred to in that subsection attaches instead to the State.

142 Compulsory assessment criteria

The ***compulsory assessment criteria*** for a person to be made subject to an assessment order are that—

(a) the person appears to have mental illness; and

(b) because the person appears to have mental illness, the person appears to need immediate treatment to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; and

(c) if the person is made subject to an assessment order, the person can be assessed; and

(d) there are no less restrictive means reasonably available to enable the person to be assessed.

143 Compulsory treatment criteria

The ***compulsory treatment criteria*** for a person to be made subject to a temporary treatment order or treatment order are that—

(a) the person has mental illness; and

(b) because the person has mental illness, the person needs immediate treatment to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; and

(c) if the person is made subject to a temporary treatment order or treatment order, the immediate treatment will be provided to the person; and

(d) there are no less restrictive means reasonably available to enable the person to receive the immediate treatment.

Part 4.2—Assessment orders

Division 1—Making of assessment order

144 Making of assessment order

(1) A registered medical practitioner or an authorised mental health practitioner may make an assessment order in respect of a person if the practitioner—

(a) has examined the person within the previous 24 hours; and

(b) is satisfied that the compulsory assessment criteria apply to the person.

(2) In determining whether to make an assessment order in respect of a person, a registered medical practitioner or an authorised mental health practitioner—

(a) must have regard to any relevant information communicated to the practitioner by the person being examined; and

(b) may have regard to any other relevant information, including information communicated to the practitioner by any other person.

(3) Before a registered medical practitioner or an authorised mental health practitioner examines a person under subsection (1)(a), the practitioner must—

(a) identify themselves to the person; and

(b) inform the person that the person will be examined by the practitioner; and

(c) take all reasonable steps to explain the purpose of the examination to the person.

145 Community or inpatient assessment order

(1) A registered medical practitioner or an authorised mental health practitioner who makes an assessment order must determine whether the order is—

(a) a community assessment order; or

(b) subject to subsection (2), an inpatient assessment order.

(2) A registered medical practitioner or an authorised mental health practitioner must not make an inpatient assessment order in respect of a person unless the practitioner is satisfied that the person cannot be assessed in the community.

146 What does an assessment order authorise?

(1) An assessment order authorises an authorised psychiatrist for the responsible designated mental health service to compulsorily examine the assessment patient for the purpose of determining whether the compulsory treatment criteria apply to the patient.

(2) A community assessment order enables the assessment patient to be examined in the community.

(3) An inpatient assessment order authorises the detention of the assessment patient for the purpose of transporting the patient to the responsible designated mental health service and the detention of the patient for the purpose of examining the patient at the service under the order.

Note

See also Part 5.3.

147 Duration of assessment order

(1) A community assessment order expires 24 hours after it is made.

(2) An inpatient assessment order expires at the earlier of the following—

(a) 24 hours after the assessment patient is received at a designated mental health service;

(b) 72 hours after the order is made.

Note

See Division 2, which provides for the variation of an assessment order. See also Division 4, which provides for the revocation or extension of an assessment order.

148 Contents of assessment order

An assessment order must contain the following information—

(a) the name of the assessment patient;

(b) the name, qualification and signature of the registered medical practitioner or authorised mental health practitioner who made the order;

(c) the date and time that the registered medical practitioner or authorised mental health practitioner examined the assessment patient before making the order;

(d) the date and time that the order was made;

(e) whether the order is a community assessment order or an inpatient assessment order;

(f) the designated mental health service which is to be responsible for assessing the assessment patient;

(g) the nature and effect of an assessment order;

(h) the duration of the order;

(i) any other prescribed information.

149 Inpatient assessment order—patient to be transported to designated mental health service as soon as practicable

A registered medical practitioner or an authorised mental health practitioner who makes an inpatient assessment order must arrange for the assessment patient to be transported to the responsible designated mental health service as soon as practicable after the inpatient assessment order is made.

150 Information to be given to assessment patient

As soon as practicable after a registered medical practitioner or an authorised mental health practitioner makes an assessment order, the practitioner must ensure that all reasonable steps are taken—

(a) to inform the assessment patient that the patient is subject to an assessment order; and

(b) to explain the purpose and effect of the order to the assessment patient; and

(c) to give a copy of the order and a statement of rights to the assessment patient.

151 Authorised psychiatrist to be notified of making of assessment order

As soon as practicable after a registered medical practitioner or an authorised mental health practitioner makes an assessment order, the practitioner must ensure that—

(a) an authorised psychiatrist for the responsible designated mental health service is notified of the making of the order; and

(b) a copy of the order is given to the authorised psychiatrist.

152 Other persons to be notified of making of assessment order

As soon as practicable after an authorised psychiatrist has been notified of the making of an assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons of the making of the order—

(i) any nominated support person of the assessment patient;

(ii) any guardian of the assessment patient;

(iii) any carer of the assessment patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the assessment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the assessment patient under a relevant child protection order; and

(b) to give a copy of the order and a statement of rights to the persons referred to in paragraph (a).

Division 2—Variation of assessment order

153 Variation of assessment order—community or inpatient

(1) If an assessment patient is subject to an inpatient assessment order, a registered medical practitioner or an authorised mental health practitioner may vary the inpatient assessment order to a community assessment order at any time before

the assessment patient is examined by an authorised psychiatrist under the order.

(2) Subject to subsection (3), if an assessment patient is subject to a community assessment order, a registered medical practitioner or an authorised mental health practitioner may vary the community assessment order to an inpatient assessment order at any time before the assessment patient is examined by an authorised psychiatrist under the order.

(3) A registered medical practitioner or an authorised mental health practitioner must not vary a community assessment order to an inpatient assessment order unless the practitioner is satisfied that the assessment patient cannot be assessed in the community.

(4) A registered medical practitioner or an authorised mental health practitioner who varies a community assessment order to an inpatient assessment order must arrange for the assessment patient to be transported to the responsible designated mental health service as soon as practicable after the variation of the assessment order.

(5) A registered medical practitioner or an authorised mental health practitioner who varies an assessment order under subsection (1) or (2) must amend the order to include the following information—

(a) whether the order has been varied to a community assessment order or an inpatient assessment order;

(b) the name, qualification and signature of the practitioner;

(c) the date and time that the order was varied;

(d) any other prescribed information.

154 Duration of varied assessment order

(1) An inpatient assessment order that is varied to a community assessment order expires at the earlier of the following—

(a) if the assessment patient had been received at a designated mental health service before the variation of the order, 24 hours after the patient is received at the designated mental health service;

(b) 24 hours after the variation of the order.

(2) A community assessment order that is varied to an inpatient assessment order expires 24 hours after the variation of the order.

Note

See Division 4 which provides for the revocation or extension of an assessment order.

155 Variation of assessment order—responsible designated mental health service

(1) A registered medical practitioner or an authorised mental health practitioner may vary an assessment order to specify a different designated mental health service which is to be responsible for assessing the assessment patient at any time before the assessment patient is examined by an authorised psychiatrist under the order.

(2) If a registered medical practitioner or an authorised mental health practitioner varies an inpatient assessment order to specify a different responsible designated mental health service, the practitioner must arrange for the assessment patient to be transported to the responsible designated mental health service as soon as practicable, but not later than 24 hours, after the variation of the order.

(3) A registered medical practitioner or an authorised mental health practitioner who varies an assessment order under subsection (1) must amend the order to include the following information—

(a) the designated mental health service which is to be responsible for assessing the assessment patient;

(b) the name, qualification and signature of the practitioner;

(c) the date and time that the order was varied;

(d) any other prescribed information.

156 Information to be given to assessment patient in relation to varied order

As soon as practicable after a registered medical practitioner or an authorised mental health practitioner varies an assessment order under section 153 or 155, the practitioner must ensure that all reasonable steps are taken—

(a) to inform the assessment patient that the order has been varied; and

(b) to explain the purpose and effect of the variation to the assessment patient; and

(c) to give a copy of the varied order and a statement of rights to the assessment patient.

157 Authorised psychiatrist to be notified of variation of assessment order

As soon as practicable after a registered medical practitioner or an authorised mental health practitioner varies an assessment order under section 153 or 155, the practitioner must ensure that—

(a) an authorised psychiatrist for the responsible designated mental health service is notified that the order has been varied; and

(b) a copy of the varied order is given to the authorised psychiatrist.

158 Other persons to be notified of variation of assessment order

(1) If an assessment order is varied under section 153 or a community assessment order is varied under section 155, the authorised psychiatrist who is notified of the variation, as soon as practicable after that notification, must ensure that all reasonable steps are taken—

(a) to notify the following persons of the variation—

(i) any nominated support person of the assessment patient;

(ii) any guardian of the assessment patient;

(iii) any carer of the assessment patient, if the authorised psychiatrist is satisfied that the variation of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the assessment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the assessment patient under a relevant child protection order; and

(b) to give a copy of the varied order and a statement of rights to the persons referred to in paragraph (a).

(2) If an inpatient assessment order is varied under section 155, an authorised psychiatrist for the responsible designated mental health service, as soon as practicable after the assessment patient is received at the service, must ensure that all reasonable steps are taken—

(a) to notify the following persons of the variation—

(i) any nominated support person of the assessment patient;

(ii) any guardian of the assessment patient;

(iii) any carer of the assessment patient, if the authorised psychiatrist is satisfied that the variation of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the assessment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the assessment patient under a relevant child protection order; and

(b) to give a copy of the varied order and a statement of rights to the persons referred to in paragraph (a).

Division 3—Examination and restrictions on treatment

159 Examination of assessment patient by authorised psychiatrist

(1) An authorised psychiatrist for the responsible designated mental health service must examine an assessment patient to determine whether the compulsory treatment criteria apply to the patient as soon as practicable—

(a) in the case of a community assessment order, after the order is made; or

(b) in the case of an inpatient assessment order, after the person has been received at the responsible designated mental health service.

(2) Before an authorised psychiatrist examines an assessment patient under subsection (1), the authorised psychiatrist must—

(a) identify themselves to the assessment patient; and

(b) inform the assessment patient that the patient will be examined under an assessment order; and

(c) take all reasonable steps to explain the purpose of the examination to the assessment patient; and

(d) if the assessment patient requests a copy of the assessment order, ensure that the patient is given a copy of the order.

160 Restrictions on treatment while assessment order is in force

(1) Subject to subsection (2), an assessment patient must not be given treatment while the assessment order is in force.

(2) An assessment patient may be given treatment while the assessment order is in force if—

(a) the patient gives informed consent to the treatment; or

(b) a registered medical practitioner employed or engaged by the responsible designated mental health service is satisfied that urgent treatment must be given to the patient to prevent—

(i) serious deterioration in the patient's mental or physical health; or

(ii) serious harm to the patient or to another person.

Division 4—Revocation and extension of assessment order

161 Revocation of assessment order by authorised psychiatrist

An authorised psychiatrist must immediately revoke an assessment order if the authorised psychiatrist determines that the compulsory treatment criteria do not apply to the assessment patient.

162 Information to be given to patient if authorised psychiatrist revokes assessment order

As soon as practicable after an authorised psychiatrist revokes an assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the person who was subject to the assessment order that the order has been revoked; and

(b) to explain the reasons for the revocation and the effect of that revocation to the person who was subject to the assessment order; and

(c) to give a written notice of the revocation to the person who was subject to the assessment order which contains the following information—

(i) the name, qualification and signature of the authorised psychiatrist who revoked the order;

(ii) the date and time that the order was revoked;

(iii) any other prescribed information.

163 Other persons to be notified if authorised psychiatrist revokes assessment order

As soon as practicable after an authorised psychiatrist revokes an assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons that the order has been revoked—

(i) any nominated support person of the person who was subject to the order;

(ii) any guardian of the person who was subject to the order;

(iii) any carer of the person who was subject to the order, if the authorised psychiatrist is satisfied that the revocation of the order will directly affect the care relationship between the carer and the person;

(iv) a parent of the person who was subject to the order, if the person is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the person who was subject to the order under a relevant child protection order; and

(b) to give a copy of the notice of revocation referred to in section 162(c) to the persons referred to in paragraph (a).

164 Assessment order revoked on making of temporary treatment order

An assessment order is revoked if a temporary treatment order is made in respect of the assessment patient.

165 Extension of assessment order

(1) An authorised psychiatrist for the responsible designated mental health service may extend an assessment order for up to 24 hours if, after examining the assessment patient, the authorised psychiatrist is not able to determine whether the compulsory treatment criteria apply to that patient.

(2) An assessment order may be extended under subsection (1) on no more than 2 occasions.

(3) An authorised psychiatrist who extends an assessment order under subsection (1) must amend the order to include the following information—

(a) the name, qualification and signature of the authorised psychiatrist;

(b) the date and time that the order was extended;

(c) the duration of the extension;

(d) any other prescribed information.

166 Information to be given to assessment patient in relation to extension of assessment order

As soon as practicable after an authorised psychiatrist extends an assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the assessment patient that the order has been extended; and

(b) to explain the purpose and effect of the extension to the assessment patient; and

(c) to give a copy of the extended order to the assessment patient.

167 Other persons to be notified of extension of assessment order

As soon as practicable after an authorised psychiatrist extends an assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons that the order has been extended—

(i) any nominated support person of the assessment patient;

(ii) any guardian of the assessment patient;

(iii) any carer of the assessment patient, if the authorised psychiatrist is satisfied that the extension of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the assessment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the assessment patient under a relevant child protection order; and

(b) to give a copy of the extended order and a statement of rights to the persons referred to in paragraph (a).

Part 4.3—Court assessment orders

Note

See Division 1 of Part 5 of the **Sentencing Act 1991** in relation to court assessment orders.

Division 1—Notifications after making of court assessment order

168 Information to be given to court assessment patient

As soon as practicable after an authorised psychiatrist has been notified under section 92(2) of the **Sentencing Act 1991** of the making of a court assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the court assessment patient that the patient is subject to a court assessment order; and

(b) to explain the purpose and effect of the order to the court assessment patient; and

(c) to give a copy of the order and a statement of rights to the court assessment patient.

169 Other persons to be notified of making of court assessment order

As soon as practicable after an authorised psychiatrist has been notified under section 92(2) of the **Sentencing Act 1991** of the making of a court assessment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons of the making of the court assessment order—

(i) any legal representative of the court assessment patient, if that legal representative was not present when the court assessment order was made;

(ii) any nominated support person of the court assessment patient;

(iii) any guardian of the court assessment patient;

(iv) any carer of the court assessment patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the care relationship between the carer and the patient;

(v) a parent of the court assessment patient, if the patient is under 16 years of age;

(vi) the DFFH Secretary, if that Secretary has parental responsibility for the court assessment patient under a relevant child protection order; and

(b) to give a copy of the court assessment order and a statement of rights to the persons referred to in paragraph (a).

Division 2—Variation of court assessment order

170 Authorised psychiatrist may change setting of assessment

(1) Despite anything to the contrary in a community court assessment order, an authorised psychiatrist who is completing an assessment of the court assessment patient, if satisfied that assessment of the person cannot occur in the community, may detain and examine the person as an inpatient and for that purpose, the community court assessment order is taken to be an inpatient court assessment order.

(2) Despite anything to the contrary in an inpatient court assessment order, an authorised psychiatrist who is completing an assessment of the court assessment patient, if satisfied that assessment of

the person could occur in the community, may examine the person in the community and for that purpose, the inpatient court assessment order is taken to be a community court assessment order.

(3) An assessment change must be recorded in writing and must specify the following information—

(a) the nature of the assessment change;

(b) the name, qualification and signature of the authorised psychiatrist who made the assessment change;

(c) the date and time of the assessment change;

(d) any other prescribed information.

(4) If an authorised psychiatrist makes an assessment change under subsection (1), the authorised psychiatrist must ensure that arrangements are made for the court assessment patient to be transported to a designated mental health service as soon as practicable after the assessment change.

171 Information to be given to court assessment patient in relation to assessment change

As soon as practicable after an authorised psychiatrist makes an assessment change, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the court assessment patient of the assessment change; and

(b) to explain the purpose and effect of the assessment change to the court assessment patient; and

(c) to give a record of the assessment change and a statement of rights to the court assessment patient.

172 Court to be notified of assessment change

As soon as practicable after an authorised psychiatrist makes an assessment change, the authorised psychiatrist must ensure that the court that made the court assessment order is notified of the assessment change.

173 Other persons to be notified of assessment change

As soon as practicable after an authorised psychiatrist makes an assessment change, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons of the assessment change—

(i) any legal representative of the court assessment patient;

(ii) any nominated support person of the court assessment patient;

(iii) any guardian of the court assessment patient;

(iv) any carer of the court assessment patient, if the authorised psychiatrist is satisfied that the assessment change will directly affect the care relationship between the carer and the patient;

(v) any parent of the court assessment patient, if the patient is under 16 years of age;

(vi) the DFFH Secretary, if that Secretary has parental responsibility for the court assessment patient under a relevant child protection order; and

(b) to give a record of the assessment change and a statement of rights to the persons referred to in paragraph (a).

Division 3—Assessment and restrictions on treatment

174 Examination of court assessment patient by authorised psychiatrist

(1) An authorised psychiatrist must examine a court assessment patient as soon as practicable—

(a) in the case of a community court assessment order, after the order is made; or

(b) in the case of an inpatient court assessment order, after the person has been received at the designated mental health service referred to in section 91(1)(d) of the **Sentencing Act 1991**.

(2) Before an authorised psychiatrist examines a court assessment patient, the authorised psychiatrist must—

(a) identify themselves to the court assessment patient; and

(b) inform the court assessment patient that the patient will be examined under a court assessment order; and

(c) take all reasonable steps to explain the purpose of the examination to the court assessment patient; and

(d) if the court assessment patient requests a copy of the court assessment order, ensure that the patient is given a copy of the order.

175 Restrictions on treatment while court assessment order is in force

(1) Subject to subsection (2), a court assessment patient must not be given treatment while a court assessment order is in force.

(2) A court assessment patient may be given treatment while a court assessment order is in force if—

(a) the patient gives informed consent to the treatment; or

(b) a registered medical practitioner employed or engaged by the designated mental health service referred to in section 91(1)(d) of the **Sentencing Act 1991** is satisfied that urgent treatment must be given to the patient to prevent—

(i) serious deterioration in the patient's mental or physical health; or

(ii) serious harm to the patient or to another person; or

(c) the patient was subject to a temporary treatment order or treatment order immediately before the court assessment order is made, and the temporary treatment order or treatment order is still in force; or

(d) an authorised psychiatrist makes a temporary treatment order in respect of the patient.

176 Completion of assessment

An authorised psychiatrist must complete an assessment of a court assessment patient within 7 days—

(a) in the case of a community court assessment order, after the order is made; or

(b) in the case of an inpatient court assessment order, after the person has been received at the designated mental health service referred to in section 91(1)(d) of the **Sentencing Act 1991**.

177 Authorised psychiatrist to provide report to court

(1) As soon as practicable after an authorised psychiatrist completes an assessment of a court assessment patient, the authorised psychiatrist must ensure that—

(a) the court that made the court assessment order is notified that the assessment has been completed; and

(b) a report is provided to the court.

(2) A report under subsection (1)(b) must—

(a) state if the authorised psychiatrist made a temporary treatment order in respect of the court assessment patient; and

(b) state if the authorised psychiatrist is satisfied that the criteria set out in subparagraphs (i) to (iv) of section 94B(1)(c) of the **Sentencing Act 1991** apply to the court assessment patient; and

(c) state if the authorised psychiatrist recommends making the court assessment patient subject to a court secure treatment order; and

(d) include information about the court assessment patient's current mental state; and

(e) include any other information that the authorised psychiatrist considers appropriate.

178 Information to be given to court assessment patient in relation to completion of assessment

As soon as practicable after an authorised psychiatrist completes an assessment of a court assessment patient, the authorised psychiatrist must ensure that all reasonable steps are taken to inform the court assessment patient that the assessment has been completed.

179 Other persons to be notified of completion of assessment

As soon as practicable after an authorised psychiatrist completes an assessment of a court assessment patient, the authorised psychiatrist must ensure that all reasonable steps are taken to notify the following entities that the assessment has been completed—

(a) any nominated support person of the court assessment patient;

(b) any guardian of the court assessment patient;

(c) any carer of the court assessment patient, if the authorised psychiatrist is satisfied that the completion of the assessment will directly affect the care relationship between the carer and the patient;

(d) a parent of the court assessment patient, if the patient is under 16 years of age;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the court assessment patient under a relevant child protection order.

Part 4.4—Temporary treatment orders

180 Making of temporary treatment order

(1) An authorised psychiatrist may make a temporary treatment order in respect of an assessment patient or a court assessment patient if the authorised psychiatrist—

(a) has examined the assessment patient or court assessment patient; and

(b) is satisfied that the compulsory treatment criteria apply to the assessment patient or court assessment patient.

(2) In determining whether to make a temporary treatment order in respect of an assessment patient or court assessment patient, the authorised psychiatrist—

(a) must have regard to the following, to the extent that is reasonable in the circumstances—

(i) the patient's views and preferences about the treatment of the patient's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(A) views or preferences expressed in the patient's advance statement of preferences (if any); and

(B) views or preferences expressed by the patient's nominated support person (if any);

(ii) the patient's reasons for their views and preferences, including any recovery outcomes that the patient would like to achieve;

(iii) the views of any guardian of the patient;

(iv) the views of any carer of the patient, if the authorised psychiatrist is satisfied that the making of a temporary treatment order will directly affect the care relationship between the carer and the patient;

(v) the views of a parent of the patient, if the patient is under 16 years of age;

(vi) the views of the DFFH Secretary, if that Secretary has parental responsibility for the patient under a relevant child protection order; and

(b) may have regard to any other relevant information, including information communicated to the authorised psychiatrist by any other person.

(3) The person who makes a temporary treatment order in respect of an assessment patient must not be the same person who made the assessment order in respect of the assessment patient.

Note

An authorised psychiatrist may delegate to a registered medical practitioner who is employed or engaged by a designated mental health service the power to make a temporary treatment order—see section 329.

181 Community or inpatient temporary treatment order

(1) An authorised psychiatrist who makes a temporary treatment order must determine whether the order is—

(a) a community temporary treatment order; or

(b) subject to subsection (2), an inpatient temporary treatment order.

(2) An authorised psychiatrist must not make an inpatient temporary treatment order in respect of an assessment patient or a court assessment patient unless the authorised psychiatrist is satisfied that the patient cannot be treated in the community.

182 What does a temporary treatment order authorise?

(1) A temporary treatment order authorises compulsory treatment to be given to the temporary treatment patient.

(2) A community temporary treatment order enables the temporary treatment patient to be treated in the community.

(3) An inpatient temporary treatment order authorises the detention of the temporary treatment patient for the purpose of transporting the patient to the responsible designated mental health service and the detention of the patient for the purpose of providing treatment to the patient at the service under the order.

Note

See also Part 5.3.

183 Duration of temporary treatment order

A temporary treatment order expires 28 days after it is made, beginning on and including the day the order was made.

Note

See Part 4.6, which provides for the revocation of a temporary treatment order.

184 Contents of temporary treatment order

A temporary treatment order must contain the following information—

(a) the name of the temporary treatment patient;

(b) the name, qualification and signature of the authorised psychiatrist who made the order;

(c) the date and time that the authorised psychiatrist examined the temporary treatment patient before making the order;

(d) the date and time that the order was made;

(e) whether the order is a community temporary treatment order or an inpatient temporary treatment order;

(f) the designated mental health service which is to be responsible for treating the temporary treatment patient;

(g) the nature and effect of a temporary treatment order;

(h) the duration of the order;

(i) any other prescribed information.

185 Inpatient temporary treatment order—patient to be transported to designated mental health service as soon as practicable

If an authorised psychiatrist makes an inpatient temporary treatment order in respect of a person and the person is not already at the responsible designated mental health service, the authorised psychiatrist must ensure that arrangements are made for the person to be transported to the responsible designated mental health service as soon as practicable after the inpatient temporary treatment order is made.

186 Information to be given to temporary treatment patient

As soon as practicable after an authorised psychiatrist makes a temporary treatment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the temporary treatment patient that the patient is subject to a temporary treatment order and will receive treatment for the patient's mental illness; and

(b) to explain the purpose and effect of the order to the temporary treatment patient; and

(c) to give a copy of the order and a statement of rights to the temporary treatment patient.

187 Mental Health Tribunal to be notified of making of temporary treatment order

As soon as practicable after an authorised psychiatrist makes a temporary treatment order, the authorised psychiatrist must ensure that the Mental Health Tribunal is notified of the making of the order.

188 Other entities to be notified of making of temporary treatment order

(1) As soon as practicable after an authorised psychiatrist makes a temporary treatment order, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons of the making of the temporary treatment order—

(i) any nominated support person of the temporary treatment patient;

(ii) any guardian of the temporary treatment patient;

(iii) any carer of the temporary treatment patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the temporary treatment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the temporary treatment patient under a relevant child protection order; and

(b) to give a copy of the temporary treatment order and a statement of rights to the persons referred to in paragraph (a).

(2) As soon as practicable after an authorised psychiatrist makes a temporary treatment order, the authorised psychiatrist must ensure that the primary non-legal mental health advocacy service provider is notified of the making of the order.

Part 4.5—Treatment orders

189 Temporary treatment patient—Mental Health Tribunal must conduct hearing

(1) Before a temporary treatment order expires, the Mental Health Tribunal must conduct a hearing to determine whether to make a treatment order in respect of the temporary treatment patient.

Note

Section 374 provides that the Mental Health Tribunal must not adjourn a hearing for a person who is subject to a temporary treatment order to a date that is after the order expires unless the Tribunal is satisfied that exceptional circumstances exist. In that case, the Mental Health Tribunal may extend the duration of the temporary treatment order for a period not exceeding 10 business days.

(2) Despite subsection (1), a hearing is not required if the temporary treatment order is revoked before the hearing.

190 Treatment patient—application for another treatment order

(1) An authorised psychiatrist may apply to the Mental Health Tribunal for another treatment order to be made in respect of a treatment patient if the authorised psychiatrist—

(a) has examined the treatment patient; and

(b) is satisfied that the compulsory treatment criteria still apply to the treatment patient.

(2) In determining whether to apply for another treatment order in respect of a treatment patient, the authorised psychiatrist—

(a) must have regard to the following, to the extent that is reasonable in the circumstances—

(i) the treatment patient's views and preferences about the treatment of the patient's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(A) views or preferences expressed in the patient's advance statement of preferences (if any); and

(B) views or preferences expressed by the patient's nominated support person (if any);

(ii) the treatment patient's reasons for their views and preferences, including any recovery outcomes that the patient would like to achieve;

(iii) the views of any guardian of the treatment patient;

(iv) the views of any carer of the treatment patient, if the authorised psychiatrist is satisfied that the making of a treatment order will directly affect the care relationship between the carer and the patient;

(v) the views of a parent of the treatment patient, if the patient is under 16 years of age;

(vi) the views of the DFFH Secretary, if that Secretary has parental responsibility for the treatment patient under a relevant child protection order; and

(b) may have regard to any other relevant information, including information communicated to the authorised psychiatrist by any other person.

(3) Before an authorised psychiatrist examines a treatment patient under subsection (1)(a), the authorised psychiatrist must—

(a) identify themselves to the treatment patient; and

(b) inform the treatment patient that the patient will be examined by the authorised psychiatrist; and

(c) take all reasonable steps to explain the purpose of the examination to the treatment patient; and

(d) if the treatment patient requests a copy of the current treatment order, ensure that the patient is given a copy of the order.

191 Requirements for treatment order application

(1) An application under section 190 must—

(a) be made at least 10 business days before the expiry of the current treatment order; and

(b) specify the date and time of the most recent examination that the authorised psychiatrist has conducted on the treatment patient.

(2) Despite subsection (1)(a), the principal registrar may accept an application under section 190 if—

(a) the application is made less than 10 business days before the expiry of the current treatment order; and

(b) the principal registrar is satisfied that it is reasonable in the circumstances to accept the application.

(3) The Mental Health Tribunal must conduct a hearing to determine an application under section 190.

Note

Section 374 provides that the Mental Health Tribunal must not adjourn a hearing for a person who is subject to a treatment order to a date that is after the order expires unless the Tribunal is satisfied that exceptional circumstances exist. In that case, the Mental Health Tribunal may extend the duration of the treatment order for a period not exceeding 10 business days.

192 Mental Health Tribunal may make treatment order

(1) This section applies to the following—

(a) a matter referred to in section 189;

(b) an application for a treatment order under section 190.

(2) The Mental Health Tribunal must—

(a) make a treatment order in respect of the person who is the subject of the proceeding if the Mental Health Tribunal is satisfied that the compulsory treatment criteria apply to the person; or

(b) revoke the temporary treatment order or treatment order to which the person is subject if the Mental Health Tribunal is not satisfied that the compulsory treatment criteria apply to the person.

(3) In determining a matter to which this section applies, the Mental Health Tribunal must have regard to the following in relation to the person who is the subject of the proceeding, to the extent that is reasonable in the circumstances—

(a) the person's views and preferences about the treatment of the person's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(i) views or preferences expressed in the person's advance statement of preferences (if any); and

(ii) views or preferences expressed by the person's nominated support person (if any);

(b) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(c) the views of any guardian of the person;

(d) the views of any carer of the person, if the Mental Health Tribunal is satisfied that the making of a treatment order will directly affect the care relationship between the carer and the person;

(e) the views of a parent of the person, if the person is under 16 years of age;

(f) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

193 Duration of treatment order

The Mental Health Tribunal must specify the period of a treatment order, which must not exceed—

(a) if the person is 18 years of age or over, 6 months; or

(b) if the person is under 18 years of age, 3 months.

194 Community or inpatient treatment order

(1) The Mental Health Tribunal must determine whether a treatment order is—

(a) a community treatment order; or

(b) subject to subsection (2), an inpatient treatment order.

(2) The Mental Health Tribunal must not make an inpatient treatment order in respect of a person unless the Mental Health Tribunal is satisfied that the person cannot be treated in the community.

195 What does a treatment order authorise?

(1) A treatment order authorises compulsory treatment to be given to the treatment patient.

(2) A community treatment order enables the treatment patient to be treated in the community.

(3) An inpatient treatment order authorises the detention of the treatment patient for the purpose of transporting the patient to the responsible designated mental health service and the detention of the patient for the purpose of providing treatment to the patient at the service under the order.

Note

See also Part 5.3.

196 Contents of treatment order

A treatment order must contain the following information—

(a) the name of the treatment patient;

(b) the date that the order was made;

(c) whether the order is a community treatment order or an inpatient treatment order;

(d) the designated mental health service which is to be responsible for treating the treatment patient;

(e) the nature and effect of a treatment order;

(f) the duration of the order;

(g) any other prescribed information.

197 Inpatient treatment order—patient to be transported to designated mental health service as soon as practicable

If the Mental Health Tribunal makes an inpatient treatment order in respect of a person and the person is not already at the responsible designated mental health service, an authorised psychiatrist for the responsible designated mental health service must ensure that arrangements are made for the person to be transported to the responsible designated mental health service as soon as practicable after the inpatient treatment order is made.

198 Information to be given to treatment patient

As soon as practicable after a treatment order is made, an authorised psychiatrist for the responsible designated mental health service must ensure that all reasonable steps are taken—

(a) to inform the treatment patient that the patient is subject to a treatment order and will receive treatment for the patient's mental illness; and

(b) to explain the purpose and effect of the order to the treatment patient; and

(c) to give a copy of the order and a statement of rights to the treatment patient.

199 Other entities to be notified of making of treatment order

(1) As soon as practicable after a treatment order is made, an authorised psychiatrist for the responsible designated mental health service must ensure that all reasonable steps are taken—

(a) to notify the following persons of the making of the treatment order—

(i) any nominated support person of the treatment patient;

(ii) any guardian of the treatment patient;

(iii) any carer of the treatment patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the treatment patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the treatment patient under a relevant child protection order; and

(b) to give a copy of the treatment order and a statement of rights to the persons referred to in paragraph (a).

(2) As soon as practicable after a treatment order is made, an authorised psychiatrist for the responsible designated mental health service must ensure that the primary non-legal mental health advocacy service provider is notified of the making of the order.

Part 4.6—Variation and revocation of temporary treatment orders and treatment orders

Division 1—Variation of temporary treatment orders and treatment orders

200 Variation of temporary treatment order or treatment order—community to inpatient

(1) Subject to subsection (2), an authorised psychiatrist may vary—

(a) a community temporary treatment order to an inpatient temporary treatment order; or

(b) a community treatment order to an inpatient treatment order.

(2) Before varying a temporary treatment order or treatment order under subsection (1), an authorised psychiatrist—

(a) must be satisfied that the person who is subject to the order cannot be treated in the community; and

(b) must have regard to the following in relation to the person who is subject to the order, to the extent that is reasonable in the circumstances—

(i) the person's views and preferences about the treatment of the person's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(A) views or preferences expressed in the person's advance statement of preferences (if any); and

(B) views or preferences expressed by the person's nominated support person (if any);

(ii) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(iii) the views of any guardian of the person;

(iv) the views of any carer of the person, if the authorised psychiatrist is satisfied that the variation of the order will directly affect the care relationship between the carer and the person;

(v) the views of a parent of the person, if the person is under 16 years of age;

(vi) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order; and

(c) may have regard to any other relevant information, including information communicated to the authorised psychiatrist by any other person.

(3) A variation of a temporary treatment order or treatment order under subsection (1) does not affect the duration of the order.

(4) If an authorised psychiatrist varies a temporary treatment order or treatment order under subsection (1) and the person who is subject to the order is not already at the responsible designated mental health service, the authorised psychiatrist must ensure that arrangements are made for the person to be transported to the responsible designated mental health service as soon as practicable after the order is varied.

201 Variation of temporary treatment order or treatment order—inpatient to community

(1) Subject to subsection (2), an authorised psychiatrist may vary—

(a) an inpatient temporary treatment order to a community temporary treatment order; or

(b) an inpatient treatment order to a community treatment order.

(2) Before varying a temporary treatment order or treatment order under subsection (1), an authorised psychiatrist—

(a) must have regard to the following in relation to the person who is subject to the order, to the extent that is reasonable in the circumstances—

(i) the person's views and preferences about the treatment of the person's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(A) views or preferences expressed in the person's advance statement of preferences (if any); and

(B) views or preferences expressed by the person's nominated support person (if any);

(ii) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(iii) the views of any guardian of the person;

(iv) the views of any carer of the person, if the authorised psychiatrist is satisfied that the variation of the order will directly affect the care relationship between the carer and the person;

(v) the views of a parent of the person, if the person is under 16 years of age;

(vi) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order; and

(b) may have regard to any other relevant information, including information communicated to the authorised psychiatrist by any other person.

(3) A variation of a temporary treatment order or treatment order under subsection (1) does not affect the duration of the order.

202 Information to be included on varied order

An authorised psychiatrist who varies an order under section 200 or 201 must amend the order to include the following information—

(a) the nature of the variation;

(b) the name, qualification and signature of the authorised psychiatrist who varied the order;

(c) the date and time that the order was varied;

(d) any other prescribed information.

203 Notification requirements for varied order

(1) As soon as practicable after an authorised psychiatrist varies an order under section 200 or 201, the authorised psychiatrist must ensure that—

(a) the Mental Health Tribunal is notified that the order has been varied; and

(b) all reasonable steps are taken—

(i) to inform the person who is subject to the varied order that the order has been varied; and

(ii) to explain the purpose and effect of the varied order to the person who is subject to the varied order; and

(iii) to give a copy of the varied order and the relevant statement of rights to the person who is subject to the varied order.

(2) As soon as practicable after an authorised psychiatrist varies an order under section 200 or 201, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons that the order has been varied—

(i) any nominated support person of the person subject to the varied order;

(ii) any guardian of the person subject to the varied order;

(iii) any carer of the person subject to the varied order, if the authorised psychiatrist is satisfied that the variation of the order will directly affect the care relationship between the carer and the person;

(iv) a parent of the person subject to the varied order, if the person is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the person subject to the varied order under a relevant child protection order; and

(b) to give a copy of the varied order and a statement of rights to the persons referred to in paragraph (a).

(3) As soon as practicable after an authorised psychiatrist varies an order under section 200 or 201, the authorised psychiatrist must ensure that the primary non-legal mental health advocacy service provider is notified that the order has been varied.

204 Treatment order—hearing to determine community to inpatient variation

(1) Within 28 days after a community treatment order is varied to an inpatient treatment order, beginning on and including the day the order was varied, the Mental Health Tribunal must conduct a hearing to determine whether the treatment patient should be subject to an inpatient treatment order.

(2) Despite subsection (1), a hearing is not required if the inpatient treatment order is revoked or varied to a community treatment order before the hearing.

(3) The Mental Health Tribunal must—

(a) confirm the inpatient treatment order if the Mental Health Tribunal is satisfied that—

(i) the compulsory treatment criteria still apply to the treatment patient; and

(ii) the patient cannot be treated in the community; or

(b) vary the order to a community treatment order if the Mental Health Tribunal is satisfied that—

(i) the compulsory treatment criteria still apply to the treatment patient; and

S. 204(3)(b)(ii) amended by No. 20/2023 s. 11.

(ii) the patient can be treated in the community; or

(c) revoke the treatment order if the Mental Health Tribunal is not satisfied that the compulsory treatment criteria apply to the treatment patient.

(4) In determining a matter under this section, the Mental Health Tribunal must have regard to the following, to the extent that is reasonable in the circumstances—

(a) the treatment patient's views and preferences about the treatment of the patient's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(i) views or preferences expressed in the patient's advance statement of preferences (if any); and

(ii) views or preferences expressed by the patient's nominated support person (if any);

(b) the treatment patient's reasons for their views and preferences, including any recovery outcomes that the patient would like to achieve;

(c) the views of any guardian of the treatment patient;

(d) the views of any carer of the treatment patient, if the Mental Health Tribunal is satisfied that the determination will directly affect the care relationship between the carer and the patient;

(e) the views of a parent of the treatment patient, if the patient is under 16 years of age;

(f) the views of the DFFH Secretary, if that Secretary has parental responsibility for the treatment patient under a relevant child protection order.

Division 2—Revocation and expiry of temporary treatment orders and treatment orders

205 Revocation of temporary treatment order or treatment order by authorised psychiatrist

An authorised psychiatrist for the responsible designated mental health service must immediately revoke a temporary treatment order or treatment order if the authorised psychiatrist determines that the compulsory treatment criteria no longer apply to the person who is subject to the order.

206 Application to Mental Health Tribunal to revoke temporary treatment order or treatment order

(1) A person who is subject to a temporary treatment order or treatment order may apply at any time while the order is in force to the Mental Health Tribunal for the order to be revoked.

(2) The following persons may apply to the Mental Health Tribunal on behalf of a person who is subject to a temporary treatment order or treatment order at any time while the order is in force for the order to be revoked—

(a) any person requested by the person subject to the order;

(b) any guardian of the person subject to the order;

(c) a mental health advocate;

(d) a parent of the person subject to the order, if the person is under 16 years of age;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the person subject to the order under a relevant child protection order.

207 Determination of revocation application

(1) The Mental Health Tribunal must hear and determine an application to revoke a temporary treatment order or treatment order as soon as practicable after the application is made.

(2) The Mental Health Tribunal must—

(a) confirm the temporary treatment order or treatment order if the Mental Health Tribunal is satisfied that the compulsory treatment criteria still apply to the person who is subject to the order; or

(b) revoke the temporary treatment order or treatment order if the Mental Health Tribunal is not satisfied that the compulsory treatment criteria apply to the person who is subject to the order.

(3) In determining an application to revoke a temporary treatment order or treatment order, the Mental Health Tribunal must have regard to the following in relation to the person who is subject to the order, to the extent that is reasonable in the circumstances—

(a) the person's views and preferences about the treatment of the person's mental illness and any beneficial alternative treatments that may be reasonably available, including—

(i) views or preferences expressed in the person's advance statement of preferences (if any); and

(ii) views or preferences expressed by the person's nominated support person (if any);

(b) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(c) the views of any guardian of the person;

(d) the views of any carer of the person, if the Mental Health Tribunal is satisfied that the determination will directly affect the care relationship between the carer and the person;

(e) the views of a parent of the person, if the person is under 16 years of age;

(f) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

(4) If the Mental Health Tribunal confirms a temporary treatment order or treatment order under subsection (2)(a), the Mental Health Tribunal must determine whether the order is—

(a) a community temporary treatment order or community treatment order (as the case requires); or

(b) subject to subsection (5), an inpatient temporary treatment order or inpatient treatment order (as the case requires).

(5) The Mental Health Tribunal must not confirm an order to be an inpatient temporary treatment order or inpatient treatment order unless the Mental Health Tribunal is satisfied that the person who is subject to the order cannot be treated in the community.

208 Revocation of temporary treatment order in other circumstances

A temporary treatment order is revoked if—

(a) a treatment order is made in respect of the temporary treatment patient; or

(b) a secure treatment order or court secure treatment order is made in respect of the temporary treatment patient; or

(c) the temporary treatment patient is detained in a designated mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

209 Revocation of treatment order in other circumstances

A treatment order is revoked if—

(a) another treatment order is made in respect of the treatment patient; or

(b) a secure treatment order or court secure treatment order is made in respect of the treatment patient; or

(c) the person is detained in a designated mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

210 Information to be given to patient in relation to revoked order

As soon as practicable after a temporary treatment order or treatment order is revoked, an authorised psychiatrist for the responsible designated mental health service must ensure that all reasonable steps are taken—

(a) to inform the person who was subject to the order that the order has been revoked; and

(b) to explain the reasons for the revocation and the effect of that revocation to the person who was subject to the order; and

(c) to give a written notice of the revocation to the person who was subject to the order which contains the following information—

(i) if the order was revoked under section 205, the name, qualification and signature of the authorised psychiatrist who revoked the order;

(ii) the date and time that the order was revoked;

(iii) any other prescribed information.

211 Other entities to be notified of revocation of order

(1) As soon as practicable after an authorised psychiatrist revokes a temporary treatment order or treatment order under section 205, the authorised psychiatrist must ensure that the Mental Health Tribunal is notified that the order has been revoked.

(2) As soon as practicable after a temporary treatment order or treatment order is revoked, an authorised psychiatrist for the responsible designated mental health service must ensure that all reasonable steps are taken—

(a) to notify the following persons that the order has been revoked—

(i) any nominated support person of the person who was subject to the order;

(ii) any guardian of the person who was subject to the order;

(iii) any carer of the person who was subject to the order, if the authorised psychiatrist is satisfied that the

revocation of the order will directly affect the care relationship between the carer and the person;

(iv) a parent of the person who was subject to the order, if the person is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the person who was subject to the order under a relevant child protection order; and

(b) to give a copy of the notice of revocation referred to in section 210(c) to the persons referred to in paragraph (a).

(3) As soon as practicable after a temporary treatment order or treatment order is revoked, an authorised psychiatrist for the responsible designated mental health service must ensure that the primary non-legal mental health advocacy service provider is notified that the order has been revoked.

Part 4.7—Leave of absence

212 Grant of leave of absence

(1) An authorised psychiatrist may grant a leave of absence from a designated mental health service in accordance with subsection (2) to a person subject to one of the following orders—

(a) an inpatient assessment order;

(b) an inpatient court assessment order;

(c) an inpatient temporary treatment order;

(d) an inpatient treatment order.

(2) For the purposes of subsection (1), an authorised psychiatrist may grant a leave of absence—

(a) subject to subsection (3)—

(i) for any purpose that the authorised psychiatrist is satisfied is appropriate, including for the purpose of receiving treatment or medical treatment at other premises; and

(ii) for any period that the authorised psychiatrist is satisfied is appropriate; and

(b) subject to any conditions that the authorised psychiatrist is satisfied are necessary in the circumstances.

(3) If the person to whom leave may be granted is subject to an inpatient treatment order and an intensive monitored supervision order, an authorised psychiatrist may only grant a leave of absence from a designated mental health service to that person—

(a) if it is necessary for the person to receive urgent or necessary medical treatment at other premises; and

(b) for a maximum period of 7 days.

(4) Subsection (3)(b) does not prevent an authorised psychiatrist from granting a further leave of absence to a person who is subject to an inpatient treatment order and an intensive monitored supervision order if it continues to be necessary for the person to receive urgent or necessary medical treatment at other premises.

213 Variation of leave of absence

(1) An authorised psychiatrist may vary the period or any conditions of a leave of absence granted under section 212.

(2) If a leave of absence has been granted to a person who is subject to an inpatient treatment order and an intensive monitored supervision order, any variation of a period under subsection (1) must not exceed the maximum period of 7 days for that leave.

214 Determining the period and any conditions of leave

For the purposes of determining the period and any conditions of a leave of absence, or whether to vary the period or any conditions of a leave of absence, an authorised psychiatrist must have regard to the following, to the extent that is reasonable in the circumstances—

(a) the purpose of the leave;

(b) the need to ensure the health and safety of the person and the safety of any other person, and to minimise the risk of serious harm to those persons;

(c) the person's views and preferences about the leave of absence, including—

(i) views or preferences expressed in the person's advance statement of preferences (if any); and

(ii) views or preferences expressed by the person's nominated support person (if any);

(d) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(e) the views of any guardian of the person;

(f) the views of any carer of the person, if the authorised psychiatrist is satisfied that the grant of leave will directly affect the care relationship between the carer and the person;

(g) the views of a parent of the person, if the person is under 16 years of age;

(h) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

215 Information to be given to person granted leave

(1) As soon as practicable after an authorised psychiatrist grants a leave of absence to a person, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the person that the leave of absence has been granted; and

(b) to explain the purpose, duration and conditions of the leave of absence to the person.

(2) As soon as practicable after an authorised psychiatrist varies a leave of absence granted to a person, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the person that the leave of absence has been varied; and

(b) to explain the purpose and effect of the variation to the person.

216 Other persons to be notified about grant or variation of leave

As soon as practicable after an authorised psychiatrist grants a leave of absence to a person or varies a leave of absence granted to a person, the authorised psychiatrist must ensure that all reasonable steps are taken to notify the following persons that the leave has been granted or varied—

(a) any nominated support person of the person granted leave;

(b) any guardian of the person granted leave;

(c) any carer of the person granted leave, if the authorised psychiatrist is satisfied that the grant or variation of leave will directly affect the care relationship between the carer and the person;

(d) a parent of the person granted leave, if the person is under 16 years of age;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the person granted leave under a relevant child protection order.

217 Revocation of leave of absence

An authorised psychiatrist may revoke a leave of absence granted to a person by written notice and require the person to return to the designated mental health service if the authorised psychiatrist is satisfied that—

(a) revocation of the leave of absence is necessary to prevent—

(i) serious deterioration in the person's mental or physical health; or

(ii) serious harm to the person or to another person; or

(b) the person has failed to comply with a condition to which the leave of absence is subject; or

(c) the purpose for the leave of absence no longer exists.

218 Information to be given to person in relation to revoked leave

As soon as practicable after an authorised psychiatrist revokes a leave of absence that had been granted to a person, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the person that the leave of absence has been revoked; and

(b) to explain the purpose and effect of the revocation to the person.

219 Other persons to be notified about revocation of leave

As soon as practicable after an authorised psychiatrist revokes a leave of absence, the authorised psychiatrist must ensure that all reasonable steps are taken to notify the following persons that the leave has been revoked—

(a) any nominated support person of the person whose leave was revoked;

(b) any guardian of the person whose leave was revoked;

(c) any carer of the person whose leave was revoked, if the authorised psychiatrist is satisfied that the revocation of leave will directly affect the care relationship between the carer and the person;

(d) a parent of the person whose leave was revoked, if the person is under 16 years of age;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the person whose leave was revoked under a relevant child protection order.

220 Persons to be notified if person is absent without leave

(1) This section applies if—

(a) a person to whom this Part applies is absent from a designated mental health service; and

(b) an authorised psychiatrist has not granted a leave of absence from the designated mental health service to the person in accordance with this Part.

(2) An authorised psychiatrist must ensure that reasonable steps are taken to notify the following persons that a person to whom this section applies is absent without leave from a designated mental health service—

(a) any nominated support person of the person who is absent without leave;

(b) any guardian of the person who is absent without leave;

(c) any carer of the person who is absent without leave, if the authorised psychiatrist is satisfied that the person's absence will directly affect the carer and the care relationship;

(d) a parent of the person who is absent without leave, if the person is under the age of 16 years;

(e) the DFFH Secretary, if that Secretary has parental responsibility for the person who is absent without leave under a relevant child protection order.

221 Authorised psychiatrist may arrange for person who is absent without leave to be transported to a designated mental health service

An authorised psychiatrist may arrange for a person who is absent without leave from a designated mental health service to be transported to a designated mental health service.

Part 4.8—Assessment or treatment by another designated mental health service

222 Application and purpose of Part

(1) This Part applies to the following orders—

(a) a court assessment order;

(b) a temporary treatment order;

(c) a treatment order.

(2) The purpose of this Part is to provide for an authorised psychiatrist to vary an order to which this Part applies to enable the assessment or treatment of the person subject to the order to be provided by another designated mental health service.

223 Variation of order to enable assessment or treatment at another designated mental health service

(1) Subject to section 224, an authorised psychiatrist may vary an order to which this Part applies to specify that assessment of, or treatment for, the person subject to the order will be provided by another designated mental health service if—

(a) the authorised psychiatrist is satisfied that the variation is necessary for the person's assessment or treatment; and

(b) an authorised psychiatrist for the designated mental health service which is to assess or treat the person approves the variation.

(2) Subject to section 224, the chief psychiatrist may direct an authorised psychiatrist to vary an order to which this Part applies to specify that assessment of, or treatment for, the person subject to the order will be provided by another designated mental health service if the chief

psychiatrist is satisfied that the variation is necessary for the person's assessment or treatment.

224 Requirement to have regard to views and preferences of certain persons

In determining whether to vary, or direct the variation of, an order to which this Part applies, an authorised psychiatrist or the chief psychiatrist (as the case requires) must have regard to the following in relation to the person who is subject to the order, to the extent that is reasonable in the circumstances—

(a) the person's views and preferences about the proposed variation, including—

(i) views or preferences expressed in the person's advance statement of preferences (if any); and

(ii) views or preferences expressed by the person's nominated support person (if any);

(b) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(c) the views of any guardian of the person;

(d) the views of any carer of the person, if the authorised psychiatrist or chief psychiatrist (as the case requires) is satisfied that the proposed variation will directly affect the care relationship between the carer and the person;

(e) the views of a parent of the person, if the person is under 16 years of age;

(f) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

225 Action to be taken after variation of order

(1) As soon as practicable after an authorised psychiatrist varies an order under section 223(1) or in accordance with a direction of the chief psychiatrist under section 223(2), the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the person who is subject to the varied order that the order has been varied and to explain the purpose and effect of the variation; and

(b) to give any documents relevant to the assessment or treatment of the person subject to the varied order to the designated mental health service which is to provide the assessment or treatment; and

(c) to notify the following persons of the variation—

(i) any nominated support person of the person subject to the varied order;

(ii) any guardian of the person subject to the varied order;

(iii) any carer of the person subject to the varied order, if the authorised psychiatrist is satisfied that the variation will directly affect the care relationship between the carer and the person;

(iv) a parent of the person subject to the varied order, if the person is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the person subject to the varied order under a relevant child protection order.

(2) If an authorised psychiatrist varies one of the following orders under section 223(1) or in accordance with a direction of the chief psychiatrist under section 223(2), the authorised psychiatrist must arrange for the person subject to the varied order to be transported to the receiving designated mental health service as soon as practicable after the variation of the order—

(a) an inpatient court assessment order;

(b) an inpatient temporary treatment order;

(c) an inpatient treatment order.

226 Application to review variation of order

(1) Within 20 business days after an order is varied under section 223, the person who is subject to that order may apply to the Mental Health Tribunal for a review of the decision to vary the order or to direct the variation of the order.

(2) The following persons may apply to the Mental Health Tribunal on behalf of a person who is subject to an order varied under section 223 for a review of the decision to vary the order or direct a variation of the order within 20 business days after the order is varied—

(a) any person requested by the person subject to the order;

(b) any guardian of the person subject to the order;

(c) a parent of the person subject to the order, if the person is under 16 years of age;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the person subject to the order under a relevant child protection order.

(3) On hearing an application under subsection (1) or (2), the Mental Health Tribunal must have regard to the following in relation to the person who is subject to the varied order, to the extent that is reasonable in the circumstances—

(a) the person's views and preferences about the variation, including—

(i) views or preferences expressed in the person's advance statement of preferences (if any); and

(ii) views or preferences expressed by the person's nominated support person (if any);

(b) the person's reasons for their views and preferences, including any recovery outcomes that the person would like to achieve;

(c) the views of any guardian of the person;

(d) the views of any carer of the person, if the Mental Health Tribunal is satisfied that the variation will directly affect the care relationship between the carer and the person;

(e) the views of a parent of the person, if the person is under 16 years of age;

(f) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

(4) The Mental Health Tribunal may make an order—

(a) directing that the person subject to the varied order be assessed or treated by the original designated mental health service and, if the person has been transported to another designated mental health service, direct that the person be returned to the original designated mental health service; or

(b) directing that the person remain subject to the order as varied.

Part 4.9—Impact of detention of person if subject to order under this Chapter

227 Effect of detention in custody on certain orders

(1) This section applies in relation to the following orders—

(a) an assessment order;

(b) a court assessment order;

(c) a temporary treatment order;

(d) a treatment order.

(2) An order to which this section applies has no effect while a person who is subject to the order is detained in custody.

(3) An order to which this section applies expires at the time it would otherwise have expired under this Act despite any period during which it has no effect under subsection (2).

(4) For the purposes of this section, a person is ***detained in custody*** if the person is held in—

(a) a prison within the meaning of the **Corrections Act 1986**; or

(b) a remand centre, youth justice centre or youth residential centre; or

(c) a police gaol within the meaning of the **Corrections Act 1986**; or

(d) immigration detention within the meaning of section 5 of the Migration Act 1958 of the Commonwealth, unless the person is assessed or receives treatment as an inpatient.

Chapter 5—Mental health crisis response and transport by authorised persons

Part 5.1—Principles and definitions

228 Health led response principle

The exercise of a power by an authorised person under this Chapter so far as is reasonably practicable in the circumstances—

(a) is to be exercised by an authorised health professional; or

(b) if it is not reasonably practicable in the circumstances for the power to be exercised by an authorised health professional, is so far as is reasonably practicable in the circumstances to be informed by—

(i) another authorised person who is an authorised health professional; or

(ii) the advice of a registered medical practitioner, an authorised mental health practitioner, a registered nurse or a registered paramedic.

S. 228(b) amended by No. 20/2023 s. 12.

229 Consideration of mental health and wellbeing principles

In the exercise of a power by an authorised person under this Chapter, the authorised person must give proper consideration to the mental health and wellbeing principles.

230 Least restrictive approach principle

So far as is reasonably practicable in the circumstances, the exercise of a power by an authorised person under this Chapter is to be exercised in the least restrictive way possible.

231 Definitions

In this Chapter—

authorised health professional means an authorised person who is—

(a) a registered paramedic employed by an ambulance service as defined in section 3(1) of the **Ambulance Services Act 1986**; or

(b) a registered medical practitioner employed or engaged by a designated mental health service; or

(c) an authorised mental health practitioner; or

(d) a member of a prescribed class of person;

search means a search of a person or of things in the possession or under the control of a person that may include—

(a) quickly running the hands over the person's outer clothing or passing an electronic metal detection device over or in close proximity to the person's outer clothing; and

(b) requiring the person to remove only the person's overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and

(c) an examination of those items of clothing; and

(d) requiring the person to empty the person's pockets or allowing the person's pockets to be searched;

specified body means—

(a) a designated mental health service; or

(b) a prescribed mental health and wellbeing service provider;

(c) a hospital, including a public hospital, a denominational hospital or a privately-operated hospital; or

(d) a public health service within the meaning of the **Health Services Act 1988**.

Part 5.2—Power to take a person into care and control in a mental health crisis

232 Taking a person into care and control in a mental health crisis

S. 232(1) amended by No. 20/2023 s. 13.

(1) An authorised person who is a police officer, a protective services officer or a member of a prescribed class of persons may take a person into care and control under this section if the authorised person is satisfied that—

(a) the person appears to have mental illness; and

(b) because of the person's apparent mental illness, it is necessary to take the person into care and control to prevent imminent and serious harm to the person or to another person.

(2) A person remains in an authorised person's care and control under this section until the person's care and control ends in accordance with section 239.

233 Exercise of clinical judgement in a mental health crisis

For the avoidance of doubt, in the exercise of a power under section 232(1), an authorised person is not required to exercise clinical judgement as to whether the person has mental illness.

Note

See section 232(1)(a) and (b).

234 Authorised person must arrange for a person in care and control to be examined

An authorised person who takes a person into care and control under section 232(1) must arrange for the person to be examined as soon as practicable, by—

(a) arranging for the examination of the person by a registered medical practitioner or an authorised mental health practitioner at or near the place at which the person was taken into care and control by the authorised person; or

(b) transporting the person, or arranging for the transport of the person by another authorised person, to a specified body at which the person may be examined by a registered medical practitioner or an authorised mental health practitioner; or

(c) transferring care and control of the person in accordance with section 235.

235 Transfer of care and control for the purposes of arranging an examination

S. 235(1) amended by No. 20/2023 s. 14.

(1) An authorised person, at any time, may transfer a person into the care and control of a police officer, a protective services officer or a member of a prescribed class of authorised health professional if it is necessary to do so for the purposes of arranging for the person to be examined in accordance with section 234.

(2) A transfer under subsection (1) must be arranged as soon as practicable.

(3) An authorised person may only transfer a person into the care and control of an authorised health professional if the authorised health professional agrees to receive care and control of the person being transferred.

(4) In determining whether to agree to the transfer of a person's care and control under subsection (3), the authorised health professional must consider the impact that the transfer of the person's care and control may have on the safety of any person.

(5) Without limiting subsection (1), an authorised health professional may transfer a person into the care and control of another authorised person who is a police officer or a protective services officer if it is necessary to do so to ensure the safety of any person.

(6) An authorised person who is a police officer must not transfer a person into the care and control of another authorised person who is a protective services officer.

(7) On receiving a person transferred under this section, the care and control of the person is transferred to the authorised person receiving the person.

236 Obligations of an authorised person to whom a person's care and control has been transferred

On receiving a person transferred in accordance with section 235, an authorised person, as soon as practicable, must—

(a) arrange for the examination of the person by a registered medical practitioner or an authorised mental health practitioner at or near the place at which the person was received into care and control by the authorised person; or

(b) transport the person, or arrange for transport of the person by another authorised person, to a specified body at which the person may be examined by a registered medical practitioner or an authorised mental health practitioner; or

(c) transfer care and control of the person to another authorised person for the purposes of arranging for the person to be examined in accordance with section 234 as soon as practicable.

237 Accepting care and control of a person at a specified body

(1) On transporting a person to a specified body in accordance with section 234(b) or 236(b), a registered medical practitioner, an authorised mental health practitioner or a registered nurse at the specified body must accept the person into their care and control as soon as is reasonably practicable and it is safe to do so.

(2) On accepting a person transported under this section, the care and control of the person is transferred to the registered medical practitioner, the authorised mental health practitioner or the registered nurse (as the case may be).

238 Authorised person may release a person from care and control

(1) An authorised person may release a person from care and control if the authorised person is satisfied that the person's care and control is no longer necessary to prevent imminent and serious harm to the person or to another person.

(2) If an authorised person releases a person under subsection (1), the authorised person must advise the person that the person is no longer in the authorised person's care and control.

239 When does an authorised person's care and control end under this Part?

A person is no longer under an authorised person's care and control under this Part if—

(a) the authorised person has released the person from care and control in accordance with section 238(1); or

(b) a registered medical practitioner or an authorised mental health practitioner has examined the person and either—

(i) makes a community assessment order in relation to the person; or

(ii) determines that the compulsory assessment criteria do not apply; or

(c) the person enters the care and control of another authorised person to whom the person's care and control has been transferred in accordance with section 235; or

(d) the person enters the care and control of a registered medical practitioner, an authorised mental health practitioner or a registered nurse at a specified body in accordance with section 237; or

(e) the person has absconded from the care and control of the authorised person.

Part 5.3—Power to take a person into care and control for the purposes of transport under the Act

240 Application of Part

This Part applies to the transport of a person to or from a designated mental health service or any other place as provided under any provision of this Act.

241 Taking a person into care and control for the purposes of transport

(1) An authorised person may take a person into care and control for the purposes of transporting the person to or from a designated mental health service or any other place as provided under this Act.

(2) A person remains in an authorised person's care and control under this Part until the person's care and control ends in accordance with section 245.

(3) An authorised person who takes a person into care and control under subsection (1), as soon as practicable—

(a) must transport the person, or arrange for transport of the person by another authorised person, to or from the designated mental health service or any other place as provided under this Act; or

(b) must transfer care and control of the person in accordance with section 242.

242 Transfer of care and control for the purposes of transport

(1) An authorised person, at any time, may transfer a person into the care and control of another authorised person if it is necessary to do so for the purposes of transporting the person in accordance with section 241(3).

(2) A transfer under subsection (1) must be arranged as soon as practicable.

(3) An authorised person may only transfer a person into the care and control of an authorised health professional if the authorised health professional agrees to receive care and control of the person being transferred.

(4) In determining whether to agree to the transfer of a person's care and control under subsection (3), the authorised health professional must consider the impact that the transfer of the person's care and control may have on the safety of any person.

(5) Without limiting subsection (1), an authorised health professional may transfer a person into the care and control of another authorised person who is a police officer or a protective services officer if it is necessary to do so to ensure the safety of any person.

(6) An authorised person who is a police officer must not transfer a person into the care and control of another authorised person who is a protective services officer.

(7) On receiving a person transferred under this section, the care and control of the person is transferred to the authorised person receiving the person.

243 Obligations of an authorised person to whom a person's care and control has been transferred

On receiving a person transferred in accordance with section 242, an authorised person must transport the person, or arrange for transport of the person by another authorised person, to or from the designated mental health service or any other place as provided under this Act in accordance with section 241(3) as soon as practicable.

244 Accepting care and control of a person at a designated mental health service or place

S. 244(1) amended by No. 20/2023 s. 15.

(1) On transporting a person to or from the designated mental health service or any other place in accordance with section 241(3)(a) or 243, a registered medical practitioner, an authorised mental health practitioner or a registered nurse must accept the person into their care and control as soon as is reasonably practicable and it is safe to do so.

(2) On accepting a person transported under this section, the care and control of the person is transferred to the registered medical practitioner, the authorised mental health practitioner or the registered nurse (as the case may be).

245 When does an authorised person's care and control end under this Part?

A person is no longer under an authorised person's care and control under this Part if the person—

(a) enters the care and control of another authorised person to whom the person's care and control has been transferred in accordance with section 242; or

(b) enters the care and control of a registered medical practitioner, an authorised mental health practitioner or a registered nurse at the

designated mental health service or place in accordance with section 244; or

(c) the person has absconded from the care and control of the authorised person.

Part 5.4—Power of authorised persons to enter premises

246 Authorised person may enter premises

(1) For the purposes of taking a person into care and control under Part 5.2, an authorised person who is a police officer, a protective services officer, a registered paramedic employed by an ambulance service as defined in section 3(1) of the **Ambulance Services Act 1986** or a member of a prescribed class of persons may enter any premises at which the authorised person is satisfied on reasonable grounds that the person may be found.

(2) For the purposes of taking a person into care and control under Part 5.3, an authorised person may enter any premises at which the authorised person is satisfied on reasonable grounds that the person may be found.

(3) Before an authorised person enters any premises under subsection (1) or (2), the authorised person must—

(a) announce to any person at or in the premises that the authorised person is authorised to enter the premises; and

(b) state the basis of the authority to enter; and

(c) give any person at or in the premises an opportunity to permit the authorised person to enter the premises.

(4) An authorised person may use reasonable force to gain entry to the premises if the authorised person is not permitted entry under subsection (3)(c).

(5) On gaining entry to the premises, an authorised person, to the extent that it is reasonable in the circumstances, must comply with section 252.

Part 5.5—Power of authorised persons to search, seize and secure

247 Authorised person may search a person

(1) This section applies when a person is in the care and control of an authorised person under Part 5.2 or 5.3.

(2) An authorised person (including another authorised person who is assisting the authorised person under section 251) may search a person if the authorised person reasonably suspects that the person is carrying any thing that presents a danger to the health and safety of the person or another person.

(3) Before searching a person under this section, the authorised person must, to the extent that is reasonable in the circumstances, explain to the person the purpose of the search.

(4) Nothing in this section permits the searching of a person after the person has been admitted as an inpatient unless the search is required immediately before the person is transported under Part 5.3.

248 Preservation of privacy and dignity during search

(1) An authorised person who searches a person, so far as is reasonably practicable in the circumstances, must comply with this section.

(2) The authorised person must inform the person to be searched of the following matters—

(a) whether the person will be required to remove clothing during the search;

(b) why it is necessary to remove the person's clothing.

(3) The authorised person must ask for the person's cooperation.

(4) The authorised person must conduct the search—

(a) in a way that provides reasonable privacy for the person searched; and

(b) as quickly as is reasonably practicable; and

(c) if the person being searched is of or under the age of 16 years, in the presence of—

(i) a parent of the person; or

(ii) a carer or supporter of the person; or

(ii) if it is not reasonably practicable for a parent, carer or supporter to be present, another adult.

(5) The authorised person must conduct the least invasive kind of search practicable in the circumstances.

(6) So far as is reasonably practicable in the circumstances, a search that involves running the hands over the person's outer clothing must be conducted by—

(a) an authorised person of the gender nominated by the person to be searched; or

(b) an authorised person nominated by the person; or

(c) a person of the gender nominated by the person to be searched under the direction of an authorised person; or

(d) a person nominated by the person to be searched under the direction of an authorised person.

Note

A person's gender is determined by how they identify.

249 Authorised person may seize and secure things found during search of person

(1) An authorised person may seize a thing found as a result of a search if the authorised person is reasonably satisfied that the thing presents a danger to the health and safety of the person or another person.

(2) If a thing is seized under subsection (1), the authorised person must make a written record that—

(a) specifies the thing seized; and

(b) specifies the name of the person from whom the thing was seized; and

(c) specifies the date on which the thing was seized; and

(d) includes any other prescribed details.

(3) The authorised person must securely store any thing seized under subsection (1) unless the thing is referred to in subsection (4).

(4) The authorised person must give a thing seized under subsection (1) to a police officer as soon as practicable after the thing is seized if—

(a) the thing is a controlled weapon, dangerous article or prohibited weapon within the meaning of the **Control of Weapons Act 1990**; or

(b) the thing is a drug of dependence within the meaning of the **Drugs, Poisons and Controlled Substances Act 1981** or a substance, material, document or equipment used for the purpose of trafficking in a drug of dependence within the meaning of that Act; or

(c) the thing is a firearm within the meaning of the **Firearms Act 1996**; or

(d) the authorised person reasonably believes the thing would present a danger to the health and safety of the person or another person if the thing were returned to the person.

(5) The authorised person must take reasonable steps to return any thing stored under subsection (3) to the person from whom it was seized when the reason for the seizure of the thing no longer applies.

Part 5.6—Use of bodily restraint on person taken into care and control

250 Authorised person may use bodily restraint

(1) This section applies if—

(a) a person is being taken into the care and control of an authorised person under Part 5.2; or

(b) a person is in the care and control of an authorised person under Part 5.2 or 5.3.

(2) An authorised person (including another authorised person who is assisting the authorised person under section 251) may use bodily restraint on a person if—

(a) all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable; and

(b) the use of bodily restraint is necessary to prevent imminent and serious harm to the person or to another person.

Note

See also section 139 for use of chemical restraint during transport.

Part 5.7—General provisions relating to powers of authorised persons

251 Authorised person may be assisted by another authorised person

An authorised person who is exercising powers under Part 5.2 or 5.3 may be assisted by another authorised person.

252 Information to be provided by an authorised person on taking person into care and control

(1) On taking a person into an authorised person's care and control under Part 5.2 or 5.3, the authorised person, so far as is reasonably practicable in the circumstances, must—

(a) identify themselves to the person; and

(b) explain to the person why the authorised person is taking the person into care and control; and

(c) give the person details of the designated mental health service or any other place to which the person will be transported if those details are available; and

(d) explain to the person the reason why the person is being transported to the designated mental health service or place referred to in paragraph (c); and

(e) if the person is to be examined by a registered medical practitioner or an authorised mental health practitioner at a location that is different from the location at which the person is taken into care and control, give the person details of the location at which the person will be examined.

S. 252(2) amended by No. 20/2023 s. 16.

(2) In addition, if the person referred to under subsection (1) is under 16 years, subject to section 31, the authorised person must give the information and details specified in that subsection to the parent, carer or supporter of the person.

253 Immunity

(1) An authorised person is not personally liable for any thing done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Chapter; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Chapter.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to an authorised person, attaches instead to the State.

(3) Nothing in this section limits—

(a) any immunity of an authorised person under this Act or any other Act; or

(b) a person's ability to make a complaint to a person or body about the conduct of an authorised person during the exercise of the authorised person's powers under this Chapter.

Chapter 6—Administration

Part 6.1—The Health Secretary

Division 1—Role and functions of the Health Secretary

254 Functions of the Health Secretary

The Health Secretary has the following functions under this Act——

(a) to plan, develop, fund, provide and promote a comprehensive range of mental health and wellbeing services;

(b) to be the steward and manager of the mental health and wellbeing system;

(c) to promote the objectives of this Act and the mental health and wellbeing principles;

(d) to perform the functions and exercise the powers conferred on the Health Secretary by this Act or any regulations under this Act subject to the general control and direction of the Minister;

(e) to develop and implement mental health and wellbeing strategies, policies, guidelines, standards and Codes of Practice;

(f) to promote human rights compliance by mental health and wellbeing service providers;

(g) to promote continuous improvement in the quality and safety of mental health and wellbeing services;

(h) to set targets to reduce and ultimately eliminate the use of restrictive interventions in the provision of mental health and wellbeing services;

(i) to develop, monitor and report on appropriate measures to progressively reduce and ultimately eliminate the use of restrictive interventions in mental health and wellbeing services;

(j) to collect, compile and analyse data about the provision of mental health and wellbeing services for the purposes of—

(i) funding, managing, planning, monitoring, evaluating, improving and reporting on mental health and wellbeing services provided by mental health and wellbeing service providers; and

(ii) improving understanding of the mental health and wellbeing needs of diverse communities and their use of mental health and wellbeing services to enable more equitable access to those services and the delivery of equitable outcomes across communities; and

(iii) research into mental illness, mental health and wellbeing and related fields;

(k) to monitor and evaluate the performance, standards and outcomes of mental health and wellbeing service providers and the quality and safety of the mental health and wellbeing services they provide;

(l) to promote awareness and understanding of mental health and wellbeing among health professionals and across government, business and the wider community;

(m) to conduct, commission and facilitate research into and evaluation of, mental illness, mental health and wellbeing and

related fields, including consumer-led research and evaluation;

(n) to develop and support the capacity of the mental health and wellbeing service provider workforce;

(o) to promote coordination between mental health and wellbeing service providers and providers of health, disability, alcohol and other drugs, justice and community support services;

(p) to oversee and support the development of mental health and wellbeing service providers;

(q) to advise the Minister about mental health and wellbeing services and the operation of this Act;

(r) to implement the recommendations of the Royal Commission into Victoria's Mental Health System;

(s) to plan, develop, fund and promote non-legal mental health advocacy services for persons engaging with mental health and wellbeing services;

(t) to monitor, review and evaluate non-legal mental health advocacy service providers;

S. 254(t) amended by No. 20/2023 s. 17.

(u) to provide information and education about non-legal mental health advocacy services to consumers, carers, families and mental health and wellbeing service providers.

255 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the Health Secretary must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

256 Delegation by Health Secretary

The Health Secretary, by instrument, may delegate to any person or class of person any of the Health Secretary's powers or functions under this Act or the regulations.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

257 Emergency declaration of designated mental health services

(1) The Health Secretary, by notice published in the Government Gazette, may declare a hospital or service specified in subsection (2) to be a designated mental health service—

(a) for a period not exceeding 28 days if the Health Secretary is satisfied that an emergency exists; and

(b) for a further period or periods if the Health Secretary is satisfied that the emergency continues to exist.

(2) For the purposes of subsection (1), the following are specified—

(a) any public hospital or public health service (within the meaning of the **Health Services Act 1988**);

(b) a private hospital (within the meaning of the **Health Services Act 1988**) if the proprietor of the private hospital agrees.

Division 2—Information collection

258 Information sharing agreements

(1) For the purposes specified in subsection (2), the Health Secretary may enter into an information sharing agreement with a public sector body on behalf of—

(a) the chief psychiatrist; or

(b) the Chief Officer; or

(c) a regional mental health and wellbeing board.

(2) The Health Secretary may enter into an information sharing agreement for any of the following purposes—

(a) to enable a public sector body to perform its functions efficiently and effectively;

(b) to ensure that public sector bodies understand what is expected of them;

(c) to ensure that information shared by persons and bodies governed under this Act is done consistently and is done in a manner that avoids duplication.

(3) An information sharing agreement under this section may provide for any of the following—

(a) that the parties to the agreement agree that the sharing of certain information is in accordance with this Act;

(b) the types of information that the parties to the agreement should not share as it would not comply with this Act or it would not be reasonable in the circumstances to share between the parties;

(c) the method of delivery for the information to be shared by the parties to the agreement and the format of the information.

(4) An information sharing agreement under this section must comply with the information sharing principles.

(5) Subject to Part 17.1, if an information sharing agreement is entered into under this section, the parties to the agreement must provide and share information in accordance with that agreement.

259 Health Secretary may collect information

(1) The Health Secretary may collect the health information, personal information, or the identifier or unique identifier of an individual from a body specified in subsection (2) for the purposes of—

(a) performing the Health Secretary's functions or exercising the Health Secretary's powers under this Act; and

(b) facilitating the performance of functions or the exercise of powers under this Act by—

(i) the chief psychiatrist; and

(ii) the Chief Officer; and

(iii) a regional mental health and wellbeing board.

(2) For the purposes of subsection (1), the following bodies are specified—

(a) a mental health and wellbeing service provider;

(b) a public service body;

(c) a public entity (within the meaning of the **Public Administration Act 2004**);

(d) Victoria Police;

(e) a body prescribed for the purposes of paragraph (d) of the definition of ***data sharing body*** in section 3(1) of the **Victorian Data Sharing Act 2017**;

(f) a court or tribunal.

(3) A body specified in subsection (2) may disclose the identifier or unique identifier of an individual to the Health Secretary for a purpose specified in subsection (1).

(4) This section does not affect the operation of—

(a) the **Health Records Act 2001**; or

(b) the **Privacy and Data Protection Act 2014**; or

(c) the **Victorian Data Sharing Act 2017**.

Part 6.2—The Chief Officer for Mental Health and Wellbeing

260 Chief Officer for Mental Health and Wellbeing

(1) There is to be employed under Part 3 of the **Public Administration Act 2004** a Chief Officer for Mental Health and Wellbeing.

(2) A person is qualified to be the Chief Officer if the person has the appropriate knowledge and experience to perform the functions of, and exercise the powers of, the Chief Officer.

(3) The Chief Officer is subject to the direction and control of the Health Secretary.

261 Functions of the Chief Officer

(1) The Chief Officer has the following functions—

(a) to plan, develop, fund, provide and promote a comprehensive range of mental health and wellbeing services;

(b) to be the steward and manager of the mental health and wellbeing system;

(c) to promote the objectives of this Act and the mental health and wellbeing principles;

(d) to develop and implement mental health and wellbeing strategies, policies, guidelines, standards and Codes of Practice;

(e) to promote human rights compliance by mental health and wellbeing service providers;

(f) to promote continuous improvement in the quality and safety of mental health and wellbeing services;

(g) to set targets to reduce and ultimately eliminate the use of restrictive interventions in mental health and wellbeing services;

(h) to develop, monitor and report on appropriate measures to progressively reduce and ultimately eliminate the use of restrictive interventions in mental health and wellbeing services;

(i) to collect, compile and analyse data about the provision of mental health and wellbeing services for the purposes of—

(i) funding, managing, planning, monitoring, evaluating, improving and reporting on mental health and wellbeing services provided by mental health and wellbeing service providers; and

(ii) improving understanding of the mental health and wellbeing needs of diverse communities and their use of mental health and wellbeing services to enable more equitable access to those services and the delivery of equitable outcomes across communities; and

(iii) research into mental illness, mental health and wellbeing and related fields;

(j) to monitor and evaluate the performance, standards and outcomes of mental health and wellbeing service providers and the quality and safety of the mental health and wellbeing services they provide;

(k) to promote awareness and understanding of mental health and wellbeing among health professionals and across government, business and the wider community;

(l) to conduct, commission and facilitate research into and evaluation of, mental illness, mental health and wellbeing and

related fields, including consumer-led research and evaluation;

(m) to develop and support the capacity of the mental health and wellbeing service provider workforce;

(n) to promote coordination between mental health and wellbeing service providers and providers of health, disability, alcohol and other drugs and community support services;

(o) to oversee and support the development of mental health and wellbeing service providers;

(p) to advise the Minister about mental health and wellbeing services and the operation of this Act;

(q) to advise the Health Secretary about mental health and wellbeing services and the operation of this Act;

(r) to implement the recommendations of the Royal Commission into Victoria's Mental Health System;

S. 261(1)(s) amended by No. 20/2023 s. 18.

(s) to monitor, review and evaluate non-legal mental health advocacy service providers;

(t) to provide information and education about non-legal mental health and wellbeing advocacy services to consumers, carers, families and mental health and wellbeing service providers;

(u) to issue guidelines to non-legal mental health advocacy service providers.

(2) As soon as practicable after the end of each financial year but no later than the following 31 October, the Chief Officer must submit to the Minister an annual report containing—

(a) an overview of the services provided by mental health and wellbeing service providers during the financial year; and

(b) a review of how the Chief Officer is performing their functions under this Act; and

(c) a review of how the regional mental health and wellbeing boards are performing their functions under this Act; and

(d) the amount appropriated under section 743 and how the proceeds have been spent on the provisions of mental health and wellbeing services; and

(e) a summary of actions taken that demonstrate that reasonable efforts have been made by the Chief Officer to comply with the mental health and wellbeing principles; and

(f) any other information requested in writing by the Minister.

262 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the Chief Officer must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

263 Powers of the Chief Officer

(1) Subject to subsection (2), the Chief Officer has all the powers necessary to perform the functions of the Chief Officer.

(2) To the extent that the Chief Officer exercises a power in the performance of a function that is inconsistent with a power exercised by the Health Secretary in the performance of a function of the Health Secretary, the Health Secretary's exercise of the power prevails.

264 Guidelines in relation to the operation of community advisory committees and regional multiagency panels

(1) The Chief Officer may prepare guidelines in relation to the following—

(a) the appointment of members to a community advisory committee or regional multiagency panel;

(b) the composition, role and functions of a community advisory committee or regional multiagency panel;

(c) the procedure of a community advisory committee or regional multiagency panel.

(2) The Chief Officer must ensure that guidelines prepared under subsection (1) are—

(a) given to the regional mental health and wellbeing boards; and

(b) published on the Department's website.

Part 6.3—The chief psychiatrist

Division 1—The chief psychiatrist

265 The chief psychiatrist

(1) There is to be employed under Part 3 of the **Public Administration Act 2004** a chief psychiatrist.

(2) A person is qualified to be chief psychiatrist if—

(a) the person is a psychiatrist; and

(b) the Health Secretary is satisfied that the psychiatrist has the appropriate knowledge and experience to perform the functions and exercise the powers conferred on the chief psychiatrist by or under this Act.

(3) The chief psychiatrist is subject to the general direction and control of the Health Secretary.

(4) The chief psychiatrist has the duties, functions and powers that are conferred on the chief psychiatrist by or under this Act or any other Act or by or under any regulations made under this Act or any other Act.

266 Role of the chief psychiatrist

For the purposes of this Act, the role of the chief psychiatrist is—

(a) to provide clinical leadership and expert clinical advice to clinical mental health service providers; and

(b) to promote the highest standard of clinical practices and care in mental health and wellbeing services provided by clinical mental health service providers; and

(c) to promote the rights of persons receiving mental health and wellbeing services from clinical mental health service providers; and

(d) to provide advice to the Minister and the Health Secretary about the provision of mental health and wellbeing services by clinical mental health service providers.

267 Functions of the chief psychiatrist

(1) The chief psychiatrist has the following functions—

(a) to develop, publish and promote standards, guidelines and practice directions for the provision of mental health and wellbeing services;

(b) to assist clinical mental health service providers to comply with the standards, guidelines and practice directions issued by the chief psychiatrist;

(c) to assist clinical mental health service providers to develop and maintain clinical governance frameworks to improve the quality and safety of those services;

(d) to provide clinical leadership to clinical mental health service providers in relation to their obligations under this Act, the regulations and any Codes of Practice;

(e) to conduct clinical reviews of clinical mental health service providers;

(f) to analyse data, undertake research and publish information about the provision of mental health and wellbeing services;

(g) to publish an annual report;

(h) to conduct investigations of the provision of mental health and wellbeing services by clinical mental health service providers;

(i) to give directions to clinical mental health service providers in respect of the provision of mental health and wellbeing services;

(j) to promote cooperation and coordination between clinical mental health service providers and providers of health, disability and community support services.

(2) The chief psychiatrist has all the powers necessary or convenient to perform the chief psychiatrist's functions under this Act or the regulations.

268 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the chief psychiatrist must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

269 Staff

There may be employed under Part 3 of the **Public Administration Act 2004** any employees who are necessary to assist the chief psychiatrist in the performance of the chief psychiatrist's functions and the exercise of the chief psychiatrist's powers under this Act.

270 Contractors

The Health Secretary may enter into agreements or arrangements with a person or body for the purpose of obtaining appropriate expertise to assist the chief psychiatrist in the performance of the chief psychiatrist's functions and the exercise of the chief psychiatrist's powers under this Act.

271 Delegation

The chief psychiatrist, by instrument, may delegate any function or power of the chief psychiatrist under this Act to a person who is a psychiatrist and who—

(a) is referred to in section 269; or

(b) has entered into an agreement or arrangement with the Health Secretary under section 270.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

272 Member of staff of clinical mental health service provider to give any reasonable assistance

A member of staff of a clinical mental health service provider must provide the chief psychiatrist, or an authorised officer acting under the direction of the chief psychiatrist, with any reasonable assistance that the chief psychiatrist or authorised officer requires to perform any duties or functions or exercise any powers under this Act or the regulations.

273 Standards, guidelines and practice directions prepared and issued by chief psychiatrist

The chief psychiatrist may prepare and issue standards, guidelines and practice directions to be observed by clinical mental health service providers to address any aspect of mental health and wellbeing service delivery, including any systemic issues or issues identified during the course of a clinical review.

274 Annual report

(1) As soon as practicable after the end of each financial year but no later than the following 31 October, the chief psychiatrist must submit to the Health Secretary an annual report containing—

(a) information on the operations and activities undertaken by the chief psychiatrist during the financial year; and

(b) an analysis of the data and information reported to the chief psychiatrist during the financial year; and

(c) a summary of actions taken that demonstrate that reasonable efforts have been made by the chief psychiatrist to comply with the mental health and wellbeing principles.

(2) As soon as practicable after receiving an annual report, the Health Secretary must publish the annual report on the Department's website.

Division 2—Authorised officers

275 Chief psychiatrist may appoint authorised officers

(1) The chief psychiatrist, by instrument, may appoint the following to be an authorised officer for the purposes of this Part—

(a) a person employed under Part 3 of the **Public Administration Act 2004**;

(b) a person with whom the Health Secretary has entered into an agreement or arrangement under section 270.

(2) The chief psychiatrist must not appoint a person to be an authorised officer under this section unless the chief psychiatrist is satisfied that the person has the appropriate knowledge and experience to perform the duties and functions of an authorised officer.

(3) The chief psychiatrist may give a direction to an authorised officer in relation to the performance of the authorised officer's functions or duties or the exercise of the authorised officer's powers under this Act or the regulations.

276 Identity cards

(1) The chief psychiatrist must issue an identity card to each authorised officer appointed by the chief psychiatrist.

(2) An identity card issued to an authorised officer under this section must—

(a) contain a photograph of the authorised officer; and

(b) contain the signature of the authorised officer; and

(c) be signed by the chief psychiatrist.

277 Production of identity card

(1) Subject to subsection (3), an authorised officer must produce their identity card for inspection before exercising a power under this Act or the regulations.

(2) Subject to subsection (3), an authorised officer must produce their identity card for inspection when asked to do so by the occupier of any premises during the exercise of a power under this Act or the regulations.

(3) However, if it is impracticable for an authorised officer to produce their identity card for inspection when exercising a power under this Act or the regulations, the authorised officer is not required to do so.

Division 3—Investigations by the chief psychiatrist

278 Investigations by the chief psychiatrist when health, safety or wellbeing of a person endangered

(1) The chief psychiatrist may conduct an investigation into the provision of mental health and wellbeing services by a clinical mental health service provider if the chief psychiatrist is of the opinion that the health, safety or wellbeing of a person is or was endangered as a result of those services.

(2) The Health Secretary or the Chief Officer may request the chief psychiatrist to conduct an investigation into the provision of mental health and wellbeing services by a clinical mental health service provider if the Health Secretary or the Chief Officer (as the case may be) is of the opinion that the health, safety or wellbeing of a person is or was endangered as a result of those services.

279 Conduct of investigations

(1) For the purposes of conducting an investigation under this Division, the chief psychiatrist may—

(a) assess the quality and safety of mental health and wellbeing services provided; and

(b) determine whether the mental health and wellbeing services are being provided in accordance with—

(i) this Act and the regulations and any Codes of Practice; and

(ii) the standards, guidelines and practice directions issued by the chief psychiatrist.

(2) An investigation under this Division may be in relation to—

(a) any aspect of the mental health and wellbeing services provided by a clinical mental health service provider, including any relevant practice, procedure, use of a restrictive intervention or treatment; or

(b) the mental health and wellbeing services that are provided to a specified person.

(3) Subject to subsection (4), the chief psychiatrist must give written notice of the investigation to the clinical mental health service provider within a reasonable time before commencing the investigation.

(4) The chief psychiatrist may dispense with giving notice of the investigation to the clinical mental health service provider if the chief psychiatrist is satisfied that it is necessary in the circumstances.

(5) Subject to this section, the process for conducting an investigation into a clinical mental health service provider is at the discretion of the chief psychiatrist.

280 Report and recommendations following investigation by chief psychiatrist

(1) As soon as practicable after completing an investigation under this Division, the chief psychiatrist must prepare an outcome report.

(2) An outcome report must—

(a) specify the findings of the chief psychiatrist based on the investigation; and

(b) include any recommendations or directions given to a clinical mental health service provider that was investigated for the purpose of improving the quality and safety of the mental health and wellbeing services provided to a specified person or more generally; and

(c) include any recommendations or directions given to the clinical mental health service provider that was investigated for the purpose of assisting the provider to comply with—

(i) this Act and the regulations and any Codes of Practice; and

(ii) the standards, guidelines and directions published by the chief psychiatrist; and

(d) include any recommendations or directions given to the clinical mental health service provider that is the subject of the report for the purpose of improving the quality and safety of the mental health and wellbeing services provided to a specified person or more generally.

(3) As soon as practicable after the outcome report is prepared, the chief psychiatrist must give a copy of the report to the clinical mental health service provider that is the subject of the report.

281 Response of mental health and wellbeing service provider to recommendations and directions

If an outcome report includes any recommendations or directions for the mental health and wellbeing service provider that is the subject of the report, the provider must—

(a) prepare a written response to those recommendations or directions that specifies the actions the provider has taken, is taking or will take to implement them; and

(b) give the chief psychiatrist the written response within 30 business days of receiving a copy of the outcome report.

282 Outcome report and any response to be given to Health Secretary and Chief Officer

The chief psychiatrist must give the Health Secretary and the Chief Officer a copy of—

(a) an outcome report; and

(b) any response prepared by a mental health and wellbeing service provider under section 281.

283 Publication of outcome report and any response

(1) Subject to subsection (2), the Health Secretary may publish a copy of an outcome report and any response prepared by a mental health and wellbeing service provider under section 281 if the Health Secretary is of the opinion that it is in the public interest to do so.

(2) The Health Secretary must not publish an outcome report and any response prepared by a mental health and wellbeing service provider if the report or response contains any information that identifies a natural person or would be likely to lead to the identification of a natural person, unless the person consents in writing to the publication.

284 Outcome report and any response to be given to Justice Secretary and Principal Commissioner in some circumstances

(1) If an outcome report and any response prepared by a mental health and wellbeing service provider under section 281 relates to the provision of mental health and wellbeing services by a mental health and wellbeing service provider in a custodial setting, the chief psychiatrist must give a copy of the report and any response to the Justice Secretary.

(2) The chief psychiatrist must give the Principal Commissioner (within the meaning of the **Commission for Children and Young People Act 2012**) a copy of an outcome report and any response under section 281 if the report relates to the provision of mental health and wellbeing services provided in any of the following—

(a) remand centre; or

(b) youth residential centre; or

(c) youth justice centre.

Division 4—Clinical reviews

285 Purpose of clinical reviews

The purpose of a clinical review is to improve the quality and safety of mental health and wellbeing services by identifying practices, processes and systemic issues that need to be addressed by one or more mental health and wellbeing service providers.

286 Clinical review by chief psychiatrist

(1) The chief psychiatrist may conduct a clinical review under this Division in respect of—

(a) any aspect of a mental health and wellbeing service provided by one or more clinical mental health service providers; or

(b) a failure by one or more clinical mental health service providers to deliver a mental health and wellbeing service.

(2) A clinical review under this Division may be conducted at the discretion of the chief psychiatrist or on the request of the Health Secretary or the Chief Officer.

(3) The process for conducting a clinical review is at the discretion of the chief psychiatrist.

287 Notice of intention to conduct clinical review to be provided

(1) The chief psychiatrist must give a clinical mental health service provider in respect of which a clinical review will be conducted written notice of the review.

(2) A notice under subsection (1) must—

(a) be given at least 20 business days before the clinical review is to commence; and

(b) specify the scope and objectives of the review; and

(c) specify the names of the persons who will carry out the review; and

(d) specify the date of commencement of the clinical review and the expected duration of the review.

288 Clinical review report and recommendations

(1) The chief psychiatrist must prepare a clinical review report of the chief psychiatrist's findings as soon as practicable after completing a clinical review in respect of a clinical mental health service provider.

(2) A clinical review report—

(a) must be in writing; and

(b) may include recommendations that the chief psychiatrist considers appropriate to improve the quality and safety of mental health services.

(3) The chief psychiatrist must give the clinical mental health service provider that is the subject of a clinical review report a copy of the report as soon as practicable after the report is prepared.

289 Interim clinical review report

(1) The chief psychiatrist may prepare an interim clinical review report before a clinical review under this Division is completed if the chief psychiatrist considers it appropriate to do so in the circumstances.

(2) The chief psychiatrist must give the Health Secretary and the Chief Officer a copy of any interim clinical review report.

290 Response of clinical mental health service provider to recommendations

If a clinical review report contains recommendations, the clinical mental health service provider that is the subject of the report must—

(a) prepare a written response to those recommendations and specify the actions the provider has taken, is taking or will take to implement them; and

(b) give the chief psychiatrist the written response within 30 business days of receiving a copy of the clinical review report under section 288(3).

291 Monitoring of clinical mental health service provider may continue

(1) The chief psychiatrist may continue to monitor a clinical mental health service provider after receiving a response under section 290 to the recommendations contained in a clinical review report.

(2) For the purposes of subsection (1), the chief psychiatrist may do the following—

(a) request further information from the clinical mental health service provider;

(b) conduct another clinical review of the clinical mental health service provider under this Division.

292 Clinical review report and any response to be given to Health Secretary and Chief Officer

The chief psychiatrist must give the Health Secretary and the Chief Officer a copy of—

(a) a clinical review report; and

(b) any response prepared by a clinical mental health service provider under section 290.

293 Clinical review report and any response to be given to Justice Secretary and Principal Commissioner in some circumstances

(1) If a clinical review report and any response prepared by a clinical mental health service provider under section 290 relates to the provision of mental health and wellbeing services by a clinical mental health service provider in a custodial setting, the chief psychiatrist must give a copy of the report and any response to the Justice Secretary.

(2) The chief psychiatrist must give the Principal Commissioner (within the meaning of the **Commission for Children and Young People Act 2012**) a copy of a clinical review report and any response prepared by a clinical mental health service provider under section 290 if the report relates to the provision of mental health and wellbeing services provided in any of the following—

(a) a remand centre; or

(b) a youth residential centre; or

(c) a youth justice centre.

294 Publication of clinical review report

(1) Subject to subsection (2), the Health Secretary may publish a clinical review report if the Secretary is of the opinion that it is in the public interest to do so.

(2) A clinical review report published under subsection (1) must not contain information that could identify a mental health and wellbeing service provider or any person.

Division 5—Directions

295 Directions to a specific clinical mental health service provider or clinical mental health service providers generally

(1) The chief psychiatrist may give a clinical mental health service provider a written direction for any of the following purposes—

(a) to ensure the provision of high quality and safe services to a specified person or to enable access to mental health and wellbeing services by a specified person;

(b) to improve the quality and safety of the mental health and wellbeing services provided by the provider generally;

(c) to address any aspect of the provision of mental health and wellbeing services provided by the provider, including any systemic issues or issues identified during the course of a clinical review;

(d) to ensure that the provision of mental health and wellbeing services by the provider complies with—

(i) the standards, guidelines and practice directions issued by the chief psychiatrist; and

(ii) this Act and the regulations and Codes of Practice.

(2) If the chief psychiatrist gives a written direction to a clinical mental health service provider under subsection (1), the chief psychiatrist must take reasonable steps to notify the following persons that the direction has been made—

(a) the person who was provided the mental health and wellbeing services that were the subject of the investigation;

(b) any nominated support person of the person specified in paragraph (a);

(c) any guardian of the person specified in paragraph (a);

(d) any carer of the person specified in paragraph (a) if the chief psychiatrist is satisfied the direction will directly affect the carer and the care relationship;

(e) a parent of the person specified in paragraph (a) if the person is under the age of 16 years;

(f) the DFFH Secretary, if that Secretary has parental responsibility for the person specified in paragraph (a) under a relevant child protection order;

(g) the Justice Secretary, if the direction is given to a clinical mental health service provider in a custodial setting.

Division 6—Powers of search and entry

296 Definition

In this Division—

premises of a clinical mental health service provider includes any custodial setting where mental health and wellbeing services are provided.

297 Powers of entry

(1) For the purposes of conducting an investigation or clinical review or performing any other function of the chief psychiatrist under this Act or the regulations, the chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, may enter—

(a) the premises of a clinical mental health service provider; or

(b) in the case of an investigation or clinical review that relates to the provision of mental health and wellbeing services at a custodial setting—the custodial setting.

(2) Before the chief psychiatrist or an authorised officer enters a custodial setting in accordance with subsection (1)(b), one of the following persons must consent to the entry—

(a) in the case of a custodial setting that is a prison within the meaning of the **Corrections Act 1986**—the Commissioner within the meaning of that Act;

Note

See section 42A of the **Interpretation of Legislation Act 1984** regarding delegates.

(b) in the case of a custodial setting that is a remand centre, youth residential centre or youth justice centre—the Executive Director

Custodial Operations, Department of Justice and Community Safety or the Commissioner within the meaning of the **Corrections Act 1986**;

(c) in the case of any other custodial setting—the Justice Secretary or the person responsible for the administration of the custodial setting.

(3) On entry to a custodial setting in accordance with subsection (1)(b), the following persons may give the chief psychiatrist or an authorised officer any direction that is necessary where there are significant concerns for the management, good order or security of the custodial setting—

(a) in the case of a custodial setting that is a prison within the meaning of the **Corrections Act 1986**—the Commissioner within the meaning of that Act;

(b) in the case of a custodial setting that is a remand centre, youth residential centre or youth justice centre—the Executive Director Custodial Operations, Department of Justice and Community Safety or the Commissioner within the meaning of the **Corrections Act 1986**;

(c) in the case of any other custodial setting—the person responsible for the administration of the custodial setting.

(4) If the chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, enters the premises of a clinical mental health service provider or a custodial setting under the powers conferred by this Act, the chief psychiatrist or authorised officer may do any one or more of the following provided it is consistent with any directions referred to under subsection (3)—

(a) inspect, examine or make enquiries at the premises;

(b) examine or inspect any document, part of a document or thing at the premises;

(c) bring any equipment or materials to the premises that may be required;

(d) take any photograph or make any audio or visual recording at the premises, including of a person at the premises, provided the person has consented to having their photograph taken or the recording of them made;

(e) use any equipment at the premises;

(f) make copies of, or take extracts from, any document kept at the premises;

(g) speak to any person receiving mental health services at the premises, if the person agrees;

(h) do any other thing that is reasonably necessary for the purpose of performing or exercising the functions or powers of the chief psychiatrist or authorised officer under this Act or the regulations.

298 Power to give written direction to persons to produce documents or answer questions

(1) The chief psychiatrist, or an authorised officer at the direction of the chief psychiatrist, may give a member of staff of a clinical mental health service provider a written direction at any time for the purpose of—

(a) conducting an investigation or clinical review; or

(b) performing any other function of the chief psychiatrist under this Act or the regulations.

(2) A written direction referred to in subsection (1) may direct a member of staff of the clinical mental health service provider—

(a) to produce a document or part of a document that is in the possession or control of the member of staff; or

(b) to answer any questions asked by the chief psychiatrist or authorised officer.

Division 7—Confidentiality obligations

299 Definitions

In this Division—

relevant person means any of the following persons—

(a) the chief psychiatrist or a person who has been the chief psychiatrist;

(b) a person who is, or has been employed or engaged under section 269 or 270.

300 Confidentiality obligations applying in respect of information from clinical review

(1) Except for the purposes of performing functions for, or related to, conducting a clinical review under this Part, a relevant person must not make a record of, access, use or disclose any information—

(a) gained by or conveyed to the relevant person; or

(b) that the relevant person has in their possession or control—

as a result of conducting the clinical review if the information could identify a mental health and wellbeing service provider or any other person.

Penalty: 10 penalty units.

(2) A relevant person must not be required to produce information the relevant person has in their possession or control as a result of performing functions for, or related to, conducting a clinical review to any of the following—

(a) a court or tribunal;

(b) an agency;

(c) any other person.

(3) A relevant person must not be required to produce or communicate to a matter or thing that has come to the relevant person's notice in performing functions for, or related to, conducting a clinical review to any of the following—

(a) a court or tribunal;

(b) an agency;

(c) any other person.

(4) Subsection (1) applies despite anything to the contrary in section 40 of the **Audit Act 1994**.

301 Confidentiality of documents

(1) This section applies to any of the following documents unless the document has been published by the Health Secretary—

(a) a document created for the sole purpose of conducting a clinical review;

(b) a document provided during the course of a clinical review.

(2) A person must not be required to produce a document to which this section applies that the person has in their possession or control to any of the following—

(a) a court or tribunal;

(b) an agency;

(c) any other person.

(3) Evidence of any information or reports obtained by or in the possession of the chief psychiatrist in the course of conducting a clinical review or evidence of or about a document to which this section applies is not admissible in any action or proceeding before—

(a) a court or tribunal; or

(b) an agency; or

(c) any other person.

302 Use or disclosure of information permitted to prevent serious harm

(1) To avoid doubt, this Division does not prevent the chief psychiatrist from using or disclosing any information in the possession or control of the chief psychiatrist as a result of conducting a clinical review if the chief psychiatrist is satisfied that the use or disclosure of the information is necessary to prevent serious harm to a person's health or safety.

(2) Nothing in this Division prevents a relevant person from including information in any document that does not contain any particulars which would be likely to lead to the identification of a person from whom or in relation to whom the information was obtained or the identification of a mental health and wellbeing service provider from which or in relation to which the information was obtained.

303 Disapplication of Freedom of Information Act 1982

The **Freedom of Information Act 1982** does not apply to documents or information specified in section 300 or 301.

304 Application of Health Records Act 2001

Part 5 and HPP 6 of the **Health Records Act 2001** do not apply to documents or information specified in section 300 or 301.

Part 6.4—Regional mental health and wellbeing boards

Division 1—Establishment of regional mental health and wellbeing boards

305 Establishment of regional mental health and wellbeing boards

(1) On the recommendation of the Minister, the Governor in Council by Order published in the Government Gazette may establish the regional mental health and wellbeing boards.

(2) An Order under subsection (1) must—

(a) be made by 31 December 2024; and

S. 305(2)(a) amended by No. 20/2023 s. 19.

(b) specify—

(i) the name of each regional mental health and wellbeing board; and

(ii) the region for which each regional mental health and wellbeing board is responsible for performing functions under this Act by reference to a map or local government area or similar.

(3) For the purposes of this section, enough regional mental health and wellbeing boards must be established so that at least one regional mental health and wellbeing board is responsible for performing functions under this Act in every part of the State.

(4) For the avoidance of doubt, the Governor in Council may make more than one Order under this section.

306 Terms of reference

(1) The Minister may issue terms of reference for a regional mental health and wellbeing board at any time.

(2) Terms of reference under subsection (1) must—

(a) be published on the Department's website; and

(b) specify the scope and priority of the functions to be performed by a regional mental health and wellbeing board.

(3) In addition to subsection (2)(b), terms of reference under subsection (1) may specify any procedures to be observed by a regional mental health and wellbeing board and the extent to which a board may regulate its own procedure.

(4) Except for the purposes of providing advice to the Minister on the Minister's request, a regional mental health and wellbeing board must perform its functions and exercise its powers within the scope of its current terms of reference (if any).

307 Functions of a regional mental health and wellbeing board

A regional mental health and wellbeing board has the following functions in respect of the region for which it is responsible—

(a) to advise the Minister on any of the following—

(i) service, capital and workforce planning for mental health and wellbeing services including prevention and early intervention and suicide prevention and response services;

(ii) funding for mental health and wellbeing services including prevention and early intervention and suicide prevention and response services;

(iii) approaches to monitoring and evaluating the performance of mental health and wellbeing service providers;

(iv) supporting the development of mental health and wellbeing service providers;

(v) supporting an integrated approach to the planning and delivery of mental health and wellbeing services and other health and social services that may support people to obtain good mental health and wellbeing including the convening of regional multiagency panels;

(vi) facilitating the use of research and innovation by mental health and wellbeing service providers;

(vii) maintaining service directory information to assist people to access services;

(viii) any other matter relating to mental health and wellbeing referred to a regional mental health and wellbeing board by the Minister; and

(b) to engage with persons receiving mental health and wellbeing services and their families, carers and supporters, mental health and wellbeing service providers and the wider community in order to advise the Minister for the purposes of paragraph (a).

308 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, a regional mental health and wellbeing board must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

309 Advice to Minister

(1) If a regional mental health and wellbeing board receives a request for advice from the Minister, the regional mental health and wellbeing board must provide that advice.

(2) A regional mental health and wellbeing board must provide advice to the Minister if it is in the regional mental health and wellbeing board's terms of reference.

(3) A regional mental health and wellbeing board may provide advice to the Minister on its own initiative.

(4) The Minister must have regard to, but is not bound by or required to act in accordance with, any advice the Minister receives from a regional mental health and wellbeing board for the purposes of making decisions that relate to matters addressed in the advice.

310 Powers of a regional mental health and wellbeing board

A regional mental health and wellbeing board has power to do all things that are necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.

311 Facilities and resources

A regional mental health and wellbeing board may request the Health Secretary to provide access to, or make available, facilities and resources to enable the regional mental health and wellbeing board to perform its functions.

Division 2—Members of regional mental health and wellbeing board

312 Appointment of members

(1) On the recommendation of the Minister, the Governor in Council, by instrument, may appoint at least 6, but not more than 9, persons to be members of a regional mental health and wellbeing board of whom one is to be appointed as chairperson.

(2) In making a recommendation to the Governor in Council under subsection (1), the Minister must ensure that the membership of a regional mental health and wellbeing board consists of—

(a) at least one person who—

(i) identifies as experiencing, or as having experienced, mental illness or psychological distress; and

(ii) has an understanding of the diverse experiences and needs of people living with mental illness or psychological distress—

which may inform their decisions as a member of a regional mental health and wellbeing board; and

(b) at least one person who—

(i) identifies as caring for or supporting, or as having cared for or supported, a person with mental illness or psychological distress; and

(ii) has an understanding of the diverse experiences and needs of families, carers and supporters of people living with mental illness or psychological distress—

which may inform their decisions as a member of a regional mental health and wellbeing board.

(3) In making a recommendation to the Governor in Council under subsection (1), the Minister must have regard to the need for members of a regional mental health and wellbeing board—

(a) to have experience, skills or knowledge that are relevant to the functions of the regional mental health and wellbeing board; and

(b) to collectively have understanding and experience of—

(i) the diverse needs of Aboriginal communities, the importance of self-determination, the importance of connection to culture, family, community and Country and the

importance of culturally responsive, safe and appropriate services; and

(ii) the diverse backgrounds and needs of persons using mental health and wellbeing services in the region for which the members would be responsible, including age, disability, neurodiversity, culture, language, communication, religion, race, gender identity and sexual orientation.

(4) To avoid doubt, the Minister must not recommend the same person for appointment for the purposes of subsection (2)(a) and (b).

313 Terms and conditions of appointment of a member

(1) A member of a regional mental health and wellbeing board—

(a) is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment; and

(b) is eligible for reappointment; and

(c) must not hold office for more than 9 consecutive years unless the Minister is satisfied that exceptional circumstances exist which justify the member holding office for a longer period; and

(d) is entitled to be paid the remuneration and allowances fixed by the Governor in Council from time to time.

(2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

314 Vacancy and resignation

A member of a regional mental health and wellbeing board ceases to hold office if the member—

(a) resigns by notice given to the Governor in Council; or

(b) becomes an insolvent under administration; or

(c) is found guilty of an indictable offence; or

(d) nominates for election for—

(i) the Parliament of Victoria or the Commonwealth or of another State or a Territory; or

(ii) a Council within the meaning of the **Local Government Act 2020**; or

(e) is removed from office under section 315.

315 Removal from office

(1) On the recommendation of the Minister, the Governor in Council may remove a member of a regional mental health and wellbeing board from office.

(2) The Minister may recommend the removal of a member of a regional mental health and wellbeing board from office if the member—

(a) becomes unable to perform the duties of the office; or

(b) fails to attend meetings of the regional mental health and wellbeing board without the approval of the board for a period of not less than 6 months; or

(c) engages in improper conduct.

Division 3—Community advisory committees

316 Regional mental health and wellbeing boards may establish community advisory committees

(1) A regional mental health and wellbeing board may establish at least one community advisory committee for the purposes of engaging with the community in its region.

(2) For the purposes of appointing members to a community advisory committee, a regional mental health and wellbeing board must have regard to—

(a) any relevant guidelines issued by the Chief Officer; and

(b) the importance of members collectively having experience of and understanding the mental health principle set out in section 17 and that people using mental health and wellbeing services in their region—

(i) come from diverse backgrounds; and

(ii) have different needs and requirements.

317 Procedure of community advisory committees

(1) Subject to subsection (2), a community advisory committee may regulate its own procedure.

(2) A community advisory committee is subject to—

(a) any guidelines issued by the Chief Officer; and

(b) any directions of the regional mental health and wellbeing board that established the committee.

Part 6.5—Panels

Division 1—Regional multiagency panels

318 Appointment of regional multiagency panels

(1) The Chief Officer must appoint regional multiagency panels—

(a) for the purposes of bringing together service providers; and

(b) to support collaboration and accountability for those living with mental illness or psychological distress and who require ongoing intensive treatment, care and support from multiple services.

(2) The Chief Officer must appoint a regional multiagency panel for each region in respect of which a regional mental health and wellbeing board has been established under section 305.

(3) For the purposes of subsection (2), the first regional multiagency panel appointed in respect of each region must be appointed within 6 months after the regional mental health and wellbeing board for that region has been established.

319 Membership of regional multiagency panel

(1) A regional multiagency panel consists of members appointed by the Chief Officer with the advice of the regional mental health and wellbeing board for the same region.

(2) The Chief Officer may appoint one of the members of a regional multiagency panel appointed under subsection (1) as chairperson.

320 Functions of a regional multiagency panel

A regional multiagency panel has the following functions in respect of its region—

(a) to identify and take steps to resolve issues relating to the delivery of services for persons living with mental illness or psychological distress who require ongoing intensive treatment, care and support from multiple services;

(b) to support mental health and wellbeing service providers to deliver integrated treatment, care and support to people living with mental illness or psychological distress who require ongoing intensive treatment, care and support from multiple services;

(c) to escalate issues requiring a system-led response to the statewide panel;

(d) to provide advice to the Chief Officer and the regional mental health and wellbeing board for the same region on broader policy or service delivery matters related to people living with mental illness or psychological distress who require ongoing intensive treatment, care and support from multiple services;

(e) to facilitate care coordination for persons living with mental illness or psychological distress who require ongoing intensive treatment, care and support from multiple services in difficult or complex circumstances where those circumstances have been unable to be addressed by the person's service providers.

321 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, a regional multiagency panel must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

322 Facilities and resources

The Chief Officer must provide access to, or make available, facilities and resources reasonably necessary to enable the regional multiagency panel to perform its functions.

323 Procedure of regional multiagency panel

(1) Subject to subsection (2), a regional multiagency panel may regulate its own procedure.

(2) A regional multiagency panel is subject to any guidelines issued by the Chief Officer.

Division 2—Statewide panel

324 Appointment of statewide panel

(1) The Chief Officer must appoint a statewide panel.

(2) The statewide panel consists of—

(a) the Chief Officer who is chairperson of the panel; and

(b) the chairperson of each regional multiagency panel; and

(c) any other persons the Chief Officer determines.

325 Function of statewide panel

The function of the statewide panel is to identify and take steps to resolve systemic issues relating to the delivery of mental health and wellbeing services for persons living with mental illness or psychological distress and who require ongoing intensive treatment, care and support from multiple mental health and wellbeing services.

326 Consideration of mental health and wellbeing principles

In the performance of its function, or the exercise of a power under this Act, the statewide panel must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

327 Procedure for statewide panel

(1) Subject to subsection (2), a statewide panel may regulate its own procedure.

(2) A statewide panel is subject to any guidelines issued by the Chief Officer.

Part 6.5A—Mental Health Workforce Safety and Wellbeing Committee

327A Mental Health Workforce Safety and Wellbeing Committee

(1) The Health Secretary must establish a Mental Health Workforce Safety and Wellbeing Committee in accordance with the regulations.

(2) The Mental Health Workforce Safety and Wellbeing Committee consists of members appointed by the Health Secretary.

(3) The Health Secretary may appoint 2 of the members of the Mental Health Workforce Safety and Wellbeing Committee to jointly chair the Committee.

(4) Members of the Mental Health Workforce Safety and Wellbeing Committee must have experience, skills or knowledge that is relevant to the objectives of the Mental Health Workforce Safety and Wellbeing Committee.

(5) The regulations may make provision for or with respect to—

(a) the appointment of the Mental Health Workforce Safety and Wellbeing Committee, including the number of members; and

(b) the powers and procedures of the Mental Health Workforce Safety and Wellbeing Committee.

327B Objectives of the Mental Health Workforce Safety and Wellbeing Committee

(1) The objectives of the Mental Health Workforce Safety and Wellbeing Committee are to provide advice to the Health Secretary and the Chief Officer in relation to—

(a) the prevention of risks to health, safety and wellbeing in the mental health and wellbeing workforce; and

(b) approaches to monitoring and responding to risks to health, safety and wellbeing in the mental health and wellbeing workforce.

(2) The Mental Health Workforce Safety and Wellbeing Committee may appoint a sub-committee to assist the Mental Health Workforce Safety and Wellbeing Committee to achieve its objectives under subsection (1).

Part 6.6—Authorised psychiatrists

328 Appointment of authorised psychiatrist

(1) Subject to subsection (4), the governing body of a designated mental health service must appoint at least one psychiatrist as authorised psychiatrist for the designated mental health service—

(a) to carry out the functions and exercise the powers conferred on an authorised psychiatrist under this Act or any other Act; and

(b) to support the chief psychiatrist to perform the chief psychiatrist's functions under this Act.

(2) An appointment made under subsection (1) must be in writing.

(3) Subject to subsections (1) and (4), the governing body of a designated mental health service may appoint as many authorised psychiatrists as the designated mental health service requires.

(4) Youth Mental Health and Wellbeing Victoria must approve any intended appointment of a psychiatrist as authorised psychiatrist of a declared operator before the governing body of the declared operator makes the appointment.

(5) The governing body of a designated mental health service must notify, in writing, the chief psychiatrist and the Mental Health Tribunal of an appointment made under this section within 5 business days after the appointment is made.

329 Delegation

(1) An authorised psychiatrist, by instrument, may delegate any function or power of the authorised psychiatrist to the following persons—

(a) a psychiatrist;

(b) a person to whom limited registration has been granted under section 66 of the Health Practitioner Regulation National Law to enable the person to undertake a period of postgraduate training or supervised practice in psychiatry or to undertake assessment or sit an examination approved by the Medical Board of Australia in relation to psychiatry;

(c) a person to whom limited registration has been granted to enable the person to practise in psychiatry in an area of need under section 67 of the Health Practitioner Regulation National Law.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

(2) An authorised psychiatrist, by instrument, may delegate to a registered medical practitioner who is employed or engaged by a designated mental health service the following powers, duties and functions of an authorised psychiatrist relating to assessment orders—

(a) the power to examine a person and extend the duration of an assessment order;

(b) the power to assess a person subject to an assessment order and to make a temporary treatment order;

(c) the power to revoke an assessment order.

(3) A delegation under subsection (2)—

(a) must not be made for a period longer than 12 months; and

(b) may be renewed.

(4) An authorised psychiatrist who has delegated a power, function or duty under subsection (2) must regularly review any exercise of that power, or performance of that function or duty, by the person to whom they were delegated.

Chapter 7—Mental Health Tribunal

Part 7.1—Establishment of the Mental Health Tribunal

330 Establishment of the Mental Health Tribunal

The Mental Health Tribunal is established.

Note

See section 763.

331 Official seal of Mental Health Tribunal

The Mental Health Tribunal has an official seal which—

(a) must be kept in the custody that the Tribunal directs; and

(b) must only be used as authorised by the Tribunal.

332 Functions of the Mental Health Tribunal

The functions of the Mental Health Tribunal are—

(a) to hear and determine the following—

(i) a matter in relation to whether a treatment order should be made;

(ii) an application to revoke a temporary treatment order or a treatment order;

(iii) a matter in relation to an application involving the transfer to another designated mental health service of—

(A) the assessment of a court assessment patient; or

(B) the treatment of a temporary treatment patient or a treatment patient;

(iv) an application to perform electroconvulsive treatment on a patient who does not have capacity to give informed consent;

(v) an application to perform electroconvulsive treatment on a person who does not have capacity to give informed consent and who is not a patient or a person under the age of 18 years;

(vi) an application to perform electroconvulsive treatment on a person who is under the age of 18 years;

(vii) an application to perform neurosurgery for mental illness;

(viii) an application by a person subject to a court secure treatment order to determine whether the criteria specified in section 94B(1)(c) of the **Sentencing Act 1991** apply;

(ix) an application by a security patient subject to a secure treatment order to have the order revoked;

(x) an application by a security patient in relation to a grant of leave of absence;

(xi) an application by a security patient for a review of a direction to be taken to another designated mental health service;

(xii) an application for an interstate transfer order or an interstate transfer of treatment order;

(xiii) an application for an intensive monitored supervision order;

(xiv) an application by a patient or on a patient's behalf for a revocation of the patient's intensive monitored supervision order; and

(b) to perform any other function which is conferred on the Mental Health Tribunal under this Act, any other Act, the regulations or the rules or regulations or rules under any other Act.

333 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the Mental Health Tribunal must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent; and

(c) consider ways to promote good mental health and wellbeing.

334 General powers of the Mental Health Tribunal

The Mental Health Tribunal has all the powers necessary or convenient to enable it to perform its functions under this Act or any other Act, the regulations or the rules or regulations or rules under any other Act.

335 Protection of Tribunal members, persons and witnesses

(1) A Tribunal member, in the performance of the member's duties as a Tribunal member, has the same protection and immunity as a Judge of the Supreme Court.

(2) An Australian legal practitioner or other person appearing before the Mental Health Tribunal on behalf of another person has the same protection and immunity as an Australian legal practitioner has in appearing for a party in a proceeding in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Mental Health Tribunal as a witness—

(a) has the same protection as a witness in a proceeding in the Supreme Court; and

(b) in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in the Supreme Court.

Part 7.2—Membership of the Mental Health Tribunal

336 Members of the Mental Health Tribunal

The members of the Mental Health Tribunal are—

(a) the President; and

(b) the Deputy President; and

(c) the senior Tribunal members; and

(d) the ordinary Tribunal members.

Note

Senior Tribunal members and ordinary Tribunal members consist of legal, psychiatrist, registered medical practitioner and community members. See section 339.

337 President

(1) On the recommendation of the Minister, the Governor in Council may appoint a person to be President of the Mental Health Tribunal if the person is eligible for appointment as a legal member of the Tribunal.

(2) The President holds office on a full-time basis for the term specified in the instrument of appointment, not exceeding 5 years.

(3) The President is eligible for reappointment.

(4) If the President was an officer within the meaning of the **State Superannuation Act 1988** immediately before the President's appointment, subject to that Act, during the President's appointment the President continues to be an officer within the meaning of that Act.

(5) The President may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of the office of President if—

(a) the Minister consents; and

(b) the President complies with all the conditions attached to that consent.

338 Deputy President

(1) On the recommendation of the Minister, the Governor in Council may appoint a person to be Deputy President of the Mental Health Tribunal if the person is eligible for appointment as a legal member of the Tribunal.

(2) The Deputy President holds office—

(a) for the term specified in the instrument of appointment, not exceeding 5 years; and

(b) on a full-time or part-time basis.

(3) The Deputy President is eligible for reappointment.

(4) If the Deputy President was an officer within the meaning of the **State Superannuation Act 1988** immediately before the Deputy President's appointment, subject to that Act, during the Deputy President's appointment the Deputy President continues to be an officer within the meaning of that Act.

(5) The Deputy President may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of the office of Deputy President if—

(a) the Minister consents; and

(b) the Deputy President complies with all the conditions attached to that consent.

339 Senior Tribunal members and ordinary Tribunal members

(1) The senior Tribunal members and ordinary Tribunal members of the Mental Health Tribunal are—

(a) the legal members; and

(b) the psychiatrist members; and

(c) the registered medical practitioner members; and

(d) the community members.

(2) The Governor in Council, on the recommendation of the Minister, may appoint persons as—

(a) senior Tribunal members; or

(b) ordinary Tribunal members.

(3) A senior Tribunal member holds office—

(a) on a full-time or a part-time basis; and

(b) for the term, not exceeding 5 years, specified in the instrument of appointment.

(4) A Tribunal ordinary member holds office—

(a) on a full-time, part-time or sessional basis; and

(b) for the term, not exceeding 5 years, specified in the instrument of appointment.

(5) As many senior Tribunal members and ordinary Tribunal members as are required for the proper functioning of the Mental Health Tribunal are to be appointed.

(6) Senior Tribunal members and ordinary Tribunal members are eligible for reappointment.

(7) A full-time or part-time Tribunal member (other than the President or Deputy President) may engage in the practice of any profession or in any paid employment (whether within or outside Victoria) outside the duties of the office of Tribunal member if—

(a) the President consents; and

(b) the full-time or part-time Tribunal member complies with all the conditions attached to that consent.

340 Legal members

A person is eligible for appointment as a legal member if the person is and has been an Australian lawyer for not less than 5 years.

341 Psychiatrist members

A person is eligible for appointment as a psychiatrist member if the person is a psychiatrist.

342 Registered medical practitioner members

A person is eligible for appointment as a registered medical practitioner member if the person—

(a) is a registered medical practitioner; and

(b) has knowledge of, and experience in relation to, the treatment of mental illness.

343 Community members

A person is eligible for appointment as a community member if the person has—

(a) a special interest or experience in mental illness; or

(b) the knowledge and experience relevant to performing the role of a community member of the Mental Health Tribunal.

344 Acting President or Acting Deputy President

(1) The Deputy President may act as President if the President is unable to perform the President's duties or functions.

(2) The President may appoint a senior Tribunal member to act as Deputy President if the Deputy President is unable to perform the Deputy President's duties or functions.

(3) A person who acts as President or Deputy President—

(a) has all the powers and must perform all the duties of the President or Deputy President, as the case requires; and

(b) is entitled to be paid the remuneration and allowances for the time being payable to the President or Deputy President, as the case requires.

345 Remuneration and allowances

A Tribunal member (including the President and Deputy President) is entitled to receive the prescribed remuneration and prescribed allowances.

Note

Remuneration and allowances may differ for different classes of Tribunal member: See section 759(1)(f).

346 Public Administration Act 2004 does not apply to Tribunal members

The **Public Administration Act 2004** does not apply to a Tribunal member (including the President and Deputy President) in respect of the office of Tribunal member.

347 Resignation of Tribunal member

A Tribunal member (including the President and Deputy President) may resign from office as a Tribunal member in writing signed by that person and delivered to the Governor in Council.

348 Suspension from office

(1) On the recommendation of the President, the Minister may suspend a Tribunal member, including the Deputy President, from office if the Minister is satisfied that there may be grounds for removal of the Tribunal member from office under section 350(2).

(2) On the recommendation of the Minister, the Governor in Council may suspend the President from office if the Minister is satisfied that there may be grounds for removal of the President from office under section 350(2).

(3) If the President is suspended from office under subsection (2), the Minister must cause a statement of the grounds of the suspension to be tabled in each House of the Parliament within 7 sitting days of that House after the suspension.

(4) A person who is suspended from office under this section remains entitled to the remuneration and allowances prescribed under section 345 during the period of suspension.

349 Investigation of member

(1) The Minister may appoint a person who is independent of the Mental Health Tribunal to undertake an investigation into the conduct of a Tribunal member (including the President or Deputy President) who has been suspended under section 348 if the Minister decides that an investigation is required in the circumstances.

(2) If the Minister decides that an investigation is required under subsection (1), the investigation must be conducted as soon as practicable after the Tribunal member's suspension.

(3) A person appointed under subsection (1) to conduct an investigation must—

(a) investigate the conduct of the suspended Tribunal member; and

(b) report to the Minister on the findings of the investigation and provide recommendations as appropriate; and

(c) give a copy of the report to the President; and

(d) give a copy of the report to the person who is the subject of the report.

(4) The report may include a recommendation that the person investigated be removed from office.

350 Vacation and removal from office

(1) The office of a Tribunal member (including the President and Deputy President) becomes vacant if—

(a) the member completes a term of office and is not reappointed; or

(b) the member is removed from office or resigns.

(2) On the recommendation of the Minister, the Governor in Council may remove a Tribunal member (including the President and Deputy President) from office if—

(a) the member becomes an insolvent under administration; or

(b) the member ceases to be eligible for appointment; or

(c) the member is convicted of an offence, the commission of which makes the person unsuitable to be a member in the opinion of the Minister; or

(d) the member fails to disclose a conflict of interest; or

(e) in the case of the President or Deputy President, the person engages in any paid employment outside the duties of office—

(i) without the consent of the Minister; or

(ii) not in accordance with the Minister's consent; or

(f) in the case of a full-time or part-time Tribunal member other than the President or Deputy President, the member engages in any paid employment outside the duties of the office—

(i) without the consent of the President; or

(ii) not in accordance with the President's consent; or

(g) the Tribunal member is unable to perform the member's duties under this Act or any other Act; or

(h) following an investigation under section 349, the member has been found—

(i) to have neglected the Tribunal member's duties under this Act or any other Act; or

(ii) to have engaged in misconduct.

Part 7.3—Administration

351 Employment of staff

There are to be employed under the **Public Administration Act 2004** to assist in the administration of the Mental Health Tribunal—

(a) a chief executive officer; and

(b) a principal registrar; and

(c) as many registrars and other staff as are necessary.

352 Functions of principal registrar

(1) The principal registrar has the functions conferred on the principal registrar by or under this Act, the regulations or the rules.

(2) The principal registrar is subject to the direction of the President in performing the principal registrar's functions under this Act, the regulations or the rules.

353 Functions of registrars

(1) Subject to this Act, the regulations and the rules, a registrar may exercise any of the powers and perform any of the functions of the principal registrar.

(2) A registrar is subject to the direction of the principal registrar in performing the registrar's functions under this Act, the regulations or the rules.

354 Delegation by President and Deputy President

(1) The President, by instrument, may delegate any of the President's functions under this Act, the regulations or the rules—

(a) to the Deputy President; and

(b) to any legal member.

(2) The President, by instrument, may delegate to the principal registrar any of the President's functions under this Act, the regulations or the rules other than the functions and powers of the President in relation to hearing and determining matters or applications referred to in section 332.

(3) The Deputy President, by instrument, may delegate to any legal member any of the Deputy President's functions under this Act, the regulations or the rules.

(4) The Deputy President, by instrument, may delegate to the principal registrar any of the Deputy President's functions under this Act, the regulations or the rules other than the functions and powers of the Deputy President in relation to hearing and determining matters or applications referred to in section 332.

Note

See section 42A(1)(aa) of the **Interpretation of Legislation Act 1984** which provides that a power to delegate does not include the power to delegate that power of delegation.

355 Secrecy

(1) This section applies to—

(a) a person who is, or has been, a Tribunal member (including as President or Deputy President) of the Mental Health Tribunal; or

(b) a person who is, or has been, a chief executive officer, principal registrar, registrar or other member of staff of the Mental Health Tribunal.

(2) A person to whom this section applies must not, directly or indirectly, make a record of, disclose or communicate to any person, any information relating to the affairs of a natural person acquired in the performance of functions or duties or the exercise of powers under this Act or the

regulations or the rules under this Act which may identify the person, unless—

(a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or the regulations or the rules under this Act; or

(b) it is necessary to do so for the purposes of a criminal proceeding or to commence any proceeding under this Act; or

(c) the person to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

(3) Nothing in this section limits the operation of Part 17.1 in relation to a person referred to in subsection (1).

356 Register of proceedings

(1) The Mental Health Tribunal must cause to be kept a register of proceedings containing details as required by the rules.

(2) Subject to this section, the Mental Health Tribunal must ensure that the register is available for inspection at any time that the registry is open for business.

(3) Without charge, a party to a proceeding of the Mental Health Tribunal may—

(a) inspect that part of the register that relates to the proceeding in which the party is or was involved; and

(b) obtain an extract of that part of the register.

(4) A person who is not a party to a proceeding of the Mental Health Tribunal, for a prescribed fee, may inspect a part of the register or obtain an extract of the register if—

(a) the President determines that the person has a proper purpose for inspecting or obtaining that part of the register; and

(b) subject to subsection (5), any aspect of the extract to be inspected or provided that may identify the person who is the subject of the extract is removed.

(5) For the purposes of subsection (4)(b), an extract that identifies the person who is the subject of the extract may be inspected or provided if the President is satisfied that—

(a) the person has given written consent to the inspection or provision of the extract; or

(b) the proper purpose for inspecting the register involves—

(i) ethics approved research; or

(ii) the management and review of the business of the Mental Health Tribunal.

357 Annual report of the Mental Health Tribunal

(1) The Mental Health Tribunal must submit to the Minister an annual report containing—

(a) a review of the operation of the Mental Health Tribunal during the 12 months ending on the preceding 30 June; and

(b) details of the number of hearings conducted by the Mental Health Tribunal being constituted by a single Tribunal member and the circumstances which necessitated the hearings being conducted by a single Tribunal member; and

(c) any other prescribed matters.

(2) The annual report must be submitted to the Minister as soon as practicable after the end of the financial year but not later than the following 31 October.

(3) The Minister must cause the annual report of the Mental Health Tribunal to be laid before each House of the Parliament before the expiry of the 14th sitting day of each House after the annual report has been received by the Minister.

Part 7.4—Divisions of the Mental Health Tribunal

358 Divisions of the Mental Health Tribunal

(1) The following divisions of the Mental Health Tribunal are established—

(a) the general division;

(b) the special division.

(2) The general division of the Mental Health Tribunal must hear and determine all matters within the jurisdiction of the Tribunal except those relating to—

(a) the performance of electroconvulsive treatment or neurosurgery for mental illness; or

(b) the provision of intensive monitored supervision.

(3) The special division of the Mental Health Tribunal must hear and determine applications for—

(a) the performance of electroconvulsive treatment or neurosurgery for mental illness; or

(b) the provision of intensive monitored supervision.

359 Constitution of the Mental Health Tribunal

(1) Subject to section 360, the President must select 3 Tribunal members who will constitute the Mental Health Tribunal for the purposes of a proceeding, having regard to subsections (2) and (3).

(2) For the purposes of a proceeding in the general division of the Mental Health Tribunal, the Tribunal is constituted by—

(a) a legal member; and

(b) a psychiatrist member or a registered medical practitioner member; and

(c) a community member.

(3) For the purposes of a proceeding in the special division of the Mental Health Tribunal, the Tribunal is constituted by—

(a) a legal member; and

(b) a psychiatrist member; and

(c) a community member.

(4) For the purposes of this section, the President and Deputy President are legal members.

360 When can the Mental Health Tribunal be constituted by a single member?

(1) The Mental Health Tribunal may be constituted by a single member who is a legal member for hearing and determining the following if the President has approved the Tribunal being so constituted in accordance with this section—

(a) the adjournment of a proceeding if—

(i) it is known in advance that an adjournment is being requested by a party; and

(ii) the adjournment is not opposed;

(b) an application for leave to withdraw an application.

Note

See section 370.

(2) Subsection (1) applies whether the proceeding is in the general division or the special division.

(3) The President may approve the Mental Health Tribunal being constituted by a single Tribunal member who is a legal member for a proceeding or application referred to in subsection (1) if satisfied that it is appropriate for a single Tribunal member to constitute the Tribunal.

(4) An approval under this section must be in writing.

(5) A copy of an approval under this section must be provided to each party to the proceeding.

(6) The President, by instrument, may delegate the President's power of approval under this section to the principal registrar.

361 Presiding member

The presiding member in a proceeding of the Mental Health Tribunal is the legal member.

Part 7.5—Procedure of the Mental Health Tribunal

362 General procedure of the Mental Health Tribunal

(1) The Mental Health Tribunal—

(a) is not bound by the rules of evidence; and

(b) is bound by the rules of procedural fairness; and

(c) may inform itself on any matter as it sees fit; and

(d) must conduct each proceeding as expeditiously and with as little formality and technicality as the requirements of this Act, the regulations and the rules and a proper consideration of the matters before it permit.

(2) Subject to this Act, the regulations and the rules, the Mental Health Tribunal may regulate its own procedure.

363 Who are the parties to a proceeding?

The parties to a proceeding of the Mental Health Tribunal are—

(a) the person who is the subject of the proceeding; and

(b) the psychiatrist treating the person who is the subject of the proceeding; and

(c) any person whose application to be a party to the proceeding has been approved by the Tribunal; and

(d) any other person or body joined as a party to the proceeding under section 364.

364 Joinder of parties

(1) The Mental Health Tribunal may order that a person be joined as a party to a proceeding if the Tribunal is satisfied that it is desirable that the person be joined as a party.

(2) On the application of a person to be a party to a proceeding, the principal registrar may join the person as a party before the hearing commences.

(3) At any time, the President, Deputy President or another Tribunal member of a class specified in the rules may join a person as a party to a proceeding without conducting a hearing on the application.

365 Appearance and representation at hearing

(1) A person who is the subject of a proceeding has the right to appear before the Mental Health Tribunal at the hearing.

(2) Despite subsection (1), the Mental Health Tribunal may exclude any person (including a person who is the subject of a proceeding) if that person is behaving in a manner that is disruptive to the hearing of the matter.

(3) A person who is the subject of a proceeding may be represented before the Mental Health Tribunal by any person authorised to that effect by the person who is the subject of the proceeding.

(4) If the person who is the subject of a proceeding is not represented before the Mental Health Tribunal, the Tribunal may appoint another person to represent that person.

366 Interpreters

(1) Subject to subsection (3), a party may be assisted at a hearing by an interpreter or another person who is necessary or desirable to make the hearing intelligible to that party.

(2) The Mental Health Tribunal may appoint or call for the assistance of an interpreter to provide interpreting services for the purposes of any hearing conducted under this Act.

(3) If the Mental Health Tribunal is satisfied that it is appropriate in the circumstances, the Tribunal may direct that a hearing under this Act continue without the assistance of an interpreter.

367 Form and content of applications to the Mental Health Tribunal

An application to the Mental Health Tribunal made under this Act must—

(a) be in the form specified in the rules; and

(b) contain or attach any information specified in the rules; and

(c) be lodged in the manner specified by the rules.

368 Principal registrar may reject certain applications

(1) The principal registrar may reject an application made to the Mental Health Tribunal if the application—

(a) is made by a person who is not entitled to make that application under this Act; or

(b) is lodged after the time for making that application has expired; or

(c) does not comply with requirements under this Act, the regulations or the rules.

(2) The principal registrar must advise any person whose application is rejected under subsection (1) that the person may seek a review by the President under section 369 of the principal registrar's decision to reject the application.

(3) The principal registrar may refer a rejected application specified in subsection (1) directly to the President for review under section 369 without an application for review being made by the applicant.

369 Review by President

(1) The President must review a decision of the principal registrar to reject an application referred to in section 368 if—

(a) the person who made the application seeks a review of that decision; or

(b) the principal registrar refers the application directly to the President under section 368(3).

(2) The review may be conducted without a hearing.

(3) After conducting a review of a decision by the principal registrar, the President may—

(a) confirm the principal registrar's decision to reject the application; or

(b) direct the principal registrar to accept the application.

(4) The President may reject an application referred to the President by the principal registrar under section 368(3) if the application—

(a) is made by a person who is not entitled to make that application under this Act; or

(b) is lodged after the time for making that application has expired; or

(c) does not comply with requirements under this Act, the regulations or the rules.

370 Withdrawal of applications and striking out of proceeding

(1) Before an application has been determined by the Mental Health Tribunal, the applicant may seek leave from the Tribunal to withdraw the application.

(2) The Mental Health Tribunal may grant leave to an applicant to withdraw an application.

(3) The Mental Health Tribunal may make an order striking out a proceeding if the applicant fails to appear.

(4) The Mental Health Tribunal's power to grant leave under subsection (2) or to strike out a proceeding under subsection (3) is exercisable by—

(a) the Tribunal as constituted for the proceeding; or

(b) the principal registrar.

(5) The principal registrar must notify in writing all parties to a proceeding of—

(a) a decision by the Mental Health Tribunal or the principal registrar to grant leave to an applicant to withdraw an application; or

(b) a decision by the Mental Health Tribunal or the principal registrar to strike out a proceeding.

371 Notice of hearing

(1) The Mental Health Tribunal must list a matter for hearing and give written notice of that hearing as soon as practicable to all of the following—

(a) the person who is the subject of the proceeding;

(b) the psychiatrist treating the person who is the subject of the proceeding;

(c) any person whose application to be a party to the proceeding has been approved by the Tribunal;

(d) if the person who is the subject of the proceeding is a person under 16 years of age, the person's parent;

(e) the nominated support person of the person who is the subject of the proceeding;

(f) a guardian of the person who is the subject of the proceeding;

(g) a carer of the person who is the subject of the proceeding;

(h) the primary non-legal mental health advocacy service provider;

(i) if the person who is the subject of the proceeding is a security patient, whoever of the following had custody of the person before the person became a security patient—

(i) the Justice Secretary;

(ii) the Chief Commissioner of Police;

(j) the DFFH Secretary, if that Secretary has parental responsibility for the person who is the subject of the proceeding under a relevant child protection order;

(k) in the case of an adult who is not a patient with respect to a proceeding for the performance of electroconvulsive treatment, the person's medical treatment decision maker and support person;

(l) any other person or body joined as a party to the proceeding under section 364.

(2) The notice must specify all of the following—

(a) the date and time of the hearing;

(b) the place where the hearing will be held and the mode of hearing;

(c) the subject matter of the hearing;

(d) that a person who is a party to the proceeding has a right to appear at the hearing;

(e) that a person who is a party to the proceeding has a right to be represented at the hearing.

(3) The Mental Health Tribunal may dispense with giving notice under subsection (1) if the Tribunal is satisfied that it is appropriate to do so in the circumstances.

(4) A hearing, proceeding or determination of the Mental Health Tribunal or an order of the Tribunal is not invalid or affected by reason only of a failure to give notice to a person.

372 Multiple matters or proceedings in respect of one person may be held concurrently

The Mental Health Tribunal may hear and determine multiple matters in one proceeding in respect of one person concurrently.

373 Access to documents

(1) Subject to subsection (3), the following must give a person who is the subject of a proceeding access to any documents in its possession in connection with the proceeding at least 2 business days before the hearing—

(a) a designated mental health service;

(b) a psychiatrist who has applied to the Mental Health Tribunal for authorisation for the performance of electroconvulsive treatment.

(2) An authorised psychiatrist or a psychiatrist may apply to the Mental Health Tribunal for access to any documents referred to in subsection (1) to be denied to the person who is the subject of a proceeding if the authorised psychiatrist or the psychiatrist is of the opinion that the disclosure of information in such a document may cause serious harm to the person or to another person.

(3) If the Mental Health Tribunal determines that the disclosure of the information referred to in subsection (2) may cause serious harm to the person who is the subject of the proceeding or to another person, the Tribunal may—

(a) deny the disclosure of the relevant document to the person who is the subject of the proceeding; and

(b) proceed with the hearing; and

(c) have regard to that information at the hearing.

(4) If the Mental Health Tribunal determines that the disclosure of the information referred to in subsection (2) will not cause serious harm to the person who is the subject of the proceeding or to another person, the Tribunal may—

(a) order the designated mental health service or the psychiatrist who has applied to the Mental Health Tribunal for authorisation for the performance of electroconvulsive treatment (as the case requires) to give the person who is the subject of the proceeding access to the relevant document; and

(b) adjourn the hearing for a period not exceeding 5 business days and extend the duration of the relevant order for the length of that period.

374 Adjournment of certain hearings only in exceptional circumstances

(1) If a person who is the subject of a proceeding is subject to a temporary treatment order or a treatment order, the Mental Health Tribunal must not adjourn the hearing to a date that is after the order expires unless the Tribunal is satisfied that exceptional circumstances exist.

(2) If a hearing is adjourned under subsection (1), the Mental Health Tribunal may extend the duration of the temporary treatment order or treatment order to which the person is subject for a period not exceeding 10 business days.

(3) The Mental Health Tribunal must not extend the duration of a temporary treatment order or treatment order more than once.

375 Hearings to be closed to the public

(1) Subject to subsections (2), (3) and (4), hearings of the Mental Health Tribunal are closed to members of the public.

(2) The Mental Health Tribunal may order that a hearing or any part of a hearing be open to members of the public if the Tribunal is satisfied that it is in the public interest.

(3) A person who is the subject of a proceeding under this Act may make a written request to the Mental Health Tribunal for the hearing, or any part of the hearing, to be heard in public.

(4) In determining a request made under subsection (3), the Mental Health Tribunal must consider whether holding the hearing, or part of the hearing, in public would—

(a) be a serious threat to the health and safety of any person; or

(b) prejudice the interests of justice.

376 Details of person not to be published without consent of President and subject person

The name and other identifying details of a person who is the subject of a proceeding before the Mental Health Tribunal must not be published unless written consent has been obtained from—

(a) the President; and

(b) the person who is the subject of a proceeding.

377 Determination of proceeding

(1) Any question arising for determination by the Mental Health Tribunal in a proceeding (other than a question of law) is to be decided by a majority of the Tribunal members constituting the Tribunal in that proceeding.

(2) The Tribunal member who is nominated by the Mental Health Tribunal in that proceeding must give oral reasons for making a determination at the conclusion of the hearing for that proceeding that include—

(a) an explanation of the determination; and

(b) an explanation of any order made by the Tribunal under this Act.

(3) An order made under this Act during a proceeding of the Mental Health Tribunal must—

(a) be in writing; and

(b) state that each party to the proceeding may—

(i) request a statement of reasons for the determination under section 380; and

(ii) apply to VCAT for review of the determination under section 383; and

(c) be signed by the presiding member of the Tribunal for the purposes of that proceeding; and

(d) be sealed with the official seal of the Tribunal.

(4) As soon as practicable after the Mental Health Tribunal makes an order under this Act, the Tribunal must take reasonable steps to give a copy of the order to the persons to whom notice was given under section 371(1).

378 Questions of law

A question of law (including a question of mixed fact and law) arising in a proceeding before the Mental Health Tribunal must be decided by the presiding member.

379 Referral of question of law to Supreme Court

(1) With the consent of the President, the Mental Health Tribunal may refer any question of law arising in a proceeding to the Supreme Court.

(2) The referral may be made—

(a) on the application of a party to a proceeding before the Mental Health Tribunal; or

(b) on the Mental Health Tribunal's own motion.

(3) If a question of law has been referred to the Supreme Court, the Mental Health Tribunal must not—

(a) make a determination to which the question of law is relevant while the referral is pending; or

(b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question.

(4) Despite anything to the contrary in this Act, if a question of law has been referred to the Supreme Court, the Mental Health Tribunal may—

(a) adjourn the hearing; and

(b) extend the duration of any temporary treatment order or treatment order to which the person who is the subject of the proceeding to which the question of law relates is subject until the referred question of law is resolved and the Tribunal has made its determination.

380 Requesting a statement of reasons

(1) After the Mental Health Tribunal has made a determination, a party to a proceeding before the Tribunal may request a statement of reasons for that determination.

(2) The request must—

(a) be in writing; and

(b) subject to subsection (3), be received by the Mental Health Tribunal within 20 business days after the Tribunal has made the relevant determination.

(3) The Mental Health Tribunal, in its discretion, may accept a request under subsection (1) that is received more than 20 business days after the determination is made for which the statement of reasons is requested.

(4) Within 20 business days after receiving a request under subsection (1), the Mental Health Tribunal must give a statement of reasons to all parties to the proceeding for which the request was made.

(5) The Mental Health Tribunal's statement of reasons must—

(a) be signed by the presiding member for the relevant proceeding or, if the presiding member is unavailable, the President or the Deputy President; and

(b) be sealed with the official seal of the Tribunal.

381 Correction of order or statement of reasons

(1) The Mental Health Tribunal may correct an order or a statement of reasons made by it if the order or statement of reasons contains—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the order or statement of reasons; or

(d) a defect of form.

(2) The correction may be made on—

(a) the Mental Health Tribunal's own motion; or

(b) the application of any person in accordance with the rules.

382 Validity of proceedings

(1) A decision of the Mental Health Tribunal is not invalid only because of a defect or irregularity in, or in connection with, the appointment of the President, Deputy President or another Tribunal member.

(2) If a person's appointment as a Tribunal member expires during the hearing of a proceeding or other matter, for the purposes of this Act, the person is taken to be a Tribunal member until the proceeding or other matter before the Mental Health Tribunal is finally concluded.

(3) A proceeding of the Mental Health Tribunal is not invalidated or affected if the proceeding was not heard within the timeframes specified under this Act for a proceeding of that kind as a result of an accidental or unintentional miscalculation of time.

383 Review by VCAT

(1) A person who was a party to a proceeding before the Mental Health Tribunal may apply to VCAT for review of any determination made by the Tribunal under this Act in that proceeding.

(2) Subject to subsection (3), an application for review under subsection (1) must be made to VCAT within 20 business days after the later of—

(a) the Mental Health Tribunal's determination; or

(b) if the person referred to in subsection (1) requested a statement of reasons, the person's receipt of the statement of reasons.

(3) VCAT may accept an application for review under subsection (1) that is made after the time specified in subsection (2) if VCAT determines that special circumstances exist.

(4) VCAT must list and complete the hearing of an application under this Part relating to an intensive monitored supervision order as a matter of urgency.

384 Use of experts

(1) The Mental Health Tribunal may engage a person to provide expert advice in relation to any matter arising in a proceeding.

(2) Without limiting subsection (1), the Mental Health Tribunal may engage legal counsel to assist and support the Tribunal in any proceeding relating to an intensive monitored supervision order.

(3) The Mental Health Tribunal is responsible for any costs associated with the engagement of a person referred to in subsection (1) or (2).

385 Witness summons

(1) The principal registrar may issue a witness summons to a person to attend the Mental Health Tribunal—

(a) to give evidence; or

(b) to produce any document that is referred to in the witness summons; or

(c) to give evidence and produce any document that is referred to in the witness summons.

(2) A witness summons may be issued—

(a) on the Mental Health Tribunal's own motion; or

(b) at the request of a party to a proceeding before the Tribunal.

(3) If a witness summons requires a person to attend the Mental Health Tribunal to produce any document that is referred to in the witness summons, the person may provide that document to the principal registrar or the Tribunal without attending the Tribunal, in accordance with any directions in the witness summons.

386 Failure to comply with witness summons

A person who has been served with a witness summons must not, without reasonable excuse—

(a) fail to attend as required by the witness summons unless the person has been excused or released from attendance by the Mental Health Tribunal; or

(b) fail to produce any document referred to in the witness summons that is in the person's possession.

Penalty: 60 penalty units.

387 False or misleading information

A person must not knowingly give false or misleading information to the Mental Health Tribunal.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

388 Contempt of the Mental Health Tribunal

A person must not—

(a) insult a Tribunal member in relation to the exercise of the Tribunal member's powers or functions as a member; or

(b) repeatedly interrupt a hearing of the Mental Health Tribunal; or

(c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Mental Health Tribunal is sitting; or

(d) do any other act or thing that would, if the Mental Health Tribunal were the Supreme Court, constitute contempt of the Supreme Court.

Penalty: 120 penalty units.

Part 7.6—Rules Committee

389 Establishment of Rules Committee

The Rules Committee of the Mental Health Tribunal is established.

Note

See section 764.

390 Functions of the Rules Committee

The functions of the Rules Committee are—

(a) to develop rules of practice and procedure and practice notes for the Tribunal; and

(b) to inform members of the Tribunal about those rules of practice and procedure and practice notes; and

(c) to perform any other functions conferred on it by the President.

391 Power to make rules and issue practice notes

(1) The Rules Committee may make rules regulating the practice and procedure of the Tribunal.

(2) The Rules Committee may issue practice notes relating to the practice and procedure of the Tribunal.

392 Membership of the Rules Committee

(1) The members of the Rules Committee are—

(a) the President; and

(b) the Deputy President; and

(c) any other members of the Tribunal that are selected by the President.

(2) The President may select members from any of the member classes referred to in section 339(1).

393 Meeting procedure

(1) At a meeting of the Rules Committee—

(a) the President presides if the President is present; and

(b) if the President is not present, the Deputy President presides.

(2) The quorum of the Rules Committee is half of the number of members who constitute the Rules Committee.

(3) Subject to subsections (1) and (2), the Rules Committee may regulate its own procedure.

394 Validity of decisions of Rules Committee

A decision of the Rules Committee is not invalid merely because of a vacancy in the office of member of the Rules Committee.

Chapter 8—Community visitors and the Community Visitors Mental Health Board

Part 8.1—Appointment of community visitors

395 Appointment of community visitors

(1) On the recommendation of the Public Advocate, the Governor in Council, by instrument, may appoint as many community visitors as are necessary for the purpose of fulfilling community visitors' functions under this Chapter.

(2) For the purposes of making a recommendation to the Governor in Council under subsection (1), the Public Advocate must ensure that the composition of community visitors is a fair and balanced reflection of the diversity of the Victorian community.

396 Terms and conditions of appointment of a community visitor

(1) A community visitor—

(a) is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment; and

(b) is eligible for reappointment; and

(c) is entitled to be paid the renumeration and allowances fixed by the Governor in Council from time to time; and

(d) holds office on any other terms and conditions that are specified in the instrument of appointment.

(2) A person appointed as a community visitor must not—

(a) be employed by, or hold any appointment with—

(i) the Department; or

(ii) a mental health and wellbeing service provider, the premises of which is a prescribed premises; or

(b) have any direct interest in any contract with—

(i) the Department; or

(ii) a mental health and wellbeing service provider, the premises of which is a prescribed premises.

(3) The **Public Administration Act 2004** does not apply to a community visitor in respect of the office of a community visitor.

397 Vacancy and resignation

(1) A community visitor may resign from office by delivering to the Governor in Council a signed letter of resignation.

(2) A community visitor ceases to hold office if the community visitor—

(a) becomes an insolvent under administration; or

(b) is convicted of an indictable offence or of an offence that, if committed in Victoria, would be an indictable offence; or

(c) is unable to perform the duties and functions of the office of a community visitor; or

(d) is removed from office under section 398; or

(e) resigns in accordance with subsection (1).

398 Removal from office

On the recommendation of the Public Advocate, the Governor in Council may remove a community visitor from office.

Part 8.2—Functions and powers of community visitors

399 Functions of a community visitor

(1) A community visitor has the following functions—

(a) to visit (either in person or remotely) a prescribed premises and inquire into a matter specified in subsection (2);

(b) to assist any person receiving mental health and wellbeing services at a prescribed premises—

(i) in the resolution of any issue identified in the course of the community visitor making an inquiry; and

(ii) to seek support from other relevant bodies or services; and

(iii) to make a complaint to the Mental Health and Wellbeing Commission;

(c) to perform any other function conferred on the community visitor under this Act.

(2) For the purposes of subsection (1)(a), the following matters are specified—

(a) the adequacy of services and facilities provided to persons receiving mental health and wellbeing services at the prescribed premises, including—

(i) the appropriateness and standard of facilities provided at those premises in relation to accommodation; and

(ii) the physical wellbeing and welfare of persons receiving mental health and wellbeing services at those premises; and

(iii) the adequacy of opportunities and facilities at those premises for recreation, occupation, education, training and recovery;

(b) whether the mental health and wellbeing services provided at the prescribed premises are provided in accordance with the objectives of this Act and the mental health and wellbeing principles;

(c) whether the prescribed premises has contravened this Act or the regulations;

(d) any other matter that the community visitor is satisfied is appropriate, having regard to the objectives of this Act and the mental health and wellbeing principles.

400 Consideration of mental health and wellbeing principles

In the performance of a function or the exercise of a power under this Chapter, a community visitor must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

401 Visits to prescribed premises by community visitors

(1) A community visitor may visit (either in person or remotely) a prescribed premises with or without any notice at the times and for the periods—

(a) determined by the community visitor; or

(b) as directed by the Public Advocate or the Community Visitors Mental Health Board.

(2) When visiting a prescribed premises, a community visitor may—

(a) subject to subsection (3), enter and inspect any part of the premises; and

(b) speak to any person receiving mental health and wellbeing services at the prescribed premises who wishes to speak to the community visitor; and

(c) inspect any document (other than a clinical record) located at, or accessible from, the prescribed premises that—

(i) is required to be kept under this Act or the regulations; or

(ii) relates to a person receiving mental health and wellbeing services at the prescribed premises; and

(d) subject to subsections (3) and (4), photograph any object, furnishing or part of the prescribed premises that the community visitor considers necessary for the performance of the community visitor's functions or the exercise of the community visitor's powers under this Chapter; and

(e) with the consent of a person receiving mental health and wellbeing services, inspect the person's clinical record.

(3) A community visitor must not enter, inspect or photograph the bedroom of a person receiving mental health and wellbeing services at a prescribed premises unless the person has given consent.

(4) A community visitor must not take a photograph under subsection (2)(d) that could identify any person.

(5) In this section—

document includes any incident report that relates to a person receiving mental health and wellbeing services at the prescribed premises.

402 Request to see a community visitor

(1) A person receiving mental health and wellbeing services at a prescribed premises, or any person on their behalf, may request that the person in charge of the prescribed premises arrange for the person receiving mental health and wellbeing services to be visited by a community visitor.

(2) Within 2 business days after receiving a request under subsection (1), the person in charge of the prescribed premises must advise a community visitor that a request has been made.

403 Reasonable assistance to be given to community visitors

A staff member of a prescribed premises must give a community visitor any reasonable assistance that the community visitor requires for the performance of the community visitor's functions or the exercise of the community visitor's powers under this Chapter.

Part 8.3—Community Visitors Mental Health Board

404 Establishment of the Community Visitors Mental Health Board

The Community Visitors Mental Health Board is established.

Note

See section 768(1).

405 Membership of the Community Visitors Mental Health Board

The Community Visitors Mental Health Board consists of—

(a) the Public Advocate; and

(b) 2 community visitors who are elected by community visitors in accordance with the regulations.

406 Functions of the Community Visitors Mental Health Board

The Community Visitors Mental Health Board has the following functions—

(a) to represent community visitors;

(b) to supervise the training of community visitors;

(c) to prepare and circulate publications that explain the role of community visitors;

(d) to report a matter to the Public Advocate or the Minister;

(e) to refer a matter under section 407;

(f) to prepare an annual report in accordance with section 409.

407 Community Visitors Mental Health Board may refer a matter

The Community Visitors Mental Health Board may refer a matter reported to it by a community visitor under section 408(1) or (2) to any of the following persons or bodies if the Community Visitors Mental Health Board considers it is appropriate for that person or body to deal with the matter—

(a) the Justice Secretary;

(b) the Public Advocate;

(c) the chief psychiatrist;

(d) the Chief Officer;

(e) the Mental Health and Wellbeing Commission.

Part 8.4—Reports and confidentiality

408 Reports by community visitors and the Community Visitors Mental Health Board

(1) A community visitor must submit a report at least twice a year to the Community Visitors Mental Health Board that details the community visitor's visits to a prescribed premises since the community visitor's last report.

(2) A community visitor may at any time submit a report to the Community Visitors Mental Health Board containing any recommendations that the community visitor is satisfied should be considered by the Community Visitors Mental Health Board.

(3) The Minister may require the Community Visitors Mental Health Board to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.

(4) The Community Visitors Mental Health Board may at any time submit a report to the Minister or the Public Advocate.

409 Annual report of Community Visitors Mental Health Board

(1) As soon as practicable after the end of each financial year but not later than the following 30 September, the Community Visitors Mental Health Board must submit to the Minister an annual report that includes the following information—

(a) the activities of community visitors during the 12 months ending on the preceding 30 June;

(b) how community visitors have complied with the mental health and wellbeing principles when performing their functions or exercising their powers as a community visitor under this Chapter.

(2) The Minister must cause the annual report of the Community Visitors Mental Health Board to be laid before each House of the Parliament before the expiry of the 14th sitting day of each House after the annual report has been received by the Minister.

410 Confidentiality

(1) A person who is, or has been, a community visitor must not, directly or indirectly, make a record of, use or disclose to any person, any information acquired in the performance of the person's functions or exercise of the person's powers as a community visitor under this Chapter.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply if—

(a) the making of the record or the use or disclosure of the information is necessary for the purposes of, or in connection with, the performance of the person's functions or exercise of the person's powers as a community visitor under this Chapter; or

(b) the disclosure of the information is made to a court or tribunal in the course of—

(i) a criminal proceeding; or

(ii) any other proceeding under this Act; or

(c) the making of the record or the use or disclosure of the information is with the consent of the person to whom the information relates.

Chapter 9—Mental Health and Wellbeing Commission

Part 9.1—Mental Health and Wellbeing Commission

Division 1—Mental Health and Wellbeing Commission

411 Establishment of the Mental Health and Wellbeing Commission

(1) The Mental Health and Wellbeing Commission is established and is constituted by the Mental Health and Wellbeing Commissioners.

(2) The Mental Health and Wellbeing Commission—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

412 Common seal

(1) The common seal of the Mental Health and Wellbeing Commission—

(a) must be kept as directed by the Mental Health and Wellbeing Commission; and

(b) must not be used except as authorised by the Mental Health and Wellbeing Commission.

(2) All courts must take judicial notice of the seal of the Mental Health and Wellbeing Commission affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

413 Objectives of the Mental Health and Wellbeing Commission

The objectives of the Mental Health and Wellbeing Commission are—

(a) to ensure the government is accountable for—

(i) the performance, quality and safety of the mental health and wellbeing system, including the implementation of recommendations made by the Royal Commission into Victoria's Mental Health System; and

(ii) ensuring the mental health and wellbeing system supports and promotes the health and wellbeing of consumers, families, carers and supporters and the mental health and wellbeing workforce; and

(b) to support and promote the leadership and participation of, persons living with mental illness or psychological distress in decision making about policies and programs, including those that directly affect them; and

(c) to provide a complaints handling system and promote effective complaint handling by mental health and wellbeing service providers; and

(d) to reduce stigma related to mental illness; and

(e) to promote, support and protect the rights of consumers, families, carers and supporters.

414 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the Mental Health and Wellbeing Commission must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

415 Functions of the Mental Health and Wellbeing Commission

The Mental Health and Wellbeing Commission has the following functions—

(a) to promote the improvement, awareness and understanding of mental health and wellbeing across government, business and the wider community;

(b) to elevate the leadership, and support the full and effective participation, of people with lived experience of mental illness or psychological distress in decision making processes;

(c) to develop and support the leadership capabilities of people with lived experience of mental illness or psychological distress;

(d) to design and deliver initiatives to develop awareness and understanding of the experiences of people with lived experience of mental illness or psychological distress;

(e) to promote the role, value and inclusion of families, carers and supporters of persons living with mental illness or psychological distress in the mental health and wellbeing system;

(f) to lead and support initiatives to prevent and address stigma related to mental illness;

(g) to issue guidance materials about how the mental health and wellbeing principles should be applied in relation to actions and decisions made under this Act;

(h) to monitor and report on the performance, quality and safety of the mental health and wellbeing system, including the following—

(i) State initiatives to prevent mental illness and improve the mental health and wellbeing of the community;

(ii) the use of restrictive interventions in the provision of mental health and wellbeing services;

(iii) the use of compulsory treatment;

(iv) the incidence of gender-based violence at bed-based mental health and wellbeing services;

(v) the incidence of suicide at the premises of mental health and wellbeing service providers;

(vi) the number, type and outcome of complaints made to mental health and wellbeing service providers;

(i) to report on the use of restrictive interventions in the provision of mental health and wellbeing services, including on the use of restrictive interventions compared

with the targets set by the Health Secretary under section 254(h);

(j) to monitor and report on the following—

(i) progress to improve mental health and wellbeing outcomes in the Victorian community;

(ii) the government's progress in relation to the implementation of recommendations made by the Royal Commission into Victoria's Mental Health System;

(iii) any other matter relating to the performance of the Mental Health and Wellbeing Commission's functions;

(k) to accept, assess, manage and investigate complaints made to the Commission;

(l) to endeavour to resolve complaints in a timely manner by using formal and informal dispute resolution, as appropriate, including conciliation;

(m) to serve compliance notices;

(n) to consult entities for the purposes of fulfilling the Commission's functions under this Act;

(o) to prepare complaint handling standards for mental health and wellbeing service providers;

(p) to ensure that the procedure for making a complaint to the Commission is available and accessible to complainants;

(q) to publish guidance materials in relation to the procedure for making a complaint to the Commission;

(r) to provide information, education and advice to mental health and wellbeing service providers about their responsibilities in managing complaints and to assist mental health and wellbeing service providers to develop and improve complaint-handling policies and procedures;

(s) to assist consumers and other complainants to resolve their complaints about mental health and wellbeing service providers directly with those mental health and wellbeing service providers, whether before or after the Commission has decided to deal with a complaint;

(t) to collect, review, report and publish data and information about complaints made to mental health and wellbeing service providers and the Commission;

(u) if the Commission becomes aware, other than through a conciliation process, that a mental health and wellbeing service provider or the Institute has not complied with the duty of candour, to report the matter to the Health Secretary;

(v) to identify, analyse and review quality, safety and other issues which come to the attention of the Commission as a result of the performance of the Commission's functions;

(w) to provide information and make recommendations to the following persons or bodies in relation to improving the provision of mental health and wellbeing services—

(i) the Health Secretary;

(ii) the Justice Secretary;

(iii) the DFFH Secretary;

(iv) the Minister;

(v) the Agency within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth;

(vi) the NDIS Quality and Safeguards Commission established by section 181A of the National Disability Insurance Scheme Act 2013 of the Commonwealth;

(vii) the Health Complaints Commissioner within the meaning of the **Health Complaints Act 2016**;

(viii) the Victorian Disability Worker Commission established under the **Disability Service Safeguards Act 2018**;

(ix) the Chief Officer;

(x) a mental health and wellbeing service provider;

(xi) the chief psychiatrist;

(xii) the Australian Health Practitioner Regulation Agency;

(xiii) the Senior Practitioner within the meaning of the **Disability Act 2006**;

(xiv) the Commission for Children and Young People established under the **Commission for Children and Young People Act 2012**;

(xv) a prescribed person or body;

(xvi) any other entity or body established by this Act;

(x) at the request of the Minister, to investigate and report on any matter arising out of the provision of mental health and wellbeing services;

(y) to initiate and conduct inquiries in relation to any matter relating to the Commission's objectives and functions;

(z) to provide advice and report to the Parliament, the Minister and any other relevant Minister in relation to the performance, quality and safety of mental health and wellbeing services;

(za) to make recommendations to the Premier, the Minister and any public sector body Head within the meaning of the **Public Administration Act 2004** on any matter relating to the Commission's objectives and functions;

(zb) to work collaboratively and share information with the Department and other entities that have powers and functions that relate to monitoring the safety and quality of the mental health and wellbeing system for the purposes of system monitoring and improvement;

(zc) to promote and support compliance with this Act;

(zd) to report to the Health Secretary any significant contravention of this Act or any matter relating to the operation of a mental health and wellbeing service that poses a serious risk of harm to a person or the community, of which the Commission becomes aware;

(ze) to refer to the relevant regulator or oversight body, or to both, any matter relating to the operation of a mental health and wellbeing service that poses a serious risk of harm to a person or the community, of which the Commission becomes aware;

(zf) to perform any other function conferred on the Mental Health and Wellbeing Commission by this Act or any other Act.

416 Powers of the Mental Health and Wellbeing Commission

The Mental Health and Wellbeing Commission has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

417 Delegation

The Mental Health and Wellbeing Commission, by instrument, may delegate to any of the following persons any function or power of the Mental Health and Wellbeing Commission—

(a) a Mental Health and Wellbeing Commissioner, including the Chair of the Mental Health and Wellbeing Commission;

(ab) the Chief Executive Officer of the Mental Health and Wellbeing Commission employed under section 419;

S. 417(ab) inserted by No. 20/2023 s. 20(1).

(b) an employee referred to in section 418(1) or a person engaged by the Commission under section 418(2);

S. 417(b) substituted by No. 20/2023 s. 20(2).

(c) any staff of a Department or a public sector body in respect of whom the Mental Health and Wellbeing Commission has entered into an agreement under section 418(3).

S. 417(c) inserted by No. 20/2023 s. 20(3).

418 Staff of the Mental Health and Wellbeing Commission

(1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary for the administration of this Act or to enable the Mental Health and Wellbeing Commission to perform its functions and exercise its powers.

(2) The Mental Health and Wellbeing Commission may engage any consultant, contractor or agent required to assist the Mental Health and Wellbeing Commission in performing its functions.

(3) The Mental Health and Wellbeing Commission may enter into agreements or arrangements for the use of the services of any staff of a Department or a public sector body.

419 Chief Executive Officer of the Mental Health and Wellbeing Commission

(1) The Mental Health and Wellbeing Commission may employ a person as the Chief Executive Officer of the Mental Health and Wellbeing Commission.

(2) The Chief Executive Officer is to be employed as an executive within the meaning of the **Public Administration Act 2004**.

(3) The Chief Executive Officer is responsible for the day to day operation and management of the Mental Health and Wellbeing Commission.

(4) The Chief Executive Officer must not be a Mental Health and Wellbeing Commissioner.

419A Meetings of the Mental Health and Wellbeing Commission

S. 419A inserted by No. 20/2023 s. 21.

(1) The Chair of the Mental Health and Wellbeing Commission may convene as many meetings of the Mental Health and Wellbeing Commission as the Chair considers necessary for the efficient conduct of the Commission's affairs.

(2) The Chair of the Mental Health and Wellbeing Commission must preside at a meeting of the Commission.

(3) The quorum for a meeting of the Commission is 3 Mental Health and Wellbeing Commissioners.

(4) A question arising at a meeting of the Mental Health and Wellbeing Commission (including a question related to setting the strategic direction of the Mental Health and Wellbeing Commission) is determined by a majority of votes of the Mental Health and Wellbeing Commissioners present and voting at the meeting.

(5) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.

419B General procedure

S. 419B inserted by No. 20/2023 s. 21.

Subject to this Chapter, the Mental Health and Wellbeing Commission may regulate its own procedure.

419C Validity of acts or decisions

S. 419C inserted by No. 20/2023 s. 21.

An act or a decision of the Mental Health and Wellbeing Commission is not invalid only because of—

(a) a vacancy in the office of Mental Health and Wellbeing Commissioner, including a vacancy arising from the failure to appoint a Mental Health and Wellbeing Commissioner; or

(b) a defect or irregularity in, or in connection with, the appointment of a Mental Health and Wellbeing Commissioner.

Division 2—Mental Health and Wellbeing Commissioners

420 Appointment of Mental Health and Wellbeing Commissioners

(1) On the recommendation of the Minister, the Governor in Council, by instrument, may appoint 4 persons to be Mental Health and Wellbeing Commissioners of the Mental Health and Wellbeing Commission, of whom one is to be appointed as the Chair of the Mental Health and Wellbeing Commission.

(2) In making a recommendation to the Governor in Council in relation to any person to be appointed as a Mental Health and Wellbeing Commissioner, the Minister must ensure that—

(a) at least one person is a person who—

(i) identifies as experiencing, or as having experienced, mental illness or psychological distress; and

(ii) has an understanding of the diverse experiences and needs of those living with mental illness or psychological distress—

which may inform their decisions as a Mental Health and Wellbeing Commissioner; and

(b) one person is a person who—

(i) identifies as caring for or supporting, or as having cared for or supported, a person experiencing mental illness or psychological distress; and

(ii) has an understanding of the diverse experiences and needs of families, carers and supporters of those experiencing mental illness or psychological distress—

which may inform their decisions as a Mental Health and Wellbeing Commissioner; and

(c) each person referred to in paragraph (a) and (b) has lived experience so that their experience may be relied on for the purposes of making decisions as a Mental Health and Wellbeing Commissioner.

(3) In making a recommendation to the Governor in Council, the Minister must have regard to the need for the Mental Health and Wellbeing Commissioners—

(a) to have experience, skills or knowledge that are relevant to the functions of the Mental Health and Wellbeing Commission; and

(b) to collectively have understanding and experience of—

(i) the diverse needs of Aboriginal communities, the importance of self-determination, the importance of connection to culture, family, community and Country and the importance of culturally responsive, safe and appropriate services; and

(ii) the diverse backgrounds and needs of persons using mental health and wellbeing services in Victoria, including age, disability, neurodiversity, culture, language, communication, religion, race, gender identity and sexual orientation.

(4) To avoid doubt—

(a) the Minister must not recommend the same person for appointment for the purposes of subsection (2)(a) and (b); and

(b) the appointment of a person referred to in subsection (2)(b) does not preclude any other person who identifies as caring for or supporting, or as having cared for or supported, a person experiencing mental illness or psychological distress from being appointed to the Mental Health and Wellbeing Commission under another provision of subsection (2) or (3).

421 Terms and conditions of appointment

(1) A Mental Health and Wellbeing Commissioner—

(a) is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment; and

(b) is eligible for reappointment; and

(c) holds office on any other terms and conditions, including remuneration and any travelling or other allowances, that are determined by the Governor in Council.

(2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a Commissioner in respect of the office of Commissioner.

422 Vacancy and resignation

A Mental Health and Wellbeing Commissioner ceases to hold office if the Commissioner—

(a) resigns in writing signed and addressed to the Governor in Council; or

(b) becomes insolvent under administration; or

(c) is convicted of an indictable offence or of an offence that, if committed in Victoria, would be indictable offence; or

(d) nominates for election for, or is elected to—

(i) the Parliament of Victoria; or

(ii) the Parliament of the Commonwealth or of another State or a Territory; or

(iii) a Council within the meaning of the **Local Government Act 2020**; or

(e) is removed from office under section 423.

423 Removal from office

(1) On the recommendation of the Minister, the Governor in Council may remove a Mental Health and Wellbeing Commissioner from office.

(2) The Minister may recommend the removal of a Mental Health and Wellbeing Commissioner from office if the Mental Health and Wellbeing Commissioner—

(a) is engaging or has engaged in paid employment outside of the duties of the office without the consent of the Minister; or

(b) is unable to perform the duties of the office; or

(c) has been found to have neglected their duties of office under the Act; or

(d) engages in improper conduct; or

(e) is the subject of any other matter on which the Minister is satisfied that the Mental Health and Wellbeing Commissioner is unfit to hold office.

(3) If the Chair of the Mental Health and Wellbeing Commission is removed from office under this section, the Minister, within 7 sitting days of the Chair's removal, must table in each House of the Parliament a statement that outlines the Minister's reasons for recommending the Chair's removal from office.

424 Acting appointment

(1) The Governor in Council may appoint a person to act in the office of a Mental Health and Wellbeing Commissioner (including the Chair of the Mental Health and Wellbeing Commission)—

(a) during a vacancy in the office of a Mental Health and Wellbeing Commissioner; or

(b) during any period when a Mental Health and Wellbeing Commissioner—

(i) is absent; or

(ii) for any other reason is unable to perform the duties of the office of Commissioner.

(2) The Minister may appoint a person to act in the office of a Mental Health and Wellbeing Commissioner for a period of not more than 6 months during a vacancy in the office of a Mental Health and Wellbeing Commissioner.

(3) A person appointed under subsection (1) is entitled to the remuneration and allowances that are determined from time to time by the Governor in Council.

(4) A person appointed under subsection (2) is entitled to the remuneration and allowances that are determined from time to time by the Minister.

(5) The Governor in Council may revoke an appointment under subsection (1) at any time.

(6) The Minister may revoke an appointment under subsection (2) at any time.

Note

See sections 40(b) and 41AA(f) of the **Interpretation of Legislation Act 1984** that provide that a person acting has the powers of the officeholder for whom they act.

425 Protection from liability

(1) A Mental Health and Wellbeing Commissioner, including an acting Mental Health and Wellbeing Commissioner, is not personally liable for any thing done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Act.

(2) Any liability resulting from an act or omission that, but for subsection (1), would attach to a Mental Health and Wellbeing Commissioner, including an acting Mental Health and Wellbeing Commissioner, attaches instead to the State.

426 Functions and powers of a Mental Health and Wellbeing Commissioner

(1) The Mental Health and Wellbeing Commissioners are collectively responsible for setting the strategic direction of the Mental Health and Wellbeing Commission for the purposes of this Act.

(2) The Mental Health and Wellbeing Commissioners constitute the Mental Health and Wellbeing Commission in accordance with section 411 and may exercise all the powers, and have all the functions, conferred on a Commissioner under this Act or any other Act.

Division 3—Reports

427 Annual report

(1) By 31 October each year, the Mental Health and Wellbeing Commission must submit a report to the Minister on the performance of its functions under this Act during the financial year ending on the immediately preceding 30 June.

(2) An annual report must include the following—

(a) a review of the Commission's activities during the financial year;

(b) a review of the Commission's compliance with the mental health and wellbeing principles during the financial year;

(c) an overview of any actions taken during the financial year by the Commission to promote the objectives of this Act;

(d) a review of the performance, quality and safety of the mental health and wellbeing system during the financial year, including—

(i) the use of restrictive interventions in the provision of mental health and wellbeing services, including on the use of restrictive interventions compared with the targets set by the Health Secretary under section 254(h); and

(ii) the use of compulsory treatment; and

(iii) the incidence of gender-based violence at bed-based mental health and wellbeing services; and

(iv) the incidence of suicide at the premises of mental health and wellbeing service providers;

(e) a review of the State's progress during the financial year in relation to the implementation of recommendations made by the Royal Commission into Victoria's Mental Health System;

(f) a review of the progress during the financial year in relation to improving mental health and wellbeing outcomes in the Victorian community;

(g) details of any reports of the Commission that are published about the performance, quality or safety of the mental health and wellbeing system;

(h) the number and outcome of complaints made to the Commission in the financial year;

(i) the number and outcome of investigations conducted by the Commission in the financial year, including details in relation to the service of compliance notices;

(j) the number and outcome of inquiries conducted by the Commission in the financial year;

(k) a summary of actions taken that demonstrate that reasonable efforts have been made by the Commission to comply with the mental health and wellbeing principles;

(l) any other information specified in writing by the Minister;

(m) any other information determined by the Commission.

(3) After a report under this section is received by the Minister, the Minister must cause a copy of the report to be laid before each House of the Parliament within 14 sitting days of the relevant House.

428 Reports to the Parliament

(1) At any time, the Mental Health and Wellbeing Commission may make a report to the Parliament on any matter arising in connection with the performance of its functions.

(2) The Commission must cause a report under this section to be transmitted to each House of the Parliament as soon as is practicable after it has been prepared.

(3) The clerk of each House of the Parliament must cause the report to be laid before the House on the day on which it is received or on the next sitting day of the House.

(4) If the Commission proposes to transmit the report to the Parliament on a day on which neither House of the Parliament is actually sitting, the Commission must—

(a) give one business day's notice of its intention to do so to the clerk of each House of the Parliament; and

(b) give the report to the clerk of each House on the day indicated in the notice; and

(c) publicly release the report as soon as practicable after giving it to the clerks.

(5) The clerk of each House must—

(a) notify each member of the House of the receipt of a notice under subsection (4)(a) on the same day that the clerk receives the notice; and

(b) give a copy of the report to each member of the House as soon as practicable after the report is received under subsection (4)(b); and

(c) cause the report to be laid before the House on the next sitting day of the House.

(6) A copy of a report that is given to the clerk of a House of the Parliament under subsection (4)(b) is taken to have been published by order, or under the authority, of that House.

S. 428(6) inserted by No. 20/2023 s. 22.

429 Content of reports tabled in Parliament

(1) If the Mental Health and Wellbeing Commission intends to include in a report tabled in Parliament under this Act a comment or opinion that is adverse to a mental health and wellbeing service provider or any other person, the Commission must—

(a) first give the mental health and wellbeing service provider or other person a reasonable opportunity to respond to the adverse material; and

(b) fairly set out the response in the report.

(2) The Commission must not include in a report tabled in Parliament under this Act any information that—

(a) identifies a person; or

(b) is likely to lead to the identification of a person—

who is not the subject of any adverse comment or opinion unless that person consents to the information being included.

Part 9.2—Complaints

Division 1—Making a complaint

430 Guiding principles of the Mental Health and Wellbeing Commission in relation to complaints

The Mental Health and Wellbeing Commission, in carrying out a function or power under this Part, must—

(a) act in a fair, impartial and independent manner; and

(b) seek to improve the quality and safety of mental health and wellbeing services; and

(c) seek to protect the rights under this Act of persons seeking or receiving services from mental health and wellbeing service providers; and

(d) act in an efficient, effective and flexible manner that avoids unnecessary formality.

431 Complaint by consumer

A complaint may be made to the Mental Health and Wellbeing Commission under this Part by a consumer in relation to any matter arising out of—

(a) the provision of a mental health and wellbeing service to the consumer by a mental health and wellbeing service provider; or

(b) a failure to provide a mental health and wellbeing service to the consumer by a mental health and wellbeing service provider; or

(c) a failure by a mental health and wellbeing service provider to make all reasonable efforts to comply with the mental health and wellbeing principles or any other principles or duties under this Act; or

(d) the manner in which a complaint made by, or on behalf of, the consumer to a mental health and wellbeing service provider was handled by the mental health and wellbeing service provider, including whether the mental health and wellbeing service provider did not comply with, or has acted inconsistently with, any complaint handling standards.

432 Complaint by person (other than consumer)

A complaint may be made to the Mental Health and Wellbeing Commission under this Part by a person (other than a consumer) in relation to any matter arising out of—

(a) the provision of a mental health and wellbeing service to a consumer by a mental health and wellbeing service provider; or

(b) a failure to provide a mental health and wellbeing service to a consumer by a mental health and wellbeing service provider; or

(c) a failure by a mental health and wellbeing service provider to make all reasonable efforts to comply with the mental health and wellbeing principles or any other principles or duties under this Act; or

(d) the manner in which a complaint made by the person or another person to a mental health and wellbeing service provider was handled by the mental health and wellbeing service provider, including whether the mental health and wellbeing service provider did not comply with, or has acted

inconsistently with, any complaint handling standards.

433 Complaint by carer, family member or supporter

A complaint may be made to the Mental Health and Wellbeing Commission under this Part by a carer, family member or supporter of a consumer in relation to their experience as a carer, family member or supporter of the consumer including—

(a) any failure by a mental health and wellbeing service provider to make all reasonable efforts to comply with the mental health and wellbeing principles or any other principles or duties under this Act; or

(b) the manner in which a complaint made to a mental health and wellbeing service provider in relation to the experience of the carer, family member or supporter of the consumer, was handled by the mental health and wellbeing service provider, including whether the mental health and wellbeing service provider did not comply with, or has acted inconsistently with, any complaint handling standards.

434 When can a complaint be made?

(1) A person is not entitled to make a complaint to the Mental Health and Wellbeing Commission—

(a) more than 12 months after the matter occurred which is the subject of the complaint; or

(b) if the mental health and wellbeing service was not provided, more than 12 months after the mental health and wellbeing service was sought.

(2) Despite subsection (1), the Mental Health and Wellbeing Commission may deal with a complaint lodged after the end of the 12-month period if the Commission is satisfied that the circumstances of the complaint so require.

435 How is a complaint made?

(1) A person may make a complaint orally or in writing to the Mental Health and Wellbeing Commission.

Note

A complaint may be made by an electronic communication within the meaning of the **Interpretation of Legislation Act 1984**. See also the **Electronic Transactions (Victoria) Act 2000**.

(2) The Mental Health and Wellbeing Commission may require a person who makes an oral complaint to confirm their complaint in writing as soon as practicable so that the Commission can continue to deal with the complaint.

(3) If information relating to the identity of a person who makes a complaint is given to the Mental Health and Wellbeing Commission, the Commission may keep that information confidential if the Commission is satisfied that—

(a) there are special circumstances; and

(b) it is in the complainant's interest to keep the information confidential.

(4) In making a determination under subsection (3), the Mental Health and Wellbeing Commission must consider whether keeping the information confidential would unreasonably limit another person's right to procedural fairness.

436 Mental Health and Wellbeing Commission must provide reasonable assistance to a person making or confirming a complaint

(1) The Mental Health and Wellbeing Commission must provide a person who is making a complaint to the Commission or confirming a complaint made to the Commission any reasonable assistance that the person requires to make or confirm a complaint.

(2) In providing reasonable assistance to a person under this section, the Mental Health and Wellbeing Commission may assist the person to identify a party to a complaint.

437 Record of complaint

(1) On receiving a complaint made to the Mental Health and Wellbeing Commission, the Commission must make a written record of the complaint.

(2) A written record made under subsection (1) must include the date that the complaint was received by the Mental Health and Wellbeing Commission.

438 Preconditions to handling a complaint made on behalf of or in relation to a consumer

(1) If a complaint is made to the Mental Health and Wellbeing Commission by a person on behalf of a consumer or in relation to a consumer under section 432, the Commission must obtain the consumer's consent to the Commission handling the complaint before it handles the complaint unless the Commission is satisfied that—

(a) the person making the complaint has legal authority to make decisions on behalf of the consumer in relation to the consumer's treatment or medical treatment or any other personal matter; or

(b) the person making the complaint is authorised by the consumer's advance statement of preferences to bring a complaint on the consumer's behalf; or

(c) the consumer is deceased and the person making a complaint on the consumer's behalf had a genuine interest in the consumer's wellbeing; or

(d) the person making the complaint has a genuine interest in the consumer's wellbeing and there are special circumstances that warrant the Commission receiving the complaint without the consumer's consent.

(2) The Commission is not required to obtain the consumer's consent before handling the complaint by any of the preliminary options referred to in section 440(2)(a) or (b) or 441(2)(a).

(3) Nothing in this section prevents the Mental Health and Wellbeing Commission from assisting a person to resolve their complaint directly with the mental health and wellbeing service provider that is the subject of the complaint.

439 Preconditions to handling a complaint made by carers, family members or supporters

(1) If a complaint is made to the Mental Health and Wellbeing Commission by a carer, family member or supporter of a consumer, the Commission must obtain the consumer's consent to the Commission handling the complaint before it handles the complaint unless the Commission is satisfied that—

(a) the complaint is made on a ground referred to in section 433; and

(b) information about the consumer is not material to the Commission dealing with the complaint.

(2) The Commission is not required to obtain the consumer's consent before handling the complaint by any of the preliminary options referred to in section 440(2)(a) or (b) or 441(2)(a).

(3) Nothing in this section prevents the Mental Health and Wellbeing Commission from assisting a carer, family member or supporter of a consumer to resolve their complaint directly with the mental health and wellbeing service provider that is the subject of the complaint.

440 Preliminary options for responding to complaint—information

(1) This section applies to a complaint that is—

(a) confirmed, if required by section 435(2); and

(b) recorded by the Mental Health and Wellbeing Commission under section 437.

(2) The Mental Health and Wellbeing Commission may seek further information about the complaint by—

(a) interviewing the complainant; or

(b) requiring the complainant to give the Commission more information.

(3) In order to determine how to deal with a complaint, the Mental Health and Wellbeing Commission may request more information from—

(a) the complainant; or

(b) the mental health and wellbeing service provider; or

(c) any person who received or sought the mental health and wellbeing service (if applicable); or

(d) any other person whom the Commission reasonably believes has relevant information.

441 Preliminary options for responding to complaint—early resolution options

(1) This section applies to a complaint that is—

(a) confirmed, if required by section 435(2); and

(b) recorded by the Mental Health and Wellbeing Commission under section 437.

(2) The Mental Health and Wellbeing Commission may—

(a) provide advice to the complainant about the options available to resolve the complaint; or

(b) attempt an early resolution of the complaint with all or any of the following persons—

(i) the complainant;

(ii) the mental health and wellbeing service provider that is a party to the complaint;

(iii) the consumer, if that person is not the complainant.

(3) The Mental Health and Wellbeing Commission may attempt an early resolution of a complaint under subsection (2)(b) in any manner and using any means that the Commission considers appropriate.

442 Complaints referred to the Mental Health and Wellbeing Commission

(1) The following persons or bodies may refer a complaint to the Mental Health and Wellbeing Commission about the provision of mental health and wellbeing services to a consumer, or the failure to provide mental health and wellbeing

services to a consumer, by a mental health and wellbeing service provider—

(a) the Australian Health Practitioner Regulation Agency;

(b) the Community Visitors Mental Health Board;

(c) the chief psychiatrist;

(d) the Public Advocate;

(e) the Health Complaints Commissioner within the meaning of the **Health Complaints Act 2016**;

(f) the Disability Services Commissioner within the meaning of the **Disability Act 2006**;

(g) the Commission for Children and Young People within the meaning of the **Commission for Children and Young People Act 2012**;

(h) the Commissioner of the Victorian Equal Opportunity and Human Rights Commission within the meaning of the **Equal Opportunity Act 2010**;

(i) in the case of a complaint made under the **Privacy and Data Protection Act 2014**, the Information Commissioner appointed under the **Freedom of Information Act 1982**;

(j) the Ombudsman appointed under the **Ombudsman Act 1973**;

(k) the NDIS Quality and Safeguards Commission established under the National Disability Insurance Scheme Act 2013 of the Commonwealth;

(l) the Health Secretary, if the complaint concerns a failure to comply with the duty of candour;

(m) any other person or body if the subject matter to be referred to the Commission is grounds for a complaint to the Commission under section 431, 432 or 433.

(2) The Mental Health and Wellbeing Commission may deal with a complaint referred to the Commission under this section as if it were a complaint made to the Commission under section 431, 432 or 433.

443 Notifying entities that Commission will deal with referred complaints

(1) If the Mental Health and Wellbeing Commission decides to deal with a complaint referred to it under section 442, the Commission must notify—

(a) the complainant; and

(b) the mental health and wellbeing service provider that is a party to the complaint; and

(c) the consumer, if the complainant is not the consumer unless—

(i) the consumer has notified the Commission that the consumer does not wish to be a party to the complaint under section 444; or

(ii) the Commission is satisfied that notifying the consumer would be detrimental to the consumer's wellbeing or pose a risk to any other person.

(2) If the Mental Health and Wellbeing Commission decides not to deal with a complaint referred under this section, the Commission must give written notice to the person or body who referred the complaint.

444 Notification by consumer who does not wish to be party to a complaint

(1) A consumer who is a party to a complaint and is not the complainant may give notice to the Mental Health and Wellbeing Commission that the consumer does not wish to be a party to the complaint either orally or in writing.

(2) If a consumer gives notice orally under subsection (1), the Commission must confirm the notice in writing as soon as practicable.

(3) On notice being given to the Commission under subsection (1), the consumer is taken not be a party to the complaint.

445 Withdrawal of complaint

(1) A person who has made a complaint to the Mental Health and Wellbeing Commission may withdraw the complaint at any time either orally or in writing.

(2) Despite subsection (1), the Commission may continue to deal with a complaint that has been withdrawn if the Commission reasonably believes that—

(a) the health, safety or wellbeing of a consumer may be adversely affected; or

(b) the complaint was withdrawn due to victimisation, intimidation, coercion or duress; or

(c) it is in the public interest to deal with the complaint.

Division 2—Procedure when a complaint is made to the Mental Health and Wellbeing Commission

446 Decision whether or not to deal with complaint

(1) The Mental Health and Wellbeing Commission must decide whether or not to deal with a complaint made to the Commission.

(2) A decision must be made under subsection (1)—

(a) subject to paragraph (b), as soon as practicable after the complaint is received; or

(b) if the Commission has attempted an early resolution of the complaint under section 441(2)(b) and the complaint has not been resolved, as soon as practicable after the failure to resolve the complaint.

S. 446(2)(b) amended by No. 20/2023 s. 23.

447 Grounds for not dealing with a complaint

(1) The Mental Health and Wellbeing Commission may decline to deal, or cease to deal, with a complaint or any part of a complaint made to the Commission if—

(a) the Commission is satisfied that the complaint is misconceived, lacking in substance or otherwise does not warrant action; or

(b) the Commission is satisfied that the complaint is not made in good faith; or

(c) the Commission is satisfied that the complaint is made for an improper purpose; or

(d) the Commission does not have jurisdiction to deal with the complaint; or

(e) the complainant has not complied with the requirements under Division 1 regarding the procedure for making complaints; or

(f) the complainant does not comply with a request for more information under section 440(2)(a) within the time specified by the Commission; or

(g) the Commission is satisfied that—

(i) there is no reasonable prospect of resolving the complaint by the use of a complaint resolution process; and

(ii) the complaint should not be investigated under Part 9.4; or

(h) the subject matter of the complaint comes within the jurisdiction of a court, tribunal or other body; or

(i) the subject matter of the complaint—

(i) is before a court, tribunal or other body; or

(ii) has been determined by a court, tribunal or other body; or

(j) the mental health and wellbeing service provider that is a party to the complaint has taken action that the Commission, after considering any advice from the complainant, is satisfied has resolved the complaint; or

(k) the complaint has been withdrawn; or

(l) the Commission otherwise considers it appropriate to do so.

(2) The Commission may decide to deal with a complaint that it has previously declined to deal or ceased to deal with under subsection (1) if—

(a) the Commission receives new information in respect of that complaint; and

(b) as a result of the new information, the Commission is satisfied that further action should be taken in relation to the complaint.

448 Mental Health and Wellbeing Commission may refer complaints with or without complainant's consent

(1) The Mental Health and Wellbeing Commission, with the consent of the complainant, may refer a complaint, a part of the complaint or any matter arising from a complaint, to another body, organisation, agency or entity if the complaint raises issues that the Commission is satisfied would be more appropriately dealt with by that other body, organisation, agency or entity.

(2) The Commission, without the consent of the complainant, may refer a complaint, part of a complaint or any matter arising from a complaint, to another body, organisation, agency or entity if the Commission is satisfied that—

(a) the complaint raises issues that require investigation or inquiry by that other body, organisation, agency or entity; and

(b) it is in the public interest to refer the complaint to that other body, organisation, agency or entity.

(3) If a complaint, part of a complaint or any matter arising from a complaint is referred to another body, organisation, agency or entity under subsection (1) or (2), the Commission may provide any information that the Commission has received in respect of the complaint to the body, organisation, agency or entity to which the complaint or matter has been referred.

(4) If the Mental Health and Wellbeing Commission refers a complaint or any matter arising from a complaint to another body, organisation, agency or entity under subsection (1) or (2), the Commission must notify the following of the referral—

(a) if the complaint is at a preliminary stage referred to in section 439 or 440, the complainant;

(b) if the Commission decides not to deal with the complaint under section 446 but refers it to another body, organisation, agency or entity under subsection (1) or (2), the complainant;

(c) if the Commission decides to deal with the complaint under section 446 and refers it to another body, organisation, agency or entity under subsection (1) or (2), any person or entity required to be notified under section 450.

449 Complaint to which National Law may also apply

(1) To avoid doubt, the Mental Health and Wellbeing Commission is a health complaints entity within the meaning of the Health Practitioner Regulation National Law.

Note

See Division 5 of Part 8 of the Health Practitioner Regulation National Law, in particular section 150 of that Law, for the Commission's duties if a complaint is made that may be the subject of a notification under section 150(2) of that Law.

(2) If it is agreed under section 150 of the Health Practitioner Regulation National Law to deal with the complaint or a part of the complaint under that Law, the Commission must refer the complaint to the Australian Health Practitioner Regulation Agency or the relevant National Board.

450 Notification of Mental Health and Wellbeing Commission's decision whether or not to deal with a complaint

(1) If the Mental Health and Wellbeing Commission decides under this Division not to deal with a complaint, as soon as practicable after making this decision, the Commission must give written notice to the complainant.

(2) If the Mental Health and Wellbeing Commission decides under this Division to deal or cease to deal with a complaint, as soon as practicable after making this decision, the Commission must give written notice—

(a) to the complainant; and

(b) to the mental health and wellbeing service provider that is a party to the complaint; and

(c) in the case of a complaint made on behalf of a consumer on a ground specified in section 432, to the consumer.

(3) Despite subsection (2)(c), the Mental Health and Wellbeing Commission is not required to give the consumer written notice if—

(a) the consumer has notified the Commission that the consumer does not wish to be a party to the complaint under section 444; or

(b) the Commission is satisfied that notifying the consumer would be detrimental to the consumer's wellbeing or pose a risk to any other person.

(4) A notice to a mental health and wellbeing service provider under subsection (2)(b) must include the particulars of the complaint, unless the notification requirement is deferred under Division 5.

(5) If the Mental Health and Wellbeing Commission decides not to deal or cease to deal with a complaint in accordance with section 447, the Commission must provide written reasons for its decision.

451 Decision on how the Mental Health and Wellbeing Commission will deal with a complaint

(1) After deciding to deal with a complaint under section 446, the Mental Health and Wellbeing Commission may—

(a) use any appropriate method to resolve the complaint in a timely manner, including—

(i) informal dispute resolution; and

(ii) conciliation; or

(b) conduct an investigation into the complaint under section 476.

(2) In determining which complaint resolution process to use, the Mental Health and Wellbeing Commission must prefer the least formal action that is appropriate in the circumstances.

(3) If the Mental Health and Wellbeing Commission acts under this section, the Commission must give written notice of the complaint resolution process to be taken by the Commission as soon as possible after the decision—

(a) to the complainant; and

(b) to the mental health and wellbeing service provider that is a party to the complaint; and

(c) in the case of a complaint made on behalf of a consumer on a ground specified in section 433, to the consumer.

(4) Despite subsection (3)(c), the Mental Health and Wellbeing Commission is not required to give the consumer written notice if—

(a) the consumer has notified the Commission that the consumer does not wish to be a party to the complaint under section 444; or

(b) the Commission is satisfied that notifying the consumer would be detrimental to the consumer's wellbeing or pose a risk to any other person.

452 Notification of complaint resolution process

(1) A written notice under section 451(3) must set out—

(a) the complaint resolution process to be used by the Commission in respect of the complaint; and

(b) the manner in which the complaint resolution process is to be conducted; and

(c) if the complaint resolution process to be used by the Commission is conciliation—

(i) the date that the conciliation is proposed to commence; and

(ii) the whole or part of the complaint that is the subject of the conciliation; and

(iii) the Commission's powers in the conduct of a conciliation; and

(iv) the obligations of the parties to a conciliation under section 455; and

S. 452(1)(c)(iv) amended by No. 20/2023 s. 24(a).

(v) the offences under sections 462(4) and 463(1).

S. 452(1)(c)(v) amended by No. 20/2023 s. 24(b).

(2) A written notice under section 451(3) must be given in a reasonable time before any time fixed by the notice for any thing to be done, having regard to—

(a) the complexity of the complaint; and

(b) ensuring that appropriate time is given for preparation by each party to a complaint.

453 Complaint resolution agreements

If the parties to a complaint reach an agreement using a complaint resolution process, the Mental Health and Wellbeing Commission must—

(a) make a written record of the agreement; and

(b) give a copy of the written record to each party.

454 Mental Health and Wellbeing Commission may divide or concurrently deal with complaints

(1) The Mental Health and Wellbeing Commission may divide a complaint at any time—

(a) into 2 or more complaints if the Commission believes it is in the interests of the person who received or sought the mental health and wellbeing service; or

(b) into a part that may be dealt with under this Act and a part that is or may be the subject of a notification, complaint, investigation or inquiry under the National Law or any other law, for the purpose of referring that part of the complaint to the person or body responsible for dealing with the matter under that law.

(2) The Mental Health and Wellbeing Commission may concurrently deal with 2 or more complaints, whether or not there is more than one complainant, if the Commission reasonably believes that—

(a) the complainant or complainants are not disadvantaged; and

(b) the mental health and wellbeing service provider's rights are not adversely affected; and

(c) the person who received or sought the mental health and wellbeing service is not disadvantaged.

(3) If the Mental Health and Wellbeing Commission acts under this section, the Commission must give written notice to any relevant complainant, mental health and wellbeing service provider and any person who received or sought the mental health and wellbeing service of the action taken by the Commission as soon as possible after taking it.

(4) The Mental Health and Wellbeing Commission is not required to give written notice under subsection (3) if—

(a) the consumer has notified the Commission that the consumer does not wish to be a party to the complaint under section 444; or

(b) the Commission is satisfied that notifying the consumer would be detrimental to the consumer's wellbeing or pose a risk to any other person.

455 Participation of mental health and wellbeing service provider in complaint resolution process

A mental health and wellbeing service provider that is a party to a complaint must participate in good faith in the complaint resolution process in respect of which it has been given notice under section 451(3) and in the case of conciliation, in respect of which it has agreed to participate.

456 Parties' withdrawal of agreement to complaint resolution process

If at any time during the conduct of a complaint resolution process a party to a complaint withdraws from a complaint resolution process or no longer agrees to participate in a complaint resolution process, the Mental Health and Wellbeing Commission may—

(a) cease the complaint resolution process and, if the Commission believes it is necessary, commence an investigation into the complaint under section 476; or

(b) decide to take no further action in respect of the complaint.

457 Mental Health and Wellbeing Commission may cease complaint resolution process

(1) The Mental Health and Wellbeing Commission may cease a complaint resolution process at any time if the Commission is satisfied that the complaint resolution process in no longer appropriate in the circumstances of the complaint.

(2) If the Commission ceases a complaint resolution process under subsection (1), the Commission must give written notice to each party to the complaint.

458 Mental health and wellbeing service provider may be required to respond

(1) During a complaint resolution process, the Mental Health and Wellbeing Commission, by written notice, may require a mental health and wellbeing service provider that is a party to a complaint to give a written response to each issue raised in the complaint.

(2) A written notice under subsection (1) must specify the time within which a written response must be given not exceeding 20 business days after the notice is given.

(3) A mental health and wellbeing service provider to whom a written notice is given under this section must comply with the requirements of the notice.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 100 penalty units.

459 Mental Health and Wellbeing Commission's power to extend time limit

During a complaint resolution process, the Mental Health and Wellbeing Commission may extend the time within which a mental health and wellbeing service provider must comply with a written notice given by the Commission under section 458.

Division 3—Conciliation

460 Conciliation

(1) The Mental Health and Wellbeing Commission must not commence a conciliation of a complaint unless—

(a) each party to the complaint has agreed to participate in the conciliation; and

(b) written notice of the conciliation was given to each party under section 452(2)(c) before the party agreed to participate in the conciliation.

(2) A conciliation must be held in private.

(3) Subject to subsection (4), the Mental Health and Wellbeing Commission may conduct the conciliation in any manner that the Commission considers appropriate in order to resolve the complaint.

(4) The Mental Health and Wellbeing Commission must take reasonable steps to ensure that the conciliation is conducted in a manner that promotes the wellbeing of the consumer.

461 Party may be represented at conciliation

(1) During a conciliation, a party to a complaint may be accompanied or represented by another person.

(2) If the Mental Health and Wellbeing Commission so authorises, a party to a complaint may be represented by an Australian legal practitioner.

(3) A consumer who is a party to a complaint is entitled to be accompanied or represented by another person at a conciliation in addition to any legal representation.

(4) A person who represents a mental health and wellbeing service provider (whether or not the person is an Australian legal practitioner) at the conciliation must be authorised to settle the complaint at conciliation on behalf of the mental health and wellbeing service provider.

(5) For the purposes of this section, the Mental Health and Wellbeing Commission may authorise a person to have legal representation by an Australian legal practitioner if satisfied that, in all the circumstances it is appropriate for the person to be legally represented.

462 Mental health and wellbeing service provider may be required to produce documents in conciliation

(1) In a conciliation, the Mental Health and Wellbeing Commission, by written notice, may require a mental health and wellbeing service provider that is a party to a complaint to produce to the Commission any document or other evidence specified in the notice that is held by the mental health and wellbeing service provider that—

(a) forms part of the health information about the consumer who received or sought the mental health and wellbeing service which is relevant to the subject matter of the complaint; or

(b) is about policies or protocols of the mental health and wellbeing service provider that are relevant to the subject matter of the complaint; or

(c) is about investigations or reviews into the subject matter of the complaint by the mental health and wellbeing service provider.

(2) A written notice under subsection (1) must specify the time, not exceeding 20 business days after the notice is given, within which the document or evidence must be produced to the Commission.

(3) The Mental Health and Wellbeing Commission may extend the time within which a person must comply with a written notice given by the Commission under this section.

(4) A mental health and wellbeing service provider to whom a written notice is given under this section must comply with the requirements of the notice.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 100 penalty units.

463 Confidentiality of conciliation process

(1) Subject to subsection (2), a party to a complaint must not disclose outside a conciliation—

(a) anything said or done in the conciliation; or

(b) any document created during the conciliation; or

(c) any document prepared for the purposes of the conciliation; or

(d) any agreement reached in the conciliation.

Penalty: In the case of a natural person, 20 penalty units;

In the case of a body corporate, 100 penalty units.

(2) A party to a complaint may disclose any information, document or agreement referred to in subsection (1) with the consent of the person to whom the information, document or agreement relates.

(3) Evidence of any information, document or agreement referred to in subsection (1) is not admissible in any hearing or proceeding in a court or a tribunal unless the parties consent.

Note

See section 519 for the authorised disclosure of information obtained in the course of a conciliation.

(4) This section does not apply to an undertaking given by a party to a complaint in the course of a conciliation.

464 Completion of conciliation

On the completion of a conciliation, the Mental Health and Wellbeing Commission must provide written notice to each party to the complaint that specifies—

(a) the date the conciliation ceased; and

(b) the outcome of the conciliation.

Division 4—Complaint handling standards and procedures for receiving, managing and resolving complaints

465 Mental Health and Wellbeing Commission must prepare complaint handling standards

(1) The Mental Health and Wellbeing Commission must prepare a document that sets out the proposed complaint handling standards for mental health and wellbeing service providers.

(2) The document under subsection (1) may—

(a) wholly or partially adopt the complaint handling standards prepared by the Health Complaints Commissioner under section 132 of the **Health Complaints Act 2016**; or

(b) adopt the complaint handling standards prepared by the Health Complaints Commissioner under section 132 of the **Health Complaints Act 2016** with amendments; or

(c) adopt the complaint handling standards prepared by the Health Complaints Commissioner under section 132 of the **Health Complaints Act 2016** and includes additional complaint handling standards prepared by the Commission.

(3) The Mental Health and Wellbeing Commission must give the document prepared under subsection (1) to the Minister.

(4) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may make the complaint handling standards.

466 Mental Health and Wellbeing Commission must review complaint handling standards

The Mental Health and Wellbeing Commission must review the complaint handling standards at least once every 5 years in consultation with—

(a) any relevant mental health and wellbeing service provider; and

(b) persons with lived experience of mental illness or psychological distress and their families, carers and supporters; and

(c) any other person the Commission is satisfied has a relevant interest.

467 Amendment or revocation of complaint handling standards

(1) The Mental Health and Wellbeing Commission may prepare a document of amended complaint handling standards or a document of revocation of complaint handling standards—

(a) on the Commission's own initiative; or

(b) on completing a review under section 466.

(2) The Mental Health and Wellbeing Commission must give a document prepared under subsection (1) to the Minister.

(3) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may—

(a) make the amended complaint handling standards; or

(b) revoke the complaint handling standards.

468 Date on which Order making or revoking complaint handling standards takes effect

An Order made under section 465(4) or 467(3)(a) or (b) takes effect—

(a) on the day that is 20 business days after the day that the Order is published in the Government Gazette; or

(b) if a later day is specified in the Order, on that later day.

469 Mental health and wellbeing service provider must establish procedures for receiving, managing and resolving complaints

(1) A mental health and wellbeing service provider must establish procedures for receiving, managing and resolving complaints made to the mental health and wellbeing service provider about the provision of mental health and wellbeing services.

(2) Procedures established under subsection (1) must comply with the complaint handling standards.

Division 5—Deferral of notification

470 Deferral of notification by the Mental Health and Wellbeing Commission

(1) This section applies despite any requirement to the contrary in any other section of this Act.

(2) The Mental Health and Wellbeing Commission may give a relevant notice or information to a party to a complaint at the same time as taking a relevant action in relation to the complaint if the Commission reasonably believes that advising the party to the complaint before that time may—

(a) prejudice an investigation conducted by the Commission under Part 9.4; or

(b) place at serious risk—

(i) a person's life, health, safety or welfare; or

(ii) the health, safety or welfare of the public.

(3) Despite subsection (2), the Commission must give a relevant notice or information to a party to a complaint without delay if the Commission ceases to hold the belief set out in subsection (2) before the time for taking a relevant action in relation to the complaint.

(4) In this section—

relevant action means—

S. 470(4) def. of *relevant action* amended by No. 20/2023 s. 25.

(a) the power to enter the premises of a mental health and wellbeing service provider under section 496; or

(b) the service of a compliance notice; or

(c) the referral of a complaint under section 448;

relevant notice or information means—

(a) written notice of a decision to refer a complaint under section 448; or

(b) written notice of a decision to deal with a complaint under section 450; or

(c) written notice of a complaint resolution process under section 452; or

(d) written notice of a decision to divide or concurrently deal with complaints under section 454; or

(e) written notice of a decision to conduct an investigation under section 480.

471 Deferral of notification at the request of the National Board

(1) This section applies if a National Board requests the Mental Health and Wellbeing Commission not to give a relevant notice or information to a specified party or parties to a complaint under this Act.

(2) A request may be made on the basis that the National Board has formed a reasonable belief that giving the notice or information may—

(a) seriously prejudice an investigation by the National Board; or

(b) place at risk a person's health or safety; or

(c) place a person at risk of harassment or intimidation.

(3) Despite anything to the contrary in this Act, the Commission may decide not to give the relevant notice or information to the specified party or parties for a specified period determined by the Commission which must not exceed the relevant period.

(4) If the Commission makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.

(5) In this section—

National Board has the same meaning as in the Health Practitioner Regulation National Law;

relevant notice or information means—

(a) written notice of a decision to refer a complaint under section 448; or

(b) written notice of a decision to deal with a complaint under section 450; or

(c) written notice of a complaint resolution process under section 452; or

(d) written notice of a decision to divide or concurrently deal with complaints under section 454; or

(e) written notice of a decision to conduct an investigation under section 480;

relevant period means the period beginning when the decision is made under subsection (3) and ending when the Commission is advised by the National Board that it no longer holds

the reasonable belief referred to in subsection (2).

472 Deferral of notification at the request of the Disability Services Commissioner

(1) The Disability Services Commissioner may request the Mental Health and Wellbeing Commission not to give a relevant notice or information to a specified party or parties to a complaint under this Act.

(2) A request may be made on the basis that the Disability Services Commissioner considers that giving the relevant notice or information may—

(a) affect the health, safety or welfare of a person; or

(b) prejudice the proper investigation of a complaint by the Disability Services Commissioner under the **Disability Act 2006**.

(3) Despite anything to the contrary in this Act, the Commission may decide not to provide the relevant notice or information to the specified party or parties for a specified period which must not exceed the relevant period.

(4) If the Commission makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.

(5) In this section—

Disability Services Commissioner has the same meaning as in the **Disability Act 2006**;

relevant notice or information means—

(a) written notice of a decision to refer a complaint under section 448;

(b) written notice of a decision to deal with a complaint under section 450;

(c) written notice of a complaint resolution process under section 452;

(d) written notice of a decision to divide or concurrently deal with complaints under section 454;

(e) written notice of a decision to conduct an investigation under section 480;

relevant period means the period beginning when the decision is made under subsection (3) and ending at the first of the following occurring—

(a) the Commission is advised by the Disability Services Commissioner, that the Disability Services Commissioner no longer holds the view referred to in subsection (2); or

(b) the end of the investigation of the complaint by the Disability Services Commissioner under the **Disability Act 2006**; or

(c) the end of the period of 6 months following the receipt of the complaint by the Disability Services Commissioner.

473 Deferral of notification at the request of the Health Complaints Commissioner

(1) The Health Complaints Commissioner may request the Mental Health and Wellbeing Commission not to give a relevant notice or information to a specified party or parties to a complaint under this Act.

(2) A request may be made on the basis that the Health Complaints Commissioner reasonably believes that giving the relevant notice or information may—

(a) place at serious risk the life, health, safety or welfare of a person; or

(b) place at serious risk the health, safety or welfare of the public; or

(c) prejudice the proper investigation of a complaint by the Health Complaints Commissioner under the **Health Complaints Act 2016**.

(3) Despite anything to the contrary in this Act, the Commission may decide not to provide the relevant notice or information to the specified party or parties for a specified period which must not exceed the relevant period.

(4) If the Commission makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.

(5) In this section—

Health Complaints Commissioner has the same meaning as in the **Health Complaints Act 2016**;

relevant notice or information means—

(a) written notice of a decision to refer a complaint under section 448; or

(b) written notice of a decision to deal with a complaint under section 450; or

(c) written notice of a complaint resolution process under section 452; or

(d) written notice of a decision to divide or concurrently deal with complaints under section 454; or

(e) written notice of a decision to conduct an investigation under section 480;

relevant period means the period beginning when the decision is made under subsection (3) and ending at the first of the following occurring—

(a) the Commission is advised by the Health Complaints Commissioner the Health Complaints Commissioner no longer holds the view referred to in subsection (2);

(b) the end of the investigation of the complaint by the Health Complaints Commissioner under the **Health Complaints Act 2016**;

(c) the end of the period of 6 months following the receipt of the complaint by the Health Complaints Commissioner.

474 Deferral of notification at the request of the Victorian Disability Worker Commissioner

(1) The Victorian Disability Worker Commissioner may request the Mental Health and Wellbeing Commission not to give a relevant notice or information to a specified party or parties to a complaint under this Act.

(2) A request may be made on the basis that the Victorian Disability Worker Commissioner reasonably believes that giving the relevant notice or information may—

(a) place at risk the health or safety of a person; or

(b) place a person at risk of harassment or intimidation; or

(c) seriously prejudice the proper investigation of a complaint by the Victorian Disability Worker Commissioner under the **Disability Service Safeguards Act 2018**.

(3) Despite anything to the contrary in this Act, the Commission may decide not to provide the relevant notice or information to the specified party or parties for a specified period which must not exceed the relevant period.

(4) If the Commission makes a decision under subsection (3), the requirement under this Act to give the relevant notice or information is suspended for the specified period.

(5) In this section—

relevant notice or information means—

(a) written notice of a decision to refer a complaint under section 448; or

(b) written notice of a decision to deal with a complaint under section 450; or

(c) written notice of a complaint resolution process under section 452; or

(d) written notice of a decision to divide or concurrently deal with complaints under section 454; or

(e) written notice of a decision to conduct an investigation under section 480;

relevant period means the period beginning when the decision is made under subsection (3) and ending at the first of the following occurring—

(a) the Commission is advised by the Victorian Disability Worker Commissioner that the Victorian Disability Worker Commissioner no longer holds the view referred to in subsection (2)

(b) the end of the investigation of the complaint by the Victorian Disability Worker Commissioner under the **Disability Service Safeguards Act 2018**;

(c) the end of the period of 6 months following the receipt of the complaint by the Victorian Disability Worker Commissioner;

Victorian Disability Worker Commissioner has the same meaning as in the **Disability Service Safeguards Act 2018**.

Division 6—Judicial Proceedings Reports Act 1958

Ch. 9 Pt 9.2 Div. 6 (Heading and ss 474A, 474B) inserted by No. 20/2023 s. 26.

474A Disclosure of information in the performance of functions not prevented by sections 3 and 4(1A) of Judicial Proceedings Reports Act 1958

S. 474A inserted by No. 20/2023 s. 26.

Sections 3 and 4(1A) of the **Judicial Proceedings Reports Act 1958** do not prevent the disclosure of information (including identifying information) by the Mental Health and Wellbeing Commission to the following in the performance of a function under this Part—

(a) the Health Complaints Commissioner within the meaning of the **Health Complaints Act 2016**;

(b) the Australian Health Practitioner Regulation Agency.

474B Disclosure of information in the performance of functions not prevented by orders under Part 3 of Judicial Proceedings Reports Act 1958

S. 474B inserted by No. 20/2023 s. 26.

A victim privacy order or an interim victim privacy order made under Part 3 of the **Judicial Proceedings Reports Act 1958** does not apply to or prevent a disclosure of information (including identifying information) by the Mental Health and Wellbeing Commission to the following in the performance of a function under this Part—

(a) the Health Complaints Commissioner within the meaning of the **Health Complaints Act 2016**;

(b) the Australian Health Practitioner Regulation Agency.

Part 9.3—Undertakings and compliance notices

475 Undertakings and compliance notices while dealing with a complaint or during an investigation

(1) At any time while dealing with a complaint, the Mental Health and Wellbeing Commission may—

(a) accept an undertaking given by a mental health and wellbeing service provider—

(i) to take remedial action in relation to the complaint; and

(ii) subject to subsection (3), take no further action in relation to the complaint; or

(b) serve a compliance notice.

(2) At any time during an investigation under Division 1 of Part 9.4, the Mental Health and Wellbeing Commission may accept an undertaking given by a mental health and wellbeing service provider to take remedial action in relation to a matter that is the subject of the investigation.

(3) If the Commission accepts an undertaking given by a mental health and wellbeing service provider under subsection (1)(a) or (2), the Commission may—

(a) monitor the mental health and wellbeing service provider to assess the remedial action that the mental health and wellbeing service provider has taken in relation to the complaint; and

(b) by written notice, require the mental health and wellbeing service provider to report to the Commission—

(i) on the remedial action taken by the mental health and wellbeing service provider; and

(ii) within a specified time not exceeding 12 months after the undertaking is given.

(4) The Commission may serve a compliance notice on a mental health and wellbeing service provider if the mental health and wellbeing service provider has not complied with an undertaking given under this section.

(5) The Mental Health and Wellbeing Commission—

(a) must make a record of any undertaking given by a mental health and wellbeing service provider; and

(b) may monitor the undertaking in accordance with this section.

Part 9.4—Investigations by the Mental Health and Wellbeing Commission

Division 1—Investigations

476 Investigation of a complaint by the Mental Health and Wellbeing Commission

The Mental Health and Wellbeing Commission may conduct an investigation of a complaint made to the Commission, if the Commission reasonably believes that the complaint should be investigated and either—

(a) the complaint is not suitable for a complaint resolution process; or

(b) the Commission has attempted to resolve the complaint by using a complaint resolution process and the complaint has not been resolved; or

(c) a mental health and wellbeing service provider that is a party to the complaint, without reasonable excuse, fails to participate in a complaint resolution process; or

(d) a mental health and wellbeing service provider that is a party to the complaint does not comply with—

(i) a request for further information under section 440(3); or

(ii) a notice requiring the mental health and wellbeing service provider to give a written response under section 458; or

(iii) a notice requiring the production of a document or other evidence under section 462.

477 Referred investigations

(1) The Minister may refer to the Mental Health and Wellbeing Commission for investigation any matter that a person is able to make a complaint about to the Commission under section 431, 432 or 433.

(2) The Commission may investigate a matter referred to it under subsection (1) in accordance with this Part.

478 Own initiative investigations

The Mental Health and Wellbeing Commission, on the Commission's own initiative, may conduct an investigation in relation to any matter that a person is able to make a complaint about to the Commission under section 431, 432 or 433.

479 Mental Health and Wellbeing Commission must not conduct investigation while conciliation is on foot

The Mental Health and Wellbeing Commission must not conduct an investigation of a complaint while a conciliation of the complaint is on foot.

480 Notice of investigation

(1) If the Mental Health and Wellbeing Commission decides to conduct an investigation of a complaint, the Commission must give written notice that specifies the matters set out in subsection (2)—

(a) to each party to the complaint; and

(b) in the case of a referred investigation or an own initiative investigation, to any mental health and wellbeing service provider that is the subject of the investigation; and

(c) in the case of an investigation that relates to mental health and wellbeing services provided at a custodial setting—to the Justice Secretary.

(2) The written notice must—

(a) specify the scope and objectives of the investigation; and

(b) specify the expected date of commencement for the investigation and the expected length of the investigation; and

(c) be accompanied by a written description of the issues arising from the complaint to be investigated.

(3) The Commission must give the written notice as soon as possible after the decision to investigate is made.

Note

Division 5 of Part 9.2 provides for the deferral of the giving of notice under this section in certain circumstances.

481 Investigation report

(1) On completing an investigation under this Division, the Mental Health and Wellbeing Commission must prepare a written report of the investigation.

(2) The investigation report must set out—

(a) in the case of an investigation into a complaint, a description of the complaint and any resolution of the complaint; and

(b) in the case of a referred investigation, a description of the matter referred by the Minister; and

(c) in the case of an own initiative investigation, a description of the matter investigated; and

(d) any findings in relation to the investigation;

(e) any recommendation of action, compliance notice served or any undertaking accepted that a mental health and wellbeing service provider should take or comply with to address the findings, and the time within which the action or compliance should be taken; and

(f) the time within which a mental health and wellbeing service provider must give a written response to the report to the Commission; and

(g) if so requested by a person or a mental health and wellbeing service provider who made submissions in the investigation and against whom the Commission has made adverse findings or comments, a summary of the submissions made in relation to those adverse findings or comments.

482 Persons to whom an investigation report must be given

(1) The Mental Health and Wellbeing Commission must give an investigation report to the mental health and wellbeing service provider that is the subject of the investigation.

(2) For the purposes of subsection (1), if more than one mental health and wellbeing service provider is the subject of an investigation, the Commission must give the part of the investigation report that relates to a specific mental health and wellbeing service provider to that mental health and wellbeing service provider.

(3) The Mental Health and Wellbeing Commission must give an investigation report that relates to a referred investigation to the Minister.

(4) The Mental Health and Wellbeing Commission may give all or part of an investigation report to the Australian Health Practitioner Regulation Agency and any relevant National Board, if the investigation report is relevant to the administration of the Health Practitioner Regulation National Law.

(5) The Mental Health and Wellbeing Commission may also give all or part of an investigation report to—

(a) in the case of an investigation into a complaint—

(i) the complainant unless—

(A) the complainant is not the consumer who is the subject of the complaint; and

(B) giving the investigation report to the complainant would unreasonably breach the consumer's privacy; and

(ii) the consumer of the complaint, if the consumer—

(A) is not the complainant; and

(B) has not notified the Commission that the consumer does not wish to be a party to the complaint under section 444; and

(b) the following persons or bodies if the Commission is satisfied that it is appropriate—

(i) the Minister;

(ii) the Health Secretary;

(iii) the Justice Secretary;

(iv) the Chief Officer;

(v) the chief psychiatrist;

(vi) a regional mental health and wellbeing board; and

(c) any other person or body if the Commission is satisfied that the investigation report is relevant to the functions of that person or body.

(6) For the purposes of subsection (5)(b) or (c), the Commission must ensure that any investigation report or part of an investigation report given to a person or body referred to in subsection (5)(b) or (c) does not include any information that identifies a person (other than a mental health and wellbeing service provider) unless that information is necessary for the performance of a function or the exercise of a power by that person or body.

483 Response by mental health and wellbeing service provider

(1) A mental health and wellbeing service provider who receives an investigation report under section 482 that sets out recommendations that apply to the mental health and wellbeing service provider must give a written response to the investigation report to the Mental Health and Wellbeing Commission that—

(a) states the action that has been taken to implement the recommendations; and

(b) if a recommendation has not been implemented, gives a reason why the recommendation has not been implemented and sets out a plan—

(i) to implement the recommendation; or

(ii) to address the issue dealt with in the recommendation.

(2) A mental health and wellbeing service provider must not, without reasonable excuse, fail to give a written response to the Mental Health and Wellbeing Commission—

(a) in accordance with subsection (1); and

(b) within the time set out in the investigation report.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Division 2—Follow up investigations

484 Power of Mental Health and Wellbeing Commission to conduct a follow up investigation

The Mental Health and Wellbeing Commission may conduct a follow up investigation as to whether there has been any failure by a mental health and wellbeing service provider—

(a) to take any action in respect of which the mental health and wellbeing service provider gave an undertaking referred to in Part 9.3; or

(b) to take any of the recommendations of action specified in an investigation report or a follow up investigation report given to the mental health and wellbeing service provider.

485 Notice of follow up investigation

(1) If the Mental Health and Wellbeing Commission decides to conduct a follow up investigation, the Commission, as soon as possible after making the decision, must give written notice of the follow up investigation to the mental health and wellbeing

service provider that is the subject of the follow up investigation.

(2) A written notice under subsection (1) must include a description of the matter being investigated.

486 Commencement of follow up investigation

(1) The Mental Health and Wellbeing Commission must not commence a follow up investigation under section 484(a) unless the mental health and wellbeing service provider—

(a) has not given the report on the undertaking under Part 9.3 to the Commission within the time fixed by the Commission; or

(b) has not, in the report given to the Commission under section 451(3)(a) or 475(3)(b), substantively addressed the implementation of the undertaking given by the mental health and wellbeing service provider to the Commission.

(2) The Commission must not commence a follow up investigation under section 484(b) unless the mental health and wellbeing service provider—

(a) has not given the response to the Commission under section 483 or 489 within the time set out in the investigation report or the follow up investigation report (as the case may be); or

(b) has not, in the response given to the Commission under section 483 or 489, substantively addressed the implementation of the recommendations made to the mental health and wellbeing service provider by the Commission.

487 Follow up investigation report

(1) On completing a follow up investigation, the Mental Health and Wellbeing Commission must prepare a written report of the investigation.

(2) The follow up investigation report must set out—

(a) whether the Commission has found that a mental health and wellbeing service provider has failed to take the actions—

(i) that the mental health and wellbeing service provider undertook to take; or

(ii) that were recommended; and

(b) any recommendation of action that a mental health and wellbeing service provider should take and the time within which to carry out the recommendation; and

(c) the time within which a mental health and wellbeing service provider must provide a written response to the follow up investigation report to the Commission; and

(d) if so requested by a person or a mental health and wellbeing service provider who made submissions in the investigation and against whom the Commission has made adverse findings or comments, a summary of the submissions made in relation to those adverse findings or comments.

488 Persons to whom follow up investigation report to be given

(1) The Mental Health and Wellbeing Commission must give a follow up investigation report to the mental health and wellbeing service provider that is the subject of the investigation.

(2) For the purposes of subsection (1), if more than one mental health and wellbeing service provider is the subject of a follow up investigation, the Commission must give the part of the follow up investigation report that relates to a specific mental health and wellbeing service provider to that mental health and wellbeing service provider.

(3) The Mental Health and Wellbeing Commission must give a follow up investigation report that relates to a referred investigation to the Minister.

(4) The Mental Health and Wellbeing Commission may give all or part of a follow up investigation report to the Australian Health Practitioner Regulation Agency and any relevant National Board, if the follow up investigation report is relevant to the administration of the Health Practitioner Regulation National Law.

(5) The Mental Health and Wellbeing Commission may also give all or part of a follow up investigation report to—

(a) in the case of a follow up investigation that relates to the investigation into a complaint—

(i) the complainant unless—

(A) the complainant is not the consumer who is the subject of the complaint; and

(B) giving the follow up investigation report to the complainant would unreasonably breach the consumer's privacy; and

(ii) the consumer of the complaint, if the consumer—

(A) is not the complainant; and

(B) has not notified the Commission that the consumer does not wish to be a party to the complaint under section 444; and

(b) the following persons or bodies if the Commission is satisfied that it is appropriate—

(i) the Minister;

(ii) the Health Secretary;

(iii) the Justice Secretary;

(iv) the Chief Officer;

(v) the chief psychiatrist;

(vi) a regional mental health and wellbeing board; and

(c) any other person or body if the Commission is satisfied that the follow up investigation report is relevant to the functions of that person or body.

(6) For the purposes of subsection (5)(b) or (c), the Commission must ensure that any follow up investigation report or part of a follow up investigation report given to a person or body referred to in subsection (5)(b) or (c) does not include any information that identifies a person (other than a mental health and wellbeing service provider) unless that information is necessary for the performance of a function or the exercise of a power by that person or body.

489 Response by mental health and wellbeing service provider

(1) A mental health and wellbeing service provider who receives a follow up investigation report under section 488 that sets out recommendations that apply to the mental health and wellbeing service provider must give a written response to that follow up investigation report to the Mental Health and Wellbeing Commission that—

(a) states the action that has been taken to implement the recommendations; and

(b) if a recommendation has not been implemented, gives a reason why the recommendation has not been implemented and sets out a plan—

(i) to implement the recommendation; or

(ii) to address the issue dealt with in the recommendation.

(2) A mental health and wellbeing services provider must not, without reasonable excuse, fail to give a written response to the Mental Health and Wellbeing Commission—

(a) in accordance with subsection (1); and

(b) within the time set out in the follow up investigation report.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Division 3—Conduct of investigations, authorised investigators and related powers

490 Conduct of investigations

(1) In conducting an investigation under this Part, the Mental Health and Wellbeing Commission—

(a) must act as expeditiously and with as little formality as is reasonably possible; and

(b) is bound by the rules of natural justice; and

(c) is not bound by the rules of evidence; and

(d) before making a finding or recommendation affecting a mental health and wellbeing service provider, must give the mental health and wellbeing service provider an opportunity to make submissions to the Commission about the finding or recommendation; and

(e) in the case of an investigation into a complaint—

(i) if the Commission is satisfied that a decision may directly affect a party to the complaint other than a mental health and wellbeing service provider, must give the party an opportunity to make submissions to the Commission about the decision; or

(ii) if the Commission is satisfied that a decision may directly affect a consumer who is not a party to the complaint, must give the consumer an opportunity to make submissions to the Commission about the decision, unless the Commission is satisfied that this would be detrimental to the wellbeing of the consumer; and

(f) must take reasonable steps to ensure that a complainant, a mental health and wellbeing service provider that is the subject of the investigation and the consumer in relation to a complaint are informed of the progress of the investigation in a timely and appropriate manner.

(2) Despite subsection (1)(f), the Commission is not required to keep a consumer in relation to a complaint informed of the progress of the investigation if the consumer has given notice under section 444 that they do not wish to be a party to the complaint.

(3) The Commission may conduct an investigation hearing in an investigation under this Part.

491 Investigation requirements if there is no hearing

If the Mental Health and Wellbeing Commission decides not to conduct an investigation hearing in an investigation under this Part, the Commission—

(a) may take oral or written submissions; and

(b) may serve an investigation notice; and

(c) must keep a record of all submissions given before the Commission and any decisions made by the Commission.

492 Investigation requirements if there is a hearing

(1) If the Mental Health and Wellbeing Commission decides to conduct an investigation hearing in an investigation under this Part, the Commission, at least 10 business days before the date on which the investigation hearing is to commence, must give written notice of the investigation hearing—

(a) in the case of an investigation of a complaint—to each party to the complaint; or

(b) in the case of a referred investigation, an own initiative investigation or a follow up investigation—to a mental health and wellbeing service provider that is the subject of the investigation.

(2) A notice under subsection (1) must—

(a) specify the date on which the investigation hearing is to commence; and

(b) specify the place at which the investigation hearing is to be held.

493 Authorised investigator

The Mental Health and Wellbeing Commission may authorise persons to exercise powers under this Part as an authorised investigator.

494 Identification of authorised investigator

The Mental Health and Wellbeing Commission must issue a document to an authorised investigator that—

(a) identifies that person as an authorised investigator; and

(b) contains a photograph of the person.

495 Authorised investigator must produce identification

An authorised investigator must produce their identification for inspection—

(a) before exercising a power under this Division; and

(b) at any time during the exercise of a power under this Division, if asked to do so.

496 Powers of entry to the premises of a mental health and wellbeing service provider

(1) For the purposes of an investigation under this Part an authorised investigator may enter—

(a) the premises of a mental health and wellbeing service provider; or

(b) in the case of an investigation that relates to a person receiving mental health and wellbeing services at a custodial setting—the custodial setting.

(2) Before an authorised investigator enters a custodial setting in accordance with subsection (1)(b), the consent of one of the following persons must be obtained—

(a) in the case of a custodial setting that is a prison within the meaning of the **Corrections Act 1986**—the Commissioner within the meaning of that Act;

Note

See section 42A of the **Interpretation of Legislation Act 1984** regarding delegates.

(b) in the case of a custodial setting that is a remand centre, youth residential centre or youth justice centre—the Executive Director Custodial Operations, Department of Justice and Community Safety or the Commissioner within the meaning of the **Corrections Act 1986**;

(c) in the case of any other custodial setting—the Justice Secretary or the person responsible for the administration of the custodial setting.

(3) The following persons may give an authorised investigator any direction that is necessary if there are significant concerns for the management, good order or security of the custodial setting on entry by the authorised investigator to the custodial setting in accordance with subsection (1)(b)—

(a) in the case of a custodial setting that is a prison within the meaning of the **Corrections Act 1986**—the Commissioner within the meaning of that Act;

(b) in the case of a custodial setting that is a remand centre, youth residential centre or youth justice centre—the Executive Director Custodial Operations, Department of Justice and Community Safety or the Commissioner within the meaning of the **Corrections Act 1986**;

(c) in the case of any other custodial setting—the person responsible for the administration of the custodial setting.

(4) An authorised investigator must comply with any direction given under subsection (3).

(5) An authorised investigator who enters the premises of a mental health service provider or a custodial setting may do any one or more of the following—

(a) inspect, examine or make enquiries at the premises or custodial setting;

(b) examine or inspect any thing, including a document or part of a document, at the premises or custodial setting;

(c) bring any equipment or materials to the premises or custodial setting that may be required;

(d) take any photographs or make any audio or visual recordings at the premises or custodial setting, including of a person at the premises or custodial setting (as the case may be) if the person has consented to having their photograph taken or the recording being made;

(e) use any equipment at the premises or custodial setting;

(f) make copies of, or take extracts from, any document kept at the premises or custodial setting;

(g) speak to any person receiving mental health and wellbeing services at the premises or custodial setting if the person consents;

(h) direct a person employed at the premises or custodial setting to produce a document or part of a document located at the premises or custodial setting (as the case may be) that is in the possession or control of the person;

(i) direct a person at the premises or custodial setting to answer any questions asked by the authorised investigator;

(j) do any other thing that is reasonably necessary for the purposes of the authorised investigator performing or exercising their functions or powers under this Act or the regulations.

Division 4—Investigation notices, investigation hearings and powers related to investigation hearings

497 Power to compel production of documents and things or attendance of witnesses—investigation notice

(1) For the purposes of conducting an investigation hearing or an investigation under this Part, the Mental Health and Wellbeing Commission may serve written notice on a person requiring the person—

(a) to produce a specified document or thing to the Commission before a specified time and in a specified manner; or

(b) to attend the investigation hearing at a specified time and place to produce any specified document or thing; or

(c) to appear before the Commission to produce a document or thing; or

(d) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence; or

(e) to attend before the Commission at a specified time and place, and from then on from day to day until excused, to give evidence; or

(f) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence and to produce any specified document or thing; or

(g) to attend before the Commission at a specified time and place, and from then on from day to day until excused, to give evidence and to produce any specified document or thing.

(2) An investigation notice must—

(a) be in the prescribed form (if any); and

(b) contain the following information—

(i) a statement that failure to comply with the notice without reasonable excuse is an offence, and stating the maximum penalty for that offence;

(ii) examples of what may constitute a reasonable excuse for failing to comply with the notice;

(iii) any other prescribed information.

498 Offence to fail to comply with investigation notice

A person who is served with an investigation notice must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: In the case of a natural person, 120 penalty units or 12 months imprisonment or both;

In the case of a body corporate, 600 penalty units.

499 Variation of investigation notice

(1) A person on whom an investigation notice is served may give written notice to the Mental Health and Wellbeing Commission—

(a) that the person has or will have a reasonable excuse for failing to comply with the investigation notice; or

(b) that a document or thing specified in the investigation notice is not relevant to the subject matter of the investigation hearing or investigation.

(2) If the Mental Health and Wellbeing Commission is satisfied that the person's claim is made out, the Commission, by further written notice served on the person, may vary or revoke the investigation notice.

(3) The Commission, by further written notice served on a person, at any time on the Commission's own initiative, may vary or revoke an investigation notice served on the person.

500 Power to take evidence on oath or affirmation in investigation hearing

(1) If a person is required to appear before the Mental Health and Wellbeing Commission under an investigation notice, the Commission may require the person to give evidence or answer questions on oath or affirmation.

(2) A Mental Health and Wellbeing Commissioner, or a member of the staff of the Commission who is authorised to do so, may administer an oath or affirmation to a person for the purposes of subsection (1).

501 Powers in relation to documents and things produced during investigation hearing or under investigation notice

(1) In an investigation hearing or following production under an investigation notice, the Mental Health and Wellbeing Commission may—

(a) inspect any document or thing produced at the investigation hearing or under the investigation notice; and

(b) retain the document or thing for so long as is reasonably necessary for the purposes of the investigation or investigation hearing to which the document or thing is relevant; and

(c) copy any document or thing produced to the Commission or investigation hearing that is relevant to the subject matter of the investigation or hearing.

(2) If the retention of a document or thing under subsection (1) ceases to be reasonably necessary for the purposes of the investigation or investigation hearing, the Commission, at the request of any person who appears to be entitled to the document or thing, must cause the document or thing to be delivered to the person.

Part 9.5—Compliance notices

502 Compliance notice

(1) The Mental Health and Wellbeing Commission may serve a compliance notice on a mental health and wellbeing service provider if the Commission is satisfied that—

(a) the mental health and wellbeing service provider has not complied with an undertaking given under Part 9.3; or

(b) after conducting an investigation under Part 9.4 or a follow-up investigation, the mental health and wellbeing service provider has contravened this Act or the regulations; or

(c) the mental health and wellbeing service provider has—

(i) acknowledged it has contravened this Act or the regulations; and

(ii) not given an undertaking under Part 9.3.

(2) A compliance notice may—

(a) specify the action to be taken by a mental health and wellbeing service provider for the purpose of ensuring compliance with an undertaking given under Part 9.3 or compliance with this Act and the regulations; and

(b) specify the time within which the action referred to in paragraph (a) is to be taken; and

(c) require the mental health and wellbeing service provider to report to the Commission within a specified time after having taken the action referred to in paragraph (a).

(3) The Commission may extend the period specified in a compliance notice for taking specified action by a mental health and wellbeing service provider.

503 Application for review—compliance notice

(1) A person or a mental health and wellbeing service provider whose interests are affected by the Mental Health and Wellbeing Commission's decision to serve a compliance notice may apply to VCAT for review of the decision.

(2) An application for review must be made within 20 business days after the compliance notice is served.

(3) The Commission is a party to a proceeding on a review under this section.

504 Offence not to comply with compliance notice

(1) A mental health and wellbeing service provider must comply with a compliance notice served on it under section 502(1).

Penalty: In the case of a body corporate, 1200 penalty units;

In any other case, 240 penalty units.

(2) Subsection (1) does not apply if—

(a) the period within which an application for review under section 503(1) may be made has not expired; or

(b) an application for review has been made under section 503(1) and VCAT affirms the Mental Health and Wellbeing Commission's decision to serve a compliance notice.

Part 9.6—Inquiries

505 Power of the Mental Health and Wellbeing Commission to conduct inquiry

The Mental Health and Wellbeing Commission may conduct an inquiry in relation to any matter relating to its objectives or functions—

(a) on its own initiative; or

(b) that is referred to the Commission by—

(i) a House of the Parliament or a Parliamentary Committee; or

(ii) a Minister; or

(iii) the Health Secretary; or

(iv) the Chief Officer.

506 Conduct of inquiry

(1) In conducting an inquiry under this Part, the Mental Health and Wellbeing Commission may hold public hearings.

(2) In conducting a public hearing, the Commission—

(a) may take oral or written submissions from the public; and

(b) may require persons to appear before the Commission; and

(c) may interview a person; and

(d) may require persons to produce documents or other things to the Commission; and

(e) is bound by the rules of natural justice; and

(f) is not bound by the rules of evidence; and

(g) must keep a record of all submissions and evidence given before the Commission and decisions made by the Commission.

507 Inquiry report

(1) On completing an inquiry, the Mental Health and Wellbeing Commission must prepare a written report of the inquiry.

(2) In an inquiry report, the Commission may make recommendations about the matter dealt with in the inquiry.

(3) For the purposes of subsection (2), the Commission may make recommendations to the following persons—

(a) in the case of an inquiry under section 505(b), the person or body who referred the matter to the Commission;

(b) the Premier;

(c) a Minister;

(d) a public sector body Head within the meaning of the **Public Administration Act 2004**.

(4) The Commission must give an inquiry report to the following persons or bodies—

(a) the Minister;

(b) the Health Secretary;

(c) in the case of an inquiry under section 505(b)—the person or body who referred the inquiry.

(5) If an inquiry report includes a comment or opinion that is adverse to a person (including a mental health and wellbeing service provider), the Commission must—

(a) first give the person an opportunity to respond to the adverse material; and

(b) fairly set out the response in the report.

Part 9.7—Protections and legal representation

508 Compellability of a Mental Health and Wellbeing Commissioner or member of staff

A person who is or was a Mental Health and Wellbeing Commissioner or a member of the staff of the Mental Health and Wellbeing Commission is not compellable to give evidence in a court in relation to an investigation under Part 9.4 unless the court gives leave.

509 Protection of participants in an investigation

A person who gives information or evidence, or produces a document or thing, in an investigation under Part 9.4 has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

510 Protection for persons who make a complaint

(1) A person who makes a complaint to the Mental Health and Wellbeing Commission is not personally liable for any loss, damage or injury suffered by another person merely because of the making of the complaint.

(2) A person who produces a document or gives any information or evidence to the Commission in making a complaint is not personally liable for any loss, damage or injury suffered by another person merely because of the production of the document or the giving of the information or evidence.

(3) Nothing in this section derogates from the protection of a person under section 509.

511 Privilege against self-incrimination

It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under Part 9.3, 9.4 or 9.5 or section 521 if the giving of the information or the doing of that other thing would tend to incriminate the person.

512 Legal professional privilege and client legal privilege

It is a reasonable excuse for a person to refuse or fail to give information or do any other thing that the person is required to do by or under Part 9.3, 9.4 or 9.5 or section 521 if the giving of the information or the doing of that other thing would be a breach of legal professional privilege or client legal privilege.

513 Offence to threaten etc. complainant

A person must not, by threat or intimidation, persuade or attempt to persuade another person not to make a complaint under Part 9.2 or not to continue with any process under this Chapter.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

514 Offence to refuse to employ, dismiss or subject a person to detrimental action

(1) A person must not refuse to employ, or dismiss another person, or subject another person to any detrimental action because the other person—

(a) intends to make, makes or has made a complaint under Part 9.2; or

(b) intends to take part in, or takes part in, or has taken part in any process under this Chapter.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A mental health and wellbeing service provider must take reasonable steps to ensure that the management of the mental health and wellbeing service provider or any member of staff of the mental health and wellbeing service provider does not take detrimental action against a consumer in reprisal for—

(a) the consumer making a complaint about the mental health and wellbeing service provider; or

(b) for another person making a complaint on the consumer's behalf about the mental health and wellbeing service provider.

515 Offence to make false statements

A person must not for the purposes of taking part in any process under this Chapter make an oral or written statement which the person knows or ought to know to be false or misleading in a material particular.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

516 Legal representation

(1) A person may be accompanied or represented by another person in relation to any process under this Chapter relating to—

(a) a complaint under Part 9.2; or

(b) an investigation under Part 9.4; or

(c) an inquiry under Part 9.6.

(2) If the Mental Health and Wellbeing Commission so authorises, a person may be represented by an Australian legal practitioner in relation to any process under this Chapter relating to—

(a) a complaint under Part 9.2; or

(b) an investigation under Part 9.4; or

(c) an inquiry under Part 9.6.

(3) For the purposes of subsection (2), a person may be represented by an Australian legal practitioner when the person is—

(a) giving evidence to the Commission; or

(b) producing documents to the Commission under an investigation notice.

Part 9.8—Confidentiality, information collection and information sharing

Division 1—Disclosure of information

517 Non-disclosure of information—investigations and complaint data reviews

(1) A person must not disclose any information obtained by that person in the course of an investigation under Part 9.4 or a complaint data review, except as authorised under this section.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) For the purposes of subsection (1), a Mental Health and Wellbeing Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) may disclose information to which subsection (1) applies in the following circumstances—

(a) the disclosure is for the purposes of a proceeding under this Act that relates to the performance of the Commission's functions;

(b) the disclosure is with the written authority of the Health Secretary, if the Health Secretary reasonably believes it is in the public interest to do so;

(c) the disclosure is to the Health Secretary, if that information is or may be relevant to determining whether or not a mental health and wellbeing service provider or the Institute has complied with the duty of candour;

(d) the disclosure is with the written authority of the person to whom the information relates;

(e) the disclosure is to the Australian Health Practitioner Regulation Agency or a relevant National Board, if that information is or may be the subject of, or relevant to, a complaint, investigation or inquiry under the Health Practitioner Regulation National Law.

(3) Despite subsection (1), a Mental Health and Wellbeing Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) is authorised and may disclose information to which subsection (1) applies if the Commissioner, the person employed or the person engaged (as the case may be) reasonably believes that the disclosure is necessary for or in connection with the performance of the Commission's functions.

(4) Despite subsection (1), a Mental Health and Wellbeing Commissioner is authorised and may disclose information to which subsection (1) applies if the Commissioner reasonably believes that the disclosure is necessary to avoid a serious risk to—

(a) the life, health, safety or welfare of a person; or

(b) the health, safety or welfare of the public.

518 Non-disclosure of information—complaint resolution processes

(1) A Mental Health and Wellbeing Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) must not disclose any information obtained by that person in the course of a complaint resolution process (other than a conciliation) except as authorised under this section.

Penalty: 60 penalty units.

(2) For the purposes of subsection (1), a Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) is authorised and may disclose information to which subsection (1) applies in the following circumstances—

(a) the Commissioner reasonably believes that the disclosure is necessary for or in connection with the performance of the Commission's functions;

(b) the disclosure is for the purposes of a proceeding under this Act that relates to the performance of the Commission's functions;

(c) the disclosure is made with the written authority of the Health Secretary, and the Health Secretary reasonably believes it is in the public interest to do so;

(d) the disclosure is made with the written authority of the person to whom the information relates;

(e) the disclosure is to the Health Secretary, if that information is or may be relevant to determining whether or not a mental health and wellbeing service provider or the Institute has complied with the duty of candour;

(f) the disclosure is to the Australian Health Practitioner Regulation Agency or a relevant National Board, if that information is or may be the subject of, or relevant to, a complaint, investigation or inquiry under the Health Practitioner Regulation National Law;

(g) the Commissioner reasonably believes that the disclosure is necessary to avoid a serious risk to—

(i) the life, health, safety or welfare of a person; or

(ii) the health, safety or welfare of the public.

519 Non-disclosure of information given in conciliation

(1) A Mental Health and Wellbeing Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) must not disclose, outside a conciliation, any information obtained during the conciliation.

Penalty: 60 penalty units.

(2) Despite subsection (1), a Commissioner, a person employed under section 418(1) or a person engaged under section 418(2) is authorised and may disclose information to which subsection (1) applies if—

(a) the disclosure is made with the written authority of the person to whom the information relates; or

(b) the disclosure is to the Health Secretary, if that information is or may be relevant to determining whether or not a mental health and wellbeing service provider or the Institute has complied with the duty of candour; or

(c) the disclosure is made with the written authority of the Health Secretary, and the Health Secretary reasonably believes it is in the public interest to do so.

(3) Despite subsection (1), a person employed under section 418(1) or a person engaged under section 418(2) is authorised and may disclose information to which subsection (1) applies if the disclosure is made by the person employed or the person engaged (as the case may be) to a Commissioner for the purposes of the Commission dealing with a complaint.

(4) Despite subsection (1), a Commissioner is authorised and may disclose information to which subsection (1) applies if the Commissioner reasonably believes that the disclosure is necessary to avoid a serious risk to—

(a) the life, health, safety or welfare of a person; or

(b) the health, safety or welfare of the public.

520 Non-disclosure of identifying information

(1) For the purposes of dealing with a complaint, conducting an investigation under Part 9.4 or conducting an inquiry under Part 9.6, the Mental Health and Wellbeing Commission may decide that any of the following information is not to be disclosed—

(a) the name of any complainant;

(b) the name of any person who received or sought a mental health and wellbeing service;

(c) the name of any person who was the subject of conduct dealt with in an own initiative investigation or a referred investigation;

(d) any identifying information about a person to whom paragraph (a), (b) or (c) applies.

(2) The Mental Health and Wellbeing Commission must not make a decision under subsection (1) unless the Commission is satisfied that—

(a) there are special circumstances; and

(b) it is in the complainant's or the person's interests not to disclose the information.

(3) In making a decision under this section, the Mental Health and Wellbeing Commission must consider whether not disclosing the information would unreasonably limit another person's right to procedural fairness.

(4) The Mental Health and Wellbeing Commission may revoke a decision under subsection (1) if the Commission is no longer satisfied of the matters set out in subsection (2).

521 Mental Health and Wellbeing Commission may require information to be provided by mental health and wellbeing service provider

(1) The Mental Health and Wellbeing Commission, by written notice, may require a mental health and wellbeing service provider to provide to the Commission non-identifying information in respect of complaints received or dealt with by the mental health and wellbeing service provider.

(2) A notice under subsection (1) must—

(a) specify the nature of the information to be provided; and

(b) set out a reasonable period of time within which the mental health and wellbeing service provider must provide the information to the Commission.

(3) The Commission may extend the time within which a mental health and wellbeing service provider must comply with a requirement under this section.

(4) A mental health and wellbeing service provider must comply with a requirement under this section within the time specified by the Commission, unless the mental health and wellbeing service provider has a reasonable excuse not to do so.

Penalty: In the case of a natural person, 10 penalty units;

In the case of a body corporate, 50 penalty units.

522 Mental Health and Wellbeing Commission may give information to other bodies or jurisdictions

(1) For the purposes of this Act, the Health Practitioner Regulation National Law or a relevant law, the Mental Health and Wellbeing Commission may give information obtained in the course of administering this Act that is or may be the subject of or relevant to a complaint, investigation or inquiry under the Health Practitioner Regulation National Law or a relevant law to—

(a) in the case of the Health Practitioner Regulation National Law, the Australian Health Practitioner Regulation Agency or any relevant National Board; or

(b) in any other case, the person or body responsible for dealing with the matter under the relevant law.

(2) In this section—

relevant law means any of the following—

(a) the **Disability Act 2006**;

(b) the **Health Records Act 2001**;

(c) the **Privacy and Data Protection Act 2014**;

(d) the **Health Complaints Act 2016**;

(e) the **Disability Service Safeguards Act 2018**;

(f) the National Disability Insurance Scheme Act 2013 of the Commonwealth.

523 Mental Health and Wellbeing Commission is authorised to receive information under the Health Practitioner Regulation National Law

To avoid doubt, the Mental Health and Wellbeing Commission is a State entity for the purposes of sections 219 and 220 of the Health Practitioner Regulation National Law.

Division 2—Reasonable assistance and information collection

524 Requirement to provide reasonable assistance to the Mental Health and Wellbeing Commission

The following persons must provide the Mental Health and Wellbeing Commission with any reasonable assistance that the Commission requires to perform any its functions or exercise any its powers under this Chapter with respect to a mental health and wellbeing service provider—

(a) the mental health and wellbeing service provider;

(b) the management of the mental health and wellbeing service provider;

(c) a member of staff, or former member of staff, of the mental health and wellbeing service provider;

(d) a volunteer, or former volunteer, at the mental health and wellbeing service provider;

(e) a member of the board, or former member of the board, of the mental health and wellbeing service provider.

525 Mental Health and Wellbeing Commission may collect information

S. 525(1) amended by No. 20/2023 s. 27.

(1) For the purposes of the Mental Health and Wellbeing Commission performing its functions (other than its functions under section 415(h) and (i)) and exercising its powers, the Commission may collect any of the following types of information about an individual from a body specified in subsection (2)—

(a) health information;

(b) personal information;

(c) identifiers;

(d) unique identifiers.

(2) For the purposes of subsection (1), the following bodies are specified—

(a) the Health Secretary;

(b) a mental health and wellbeing service provider;

(c) a public service body;

(d) a public entity within the meaning of the **Public Administration Act 2004**;

(e) Victoria Police;

(f) a body prescribed for the purposes of paragraph (d) of the definition of ***data sharing body*** in section 3(1) of the **Victorian Data Sharing Act 2017**;

(g) a court or tribunal.

(3) A body specified in subsection (2) may provide information described in subsection (1) to the Commission.

(4) This section does not affect the operation of—

(a) the **Health Records Act 2001**; or

(b) the **Privacy and Data Protection Act 2014**; or

(c) the **Victorian Data Sharing Act 2017**.

526 Mental Health and Wellbeing Commission may collect data and information from mental health and wellbeing service providers and data sharing bodies

(1) The Mental Health and Wellbeing Commission may collect the following data and information from a mental health and wellbeing service provider and a data sharing body—

(a) data and information about service delivery, system performance and outcomes, including linked data;

(b) data and information about the implementation of the recommendations of the Royal Commission into Victoria's Mental Health System;

(c) any other information that will enable the Mental Health and Wellbeing Commission to perform its functions and exercise its powers.

(2) A mental health and wellbeing service provider and a data sharing body may disclose the data and information specified in subsection (1) to the Mental Health and Wellbeing Commission.

(3) In this section—

data sharing body has the meaning given by section 3(1) of the **Victorian Data Sharing Act 2017**.

527 Information sharing agreements

(1) For the purposes specified in subsection (2), the Mental Health and Wellbeing Commission may enter into an information sharing agreement with a public sector body—

(a) on its own behalf; and

(b) on behalf of—

(i) the chief psychiatrist; or

(ii) the Chief Officer; or

(iii) a regional mental health and wellbeing board.

(2) The Mental Health and Wellbeing Commission may enter into an information sharing agreement for any of the following purposes—

(a) to enable a public sector body to perform its functions efficiently and effectively;

(b) to ensure that public sector bodies understand what is expected of them;

(c) to ensure that information shared by persons and bodies governed under this Act is done consistently and is done in a manner that avoids duplication.

(3) An information sharing agreement under this section may provide for any of the following—

(a) that the parties to the agreement agree that the sharing of certain information is in accordance with this Act;

(b) the types of information that the parties to the agreement should not share as it would not comply with this Act or it would not be reasonable in the circumstances to share between the parties;

(c) the method of delivery for the information to be shared by the parties to the agreement and the format of the information.

(4) An information sharing agreement under this section must comply with the information sharing principles.

(5) Subject to Part 17.1, if an information sharing agreement is entered into under this section, the parties to the agreement must provide and share information in accordance with that agreement.

Part 9.9—Complaint data review

528 Power to conduct a complaint data review

(1) The Mental Health and Wellbeing Commission may conduct a review of any information given to the Commission in dealing with a complaint or in the conduct of an investigation under Part 9.4, if the Commission reasonably believes persistent or recurrent issues related to the provision of a mental health and wellbeing service may be identified by the conduct of a review.

(2) The Commission may provide advice based on the results of a complaint data review to a mental health and wellbeing service provider regarding the provision of a mental health and wellbeing service.

529 Conduct of a complaint data review

(1) In conducting a complaint data review, the Mental Health and Wellbeing Commission must give written notice to a mental health and wellbeing service provider of—

(a) the process to be followed in conducting the complaint data review; and

(b) the matter that is to be reviewed.

(2) In conducting a complaint data review, the Commission—

(a) must act as expeditiously and with as little formality as is reasonably possible; and

(b) is bound by the rules of natural justice; and

(c) is not bound by the rules of evidence; and

(d) before making a decision affecting a person, must give the person an opportunity to make submissions to the Commission about the decision.

530 Complaint data review report

(1) On completing a complaint data review, the Mental Health and Wellbeing Commission may prepare a written report of the review.

(2) The complaint data review report must set out—

(a) a description of the matter reviewed; and

(b) any findings made as a result of the review; and

(c) any recommendation of action that a mental health and wellbeing service provider should take and the time within which to carry out the recommendation; and

(d) the time within which a written response under section 532 (if any) must be given to the Commission; and

(e) if so requested by a person who made submissions in the review and against whom the Commission has made an adverse decision, a summary of the submissions made in relation to that decision.

531 Persons to whom complaint data review report to be given

The Mental Health and Wellbeing Commission—

(a) must give a complaint data review report to the mental health and wellbeing service provider to whom notice has been given under section 529(1); or

(b) if there is more than one mental health and wellbeing service provider, give that part of a complaint data review report that relates to a mental health and wellbeing service provider to that mental health and wellbeing service provider.

532 Response by mental health and wellbeing service provider

A mental health and wellbeing service provider who has received a complaint data review report that sets out recommendations that apply to the mental health and wellbeing service provider may give a written response to that report to the Mental Health and Wellbeing Commission, within the time set out in the complaint data review report, that—

(a) states the action that has been taken to implement the recommendations; and

(b) if a recommendation has not been implemented, gives a reason why the recommendation has not been implemented and sets out a plan—

(i) to implement the recommendation; or

(ii) to address the issue dealt with in the recommendation.

Chapter 10—Security patients

Part 10.1—Preliminary

533 Construction of references

In this Chapter—

(a) a reference to the Justice Secretary includes the Chief Commissioner of Police in relation to a person who is, or who immediately before being detained in a designated mental health service was—

(i) serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986**; or

(ii) being held in police custody on the order of a court;

(b) a reference to "a prison or other place of confinement" includes—

(i) a remand centre, youth residential centre or youth justice centre; and

(ii) a police gaol within the meaning of the **Corrections Act 1986**.

Part 10.2—Secure treatment order

534 What is a secure treatment order?

A secure treatment order is an order made by the Justice Secretary that enables a person who is subject to the order to be—

(a) compulsorily taken from a prison or other place of confinement and transported to a designated mental health service; and

(b) detained and treated in the designated mental health service.

535 Making a secure treatment order

(1) The Justice Secretary may make a secure treatment order in relation to a person if—

(a) the person is detained in a prison or other place of confinement; and

(b) the person has been examined by a psychiatrist and the Justice Secretary is satisfied by the production of the psychiatrist's report and any other evidence that the following criteria apply to the person—

(i) the person has mental illness;

(ii) because the person has mental illness, the person needs immediate treatment to prevent—

(A) serious deterioration in the person's mental or physical health; or

(B) serious harm to the person or to another person; and

(iii) the immediate treatment will be provided to the person if the person is made subject to a secure treatment order;

(iv) there is no less restrictive means reasonably available to enable the person to receive the immediate treatment; and

(c) the Justice Secretary has received a report from the authorised psychiatrist for the designated mental health service to which it is proposed that the person be transported—

(i) recommending the making of the secure treatment order; and

(ii) stating that there are facilities or services available at the designated mental health service for the detention and treatment of the person.

(2) Subsection (1) does not apply to a person who is subject to a court secure treatment order and is detained in a prison or other place of confinement.

(3) As soon as practicable after the Justice Secretary makes a secure treatment order in relation to a person, the Justice Secretary must ensure that reasonable steps are taken to inform the person of the order and to explain its purpose and effect.

536 Notification of receipt of security patient subject to a secure treatment order

(1) As soon as practicable after a security patient who is subject to a secure treatment order has been received at a designated mental health service, the authorised psychiatrist must—

(a) ensure that the Mental Health Tribunal is notified of the security patient's receipt; and

(b) ensure that reasonable steps are taken to inform the following persons in relation to the security patient of the security patient's receipt—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the receipt of the security patient will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

(2) When a security patient who is subject to a secure treatment order is received at a designated mental health service, the designated mental health service must ensure the primary non-legal mental health advocacy service provider is notified as soon as practicable after the security patient is received.

(3) The authorised psychiatrist must ensure that reasonable steps are taken when a security patient who is subject to a secure treatment order is received at a designated mental health service to give the security patient a statement of rights.

537 Application to revoke secure treatment order

(1) A security patient who is subject to a secure treatment order may apply to the Mental Health Tribunal to revoke the secure treatment order.

(2) The following persons may apply to the Mental Health Tribunal on behalf of a security patient who is subject to a secure treatment order to revoke the order—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the person is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

538 Mental Health Tribunal hearing in relation to secure treatment order

(1) The Mental Health Tribunal must conduct a hearing and determine whether the criteria set out in section 535(1)(b) currently apply to the security patient who is subject to a secure treatment order—

(a) within 28 days beginning on and including the day that the security patient is received at the designated mental health service; and

(b) at least every 6 months following the initial review of the order under paragraph (a) until the person ceases to be a security patient; and

(c) on an application made under section 537 by the security patient or by a person on the patient's behalf.

(2) If the Mental Health Tribunal is satisfied that the criteria set out in section 535(1)(b) currently apply to the security patient, the Tribunal must order that the person remain a security patient.

(3) If the Mental Health Tribunal is not satisfied that the criteria set out in section 535(1)(b) currently apply to the security patient, the Tribunal must order that the person be discharged as a security patient.

539 Discharge of person subject to a secure treatment order

(1) An authorised psychiatrist must discharge a person as a security patient who is subject to a secure treatment order if—

(a) the authorised psychiatrist determines that the criteria set out in section 535(1)(b) for making a secure treatment order in relation to the person no longer apply; or

(b) the Mental Health Tribunal makes an order under section 538(3) that the person be discharged as a security patient; or

(c) section 559(1) applies.

(2) A person who is discharged as a security patient under subsection (1)(a) or (b) ceases to be a security patient—

(a) on entering the legal custody of the Justice Secretary; or

(b) if an order has been made under section 74 of the **Corrections Act 1986** that the person be released on parole and the time for release has occurred, on the release of the person.

(3) A secure treatment order is revoked on the person being discharged as a security patient under this section.

Part 10.3—Court secure treatment orders

Note

See Part 5 of the **Sentencing Act 1991** in relation to court secure treatment orders.

540 Taking person subject to court secure treatment order from prison and transporting to designated mental health service

(1) The Justice Secretary may make a direction that a person who is subject to a court secure treatment order be taken from a prison or other place of confinement and transported to a designated mental health service.

(2) The Justice Secretary must not make a direction under subsection (1) unless—

(a) the person has been examined by a psychiatrist and the Justice Secretary is satisfied by the production of the psychiatrist's report and any other evidence that the criteria for making a court secure treatment order referred to in section 94B(1)(c) of the **Sentencing Act 1991** apply to the person; and

(b) the Justice Secretary has received a report from the authorised psychiatrist for the designated mental health service to which it is proposed that the person be transported—

(i) recommending the making of the direction; and

(ii) stating that there are facilities or services available at the designated mental health service for the detention and treatment of the person.

(3) As soon as practicable after the Justice Secretary makes a direction under subsection (1) in relation to a person who is subject to a court secure treatment order, the Justice Secretary must ensure that reasonable steps are taken to inform the person of the direction and to explain its purpose and effect.

541 Notification of receipt of security patient subject to a court secure treatment order

(1) As soon as practicable after a security patient who is subject to a court secure treatment order has been received at a designated mental health service, the authorised psychiatrist—

(a) must ensure the Mental Health Tribunal is notified of the security patient's receipt; and

(b) must ensure that reasonable steps are taken to inform the following persons in relation to the security patient of the security patient's receipt—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the receipt of the security patient will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

(2) When a security patient who is subject to a court secure treatment order is received at a designated mental health service, the designated mental health service must ensure the primary non-legal mental health advocacy service provider is notified as soon as practicable after the security patient is received.

(3) The authorised psychiatrist must ensure that reasonable steps are taken when a security patient who is subject to a court secure treatment order is received at a designated mental health service to give the security patient a statement of rights.

542 Application to Mental Health Tribunal in relation to security patient subject to court secure treatment order

(1) A security patient who is subject to a court secure treatment order may apply to the Mental Health Tribunal to conduct a hearing and determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the patient.

(2) The following persons may apply to the Mental Health Tribunal on behalf of a security patient who is subject to a court secure treatment order to conduct a hearing and determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the security patient is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

543 Mental Health Tribunal hearing in relation to court secure treatment order

(1) The Mental Health Tribunal must conduct a hearing to determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient who is subject to a court secure treatment order—

(a) within 28 days beginning on and including the day the security patient is received at the designated mental health service; and

(b) at least every 6 months following the initial review of the order under paragraph (a) until the person ceases to be a security patient; and

(c) on an application made under section 542 by the security patient or on the patient's behalf.

(2) If the Mental Health Tribunal is satisfied that the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient, the Tribunal must order that the person remain a security patient.

(3) If the Mental Health Tribunal is not satisfied that the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the security patient, the Tribunal must order that the person be discharged as a security patient.

544 Discharge of person subject to a court secure treatment order

(1) An authorised psychiatrist must discharge a person as a security patient who is subject to a court secure treatment order if—

(a) the authorised psychiatrist determines that the criteria for making a court secure treatment order under section 94B(1)(c) of

the **Sentencing Act 1991** in relation to the person no longer apply; or

(b) the Mental Health Tribunal makes an order under section 543(3) that the person be discharged as a security patient; or

(c) section 559(1) applies and the person ceases to be security patient.

(2) A person who is discharged as a security patient under subsection (1)(a) or (b) ceases to be a security patient who is subject to a court secure treatment order—

(a) on entering the legal custody of the Justice Secretary; or

(b) if an order has been made under section 74(8A) of the **Corrections Act 1986** for the person to be released on parole and the time for release has occurred, on the release of that person.

Note

A person who is discharged as a security patient under subsection (1)(a) or (b) must serve the unexpired portion of the court secure treatment order in a prison or other place of confinement—see section 94C(5) of the **Sentencing Act 1991**.

Part 10.4—Leave of absence

545 Grant of leave of absence

(1) Subject to subsections (2), (3) and (4), an authorised psychiatrist may grant a security patient a leave of absence from a designated mental health service—

(a) for the purpose of receiving treatment or medical treatment; or

(b) for any other purpose that the authorised psychiatrist is satisfied is appropriate.

(2) The authorised psychiatrist may grant a security patient a leave of absence for a period—

(a) not exceeding 7 days, in the case of leave granted for the purpose of receiving treatment or medical treatment; or

(b) not exceeding 24 hours, in any other case.

(3) The authorised psychiatrist may grant a leave of absence for a security patient subject to any conditions that the authorised psychiatrist is satisfied are necessary—

(a) having regard to the purpose of the leave; and

(b) if satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result.

(4) The authorised psychiatrist may vary the conditions or duration of the leave of absence—

(a) having regard to the purpose of the leave; and

(b) if satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result.

(5) In making a determination under subsection (3) or (4), to the extent that is reasonable in the circumstances, the authorised psychiatrist must have regard to all of the following—

(a) the security patient's views and preferences about the leave and the reasons for those views and preferences, including the recovery outcomes that the security patient would like to achieve;

(b) the views and preferences of the security patient expressed in the patient's advance statement of preferences;

(c) the views of the security patient's nominated support person;

(d) the views of a guardian of the security patient;

(e) the views of the security patient's carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(f) the views of a parent of the security patient, if the security patient is under the age of 16 years;

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

546 Revocation of leave of absence

The authorised psychiatrist may revoke a security patient's leave of absence by written notice and require the security patient to return to the designated mental health service if the authorised psychiatrist is satisfied that—

(a) revocation of leave is necessary to prevent—

(i) serious deterioration in the security patient's mental or physical health; or

(ii) serious harm to the security patient or to another person; or

(b) the security patient has failed to comply with a condition to which the leave of absence is subject; or

(c) the purpose for the leave of absence no longer exists.

547 Notification requirements for leave of absence

(1) Before granting a security patient a leave of absence, the authorised psychiatrist must advise the Justice Secretary.

(2) As soon as practicable after the authorised psychiatrist grants, varies or revokes a leave of absence, the authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the security patient of the decision and to explain its purpose and effect; and

(b) to notify the following persons in relation to the security patient of the decision—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order;

(vi) the Justice Secretary.

S. 547(2)(b)(vi) amended by No. 20/2023 s. 28(1).

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S. 547(2)(c) repealed by No. 20/2023 s. 28(2).

547A Authorised psychiatrist may arrange for security patient who is absent without leave to be transported to a designated mental health service

S. 547A inserted by No. 20/2023 s. 29.

An authorised psychiatrist may arrange for a security patient who is absent without leave from a designated mental health service to be transported to a designated mental health service.

548 Application to Mental Health Tribunal for review of decision not to grant leave of absence

(1) A security patient may apply to the Mental Health Tribunal for a review of an authorised psychiatrist's decision to not grant a leave of absence under section 545.

(2) The Mental Health Tribunal must—

(a) hear and determine the application as soon as practicable; and

(b) have regard to the matters referred to in section 545(5) when determining the application, to the extent that is reasonable in the circumstances.

(3) If the Mental Health Tribunal is satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result of granting the security patient a leave of absence and having regard to the purpose of the leave, the Tribunal must make an order granting the application and direct the authorised psychiatrist to grant a leave of absence subject to specified conditions and for a period—

(a) not exceeding 7 days, in the case of leave granted for the purpose of receiving treatment or medical treatment; or

(b) not exceeding 24 hours, in any other case.

(4) If the Mental Health Tribunal is not satisfied on the evidence available that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result of granting the security patient a leave of absence and having regard to the purpose of the leave, the Tribunal must make an order refusing the application and confirm the authorised psychiatrist's decision.

Part 10.5—Monitored leave

549 Monitored leave application and grant

(1) An application for monitored leave for a security patient may be made to the Justice Secretary by the following—

(a) the security patient;

(b) the authorised psychiatrist for the designated mental health service in which the security patient is detained;

(c) any person, at the request of the security patient;

(d) a guardian of the security patient;

(e) a parent of the security patient, if the patient is under the age of 16 years;

(f) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

(2) An application for monitored leave may be made and granted under this section more than once, but only one grant of monitored leave may be in force at any one time in respect of a security patient.

(3) The Justice Secretary may grant monitored leave for a period not exceeding 6 months if, on the evidence available, the Secretary is satisfied that the health and safety of the security patient or the safety of any other person will not be seriously endangered as a result, having regard to the purpose of the monitored leave.

(4) The purposes for which the Justice Secretary may grant monitored leave are one or more of the following—

(a) to rehabilitate the security patient;

(b) to maintain or re-establish the security patient's family relationships or relationships with others who can assist in supporting the patient;

(c) to re-integrate the security patient with the community;

(d) to prepare the security patient for release.

550 Monitored leave conditions, duration and variation

(1) The Justice Secretary may grant monitored leave under section 549 subject to any conditions that the Secretary considers necessary—

(a) having regard to the purpose of the monitored leave; and

(b) if satisfied, on the evidence available, that the health and safety of the security patient and the safety of any other person will not be seriously endangered as a result.

(2) The Justice Secretary may vary the monitored leave conditions or the duration of the monitored leave if the Secretary considers this necessary—

(a) having regard to the purpose for which the leave is granted; and

(b) if satisfied, on the evidence available, that the health and safety of the security patient and the safety of any other person will not be seriously endangered as a result.

551 Matters to take into account for monitored leave

In determining whether to grant monitored leave under section 549 or whether to vary its conditions or duration under section 550, the Justice Secretary must—

(a) to the extent that is reasonable in the circumstances, have regard to all of the following—

(i) the security patient's views and preferences about the leave and the reasons for those views and preferences, including the recovery outcomes that the patient would like to achieve;

(ii) the views and preferences of the security patient expressed in the patient's advance statement of preferences;

(iii) the views of the security patient's nominated support person;

(iv) the views of a guardian of the security patient;

(v) the views of the security patient's carer, if the Justice Secretary is satisfied that the decision will directly affect the carer and the care relationship;

(vi) the views of a parent of the security patient, if the patient is under the age of 16 years;

(vii) the views of the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order; and

(b) have regard to the security patient's applicant profile and leave plan.

552 Applicant profiles and leave plans for monitored leave

(1) If an application for monitored leave is made by or on behalf of a security patient, an authorised psychiatrist for the designated mental health service in which the security patient is detained must prepare for the Justice Secretary the

following documents in relation to the security patient—

(a) an applicant profile that complies with subsection (2);

(b) if the authorised psychiatrist is satisfied that monitored leave should be granted, a leave plan that complies with subsection (3);

(c) if the authorised psychiatrist is satisfied that monitored leave should not be granted—

(i) a written statement containing the reasons why the leave should not be granted; and

(ii) any information that the authorised psychiatrist considers relevant; and

(iii) any other information requested by the Justice Secretary.

(2) The applicant profile must include information concerning—

(a) the security patient's mental illness; and

(b) the relationship between the security patient's mental illness and the patient's offending behaviour; and

(c) the security patient's clinical history and social circumstances; and

(d) the security patient's current mental state.

(3) The leave plan must include information concerning—

(a) the purpose of the proposed monitored leave; and

(b) any proposed monitored leave conditions; and

(c) any other information that the authorised psychiatrist considers relevant; and

(d) any other information requested by the Justice Secretary.

553 Revocation of monitored leave

The Justice Secretary may revoke a security patient's monitored leave by written notice and require the security patient to return to the designated mental health service if the Justice Secretary is satisfied that—

(a) the revocation is necessary to prevent—

(i) serious deterioration in the security patient's mental or physical health; or

(ii) serious harm to the security patient or to another person; or

(b) the security patient has failed to comply with a condition to which the monitored leave is subject; or

(c) the purpose for the monitored leave no longer exists.

554 Notification requirements for monitored leave

(1) As soon as practicable after granting, varying or revoking monitored leave, the Justice Secretary must notify the authorised psychiatrist for the designated mental health service in which the security patient is or was detained of the Justice Secretary's decision.

(2) The authorised psychiatrist must ensure that reasonable steps are taken—

(a) to inform the security patient of the decision of the Justice Secretary and to explain its purpose and effect; and

(b) to notify the following persons in relation to the security patient of the decision—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the security patient is under the age of 16 years;

S. 554(2)(b)(v) amended by No. 20/2023 s. 30(1).

(v) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

S. 554(2)(c) repealed by No. 20/2023 s. 30(2).

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Part 10.6—Transporting security patients to another designated mental health service

555 Authorised psychiatrist may direct security patient to be transported to another designated mental health service

(1) An authorised psychiatrist may make a written direction that a security patient is to be transported to another designated mental health service if—

(a) the authorised psychiatrist is satisfied that this is necessary for the security patient's treatment; and

(b) the authorised psychiatrist for the designated mental health service which is to provide the treatment to the security patient approves.

(2) In determining whether the security patient is to be transported to another designated mental health service, to the extent that is reasonable in the circumstances, the authorised psychiatrist must have regard to all of the following—

(a) the security patient's views and preferences about receiving treatment at another designated mental health service and the reasons for those views and preferences, including the recovery outcomes the security patient would like to achieve;

(b) the views or preferences expressed by the security patient in the patient's advance statement of preferences;

(c) the views of the security patient's nominated support person;

(d) the views of a guardian of the security patient;

(e) the views of the security patient's carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(f) the views of a parent of the security patient, if the security patient is under the age of 16 years;

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order;

(h) the views of the Justice Secretary.

556 Chief psychiatrist may direct security patient to be transported to another designated mental health service

(1) The chief psychiatrist may direct an authorised psychiatrist to arrange for a security patient to be transported to another designated mental health service if the chief psychiatrist is satisfied that this is necessary for the security patient's treatment.

(2) In determining whether a security patient is to be transported to another designated mental health service, to the extent that is reasonable in the circumstances, the chief psychiatrist must have regard to the matters referred to in section 555(2).

557 Role of authorised psychiatrist in transporting security patient to another designated mental health service

(1) As soon as practicable after making a direction under section 555 or receiving a direction under section 556, the authorised psychiatrist must—

(a) ensure reasonable steps are taken to notify the security patient of the direction to transport the security patient to another

designated mental health service and to explain its purpose and effect; and

(b) ensure reasonable steps are taken to notify the following persons in relation to the security patient of the direction—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the decision will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order;

(c) ensure reasonable steps are taken to notify the primary non-legal mental health advocacy service provider; and

(d) ensure the security patient is taken to the receiving designated mental health service; and

(e) ensure that any documents relevant to the treatment of the security patient are forwarded to the receiving designated mental health service.

(2) As soon as practicable after a security patient is transported to the receiving designated mental health service, the authorised psychiatrist of that designated mental health service must ensure that reasonable steps are taken to notify the Justice Secretary that the security patient has been received at that designated mental health service.

558 Application to Mental Health Tribunal for review of direction to transport security patient to another designated mental health service

(1) A security patient who is subject to a direction made under section 555 or 556 to be transported to another designated mental health service may apply within 20 business days after the direction is made to the Mental Health Tribunal for a review of the direction.

(2) The following persons may apply to the Mental Health Tribunal for a review of the direction made under section 555 or 556 on behalf of a security patient referred to in subsection (1) within 20 business days after the direction is made—

(a) any person, at the request of the security patient;

(b) a guardian of the security patient;

(c) a parent of the security patient, if the security patient is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the security patient under a relevant child protection order.

(3) As soon as practicable after an application is made, the Mental Health Tribunal must hear and determine the application.

(4) In hearing an application under this section, to the extent that is reasonable in the circumstances, the Mental Health Tribunal must have regard to the matters referred to in section 555(2).

(5) The Mental Health Tribunal must—

(a) refuse the application and confirm the direction if the Tribunal is satisfied that transporting the security patient to another designated mental health service is necessary for the patient's treatment; or

(b) grant the application and overturn the direction if the Tribunal is not satisfied that transporting the security patient to another designated mental health service is necessary for the patient's treatment.

(6) If the Mental Health Tribunal grants the application and overturns the direction and the security patient has been transported to another designated mental health service, the Tribunal must direct that the security patient be returned to the original designated mental health service.

(7) If the Mental Health Tribunal refuses the application and confirms the direction, the security patient must be transported to the receiving designated mental health service as directed by the authorised psychiatrist or the chief psychiatrist.

Part 10.7—General security patient matters

559 Cessation of security patient status

(1) A person immediately ceases to be a security patient if—

(a) the person's sentence of imprisonment or detention in a prison or other place of confinement expires; or

(b) the court secure treatment order to which the person was subject expires; or

(c) the person is granted bail; or

(d) a court releases the person from custody; or

(e) an order has been made under section 74 of the **Corrections Act 1986** that the person be released on parole and the time for release has occurred.

(2) The Justice Secretary must notify the authorised psychiatrist as soon as practicable of the date on which a security patient's sentence of imprisonment or detention is to expire.

560 Security conditions

(1) A security patient is subject to those security conditions that the authorised psychiatrist is satisfied are necessary to protect the health and safety of the patient or the safety of any other person.

(2) The security conditions apply while the security patient is—

(a) detained in a designated mental health service; or

(b) absent from a designated mental health service on leave or monitored leave; or

(c) transported to and from any places that may be necessary for the administration of this Act.

561 Notification and directions following discharge of security patient subject to court secure treatment order or secure treatment order

(1) An authorised psychiatrist must ensure the Justice Secretary is notified that the authorised psychiatrist intends to discharge a person as a security patient—

(a) in the case of a person who is subject to a secure treatment order, under section 539(1); or

(b) in the case of a person who is subject to a court secure treatment order, under section 544(1).

(2) An authorised psychiatrist must ensure the Mental Health Tribunal is notified notify as soon as practicable after discharging a person as a security patient unless the Tribunal ordered that the person be discharged as a security patient.

(3) An authorised psychiatrist who has discharged a person as a security patient must—

(a) ensure reasonable steps are taken to notify the person that the person has been discharged as a security patient and ensure the purpose and effect of the discharge is explained to the person; and

(b) ensure that reasonable steps are taken to notify the following persons in relation to the person who is discharged that the person has been discharged—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the discharge will directly affect the carer and the care relationship;

(iv) a parent, if the person is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order; and

(c) ensure reasonable steps are taken to notify the primary non-legal mental health advocacy service.

(4) As soon as practicable after the Justice Secretary is notified under subsection (1), the Justice Secretary must make the necessary arrangements to transport the person to a prison or other place of confinement if the person is discharged under section 539(1)(a) or (b) or 544(1)(a) or (b).

562 Custody of security patients

A security patient is in the custody of the authorised psychiatrist from the time when the security patient is received at the designated mental health service until—

(a) the person ceases to be a security patient under section 559; or

(b) if the authorised psychiatrist discharges the person as a security patient, the person enters the legal custody of the Justice Secretary.

563 Warrant to arrest security patient absent without leave who leaves Victoria

(1) An appropriate person may apply to a magistrate, a Judge of the Supreme Court or a judge of the County Court for a warrant to arrest a security patient if it appears to the appropriate person that the security patient—

(a) is absent from a designated mental health service without leave of absence; and

(b) is no longer in Victoria.

(2) A warrant to arrest may be issued against the security patient if the magistrate, a Judge of the Supreme Court or a judge of the County Court is satisfied by evidence on oath or by affirmation (whether oral or by affidavit) of the matters specified in subsection (1)(a) and (b).

Note

Under the Service and Execution of Process Act 1992 of the Commonwealth, a person who is apprehended interstate under a warrant issued in Victoria is to be taken before a magistrate in the place where the person is apprehended. That Act provides for the magistrate to specify the place in Victoria to which the person is then to be taken.

(3) Except as provided by this Act, the rules to be observed with respect to arrest warrants under the **Magistrates' Court Act 1989** extend and apply to arrest warrants under this section.

(4) In this section, ***appropriate person*** means—

(a) an authorised psychiatrist; or

(d) the chief psychiatrist; or

(c) the Health Secretary; or

(d) the Justice Secretary.

Part 10.8—Interstate security patients

564 Definitions for this Part

In this Part—

interstate security patient means a person who—

(a) has been convicted of an offence in another State or a Territory that would be an offence if committed in Victoria; and

(b) is serving a sentence of imprisonment in any relevant State (other than Victoria) for that offence (whether in a prison or otherwise); and

(c) is required to receive involuntary treatment for mental illness in the State or Territory in which the person is serving the person's sentence;

mental health facility means a facility for the detention and treatment of persons who have mental illness;

relevant State, in relation to an interstate security patient, means the State or Territory in which the sentence was imposed on the security patient.

565 Warrant to arrest interstate security patient who absconds to Victoria

(1) The Health Secretary may apply to a magistrate for a warrant to arrest a person if the Secretary is satisfied that—

(a) the person is an interstate security patient; and

(b) the person is in Victoria; and

(c) the person could be apprehended in the relevant State, if the person were still in that State, because the person is absent without leave or other lawful authority from a mental health facility in the relevant State; and

(d) one of the following applies—

(i) the person cannot be lawfully apprehended in Victoria because a warrant to apprehend or arrest the person has not been or cannot be issued in the relevant State, or such a warrant cannot be executed in Victoria;

(ii) the person cannot be lawfully apprehended in Victoria under section 608;

(iii) although the person could be lawfully apprehended in Victoria, the person would not be able to be returned to the relevant State following the apprehension.

(2) For the purposes of subsection (1)(c), a person is taken to be absent without lawful authority from a mental health facility in a relevant State if the person did not return to the facility when required to do so under a law of that State.

(3) If the magistrate is satisfied by evidence on oath or by affirmation (whether oral or by affidavit) of the matters specified in subsection (1)(a) to (d), the magistrate may order that a warrant to arrest be issued against the person who is the subject of the application.

(4) Except as provided by this Act, the rules to be observed with respect to arrest warrants under the **Magistrates' Court Act 1989** extend and apply to arrest warrants under this section.

(5) Despite section 64(2)(a) of the **Magistrates' Court Act 1989**, a person arrested under a warrant issued under this section must be brought before the Magistrates' Court on the day of that person's arrest or on the next sitting day of the court.

566 Orders that Magistrates' Court may make in respect of interstate security patients

(1) If a person arrested under a warrant issued under section 565 is brought before the Magistrates' Court, the court must make—

(a) an order granting the person bail; or

(b) an order remanding the person in custody in a prison or other place of confinement—

unless the court is satisfied that the matters specified in section 565(1)(a) to (d) are not made out.

(2) If the court is satisfied that any one of the matters specified in section 565(1)(a) to (c) is not made out, the court must discharge the person.

(3) If the court is satisfied that the matters specified in section 565(1)(a) to (c) are made out, but that the person can be returned to the relevant State, the court must order the person to be released into the custody of a person who is authorised to escort the person to the relevant State.

567 Translated sentence for interstate security patient

(1) Within 7 days after an interstate security patient is granted bail or remanded in custody in a prison under section 566(1), the Health Secretary must apply to the Supreme Court for a translated sentence to be imposed on the interstate security patient.

(2) The Supreme Court may—

(a) deal with the application; or

(b) refer the application to the County Court.

(3) On an application under subsection (1), the court must make an order imposing a translated sentence on the interstate security patient and determine the period of that sentence already served, unless the court is satisfied that the interstate security patient can be returned to the relevant State.

(4) If the court is satisfied that the interstate security patient can be returned to the relevant State, the court must order that the patient be released into the custody of a person who is authorised to escort the interstate security patient to the relevant State.

(5) The translated sentence must be a sentence of the same duration as that imposed on the interstate security patient in the relevant State in respect of the offence that resulted in the interstate security patient becoming an interstate security patient.

(6) In determining the period of the translated sentence already served, the court is to take into account—

(a) the period of the sentence already served in the relevant State; and

(b) the period since the interstate security patient was first arrested in Victoria under a warrant issued under section 565.

568 Matters relating to translated sentences

(1) Subject to this section, a translated sentence imposed on an interstate security patient under section 567 has the same effect as if it had been imposed on the interstate security patient under the **Sentencing Act 1991** on conviction for an offence in Victoria.

(2) If, under the law of the relevant State, a court has fixed a non-parole period in respect of a sentence imposed on the interstate security patient, that non-parole period is taken to have been fixed by the court in Victoria in respect of the translated sentence.

(3) If the sentence imposed on an interstate security patient, or any non-parole period in respect of that sentence—

(a) is varied, quashed or set aside on a review by or appeal to a court in the relevant State, the translated sentence or non-parole period is taken to have been varied to the same extent, or to have been set aside, by a corresponding court in Victoria; or

(b) is otherwise varied or ceases to have effect as a result of action taken by any person or authority in the relevant State, the translated sentence is taken to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in Victoria.

Chapter 11—Forensic patients

569 Definitions for this Chapter

(1) In this Chapter—

Forensic Leave Panel means the Forensic Leave Panel established under section 59 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

forensic patient means—

(a) a person remanded in custody in a designated mental health service under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (other than under Part 5A of that Act); or

(b) a person committed to custody in a designated mental health service by a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (other than under Part 5A of that Act); or

(c) a person detained in a designated mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(d) a person deemed to be a forensic patient by section 73E(4) or 73K(8) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(e) a person detained in a designated mental health service under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth; or

(f) a person who is an international forensic patient within the meaning of section 73O of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

(2) A person does not cease to be a forensic patient under subsection (1) if that person—

(a) is on leave of absence from a designated mental health service; or

(b) is absent from a designated mental health service without leave.

570 Notification when forensic patient received other than under section 571, 572, 573 or 574

(1) This section applies if a forensic patient is transported to a designated mental health service other than under section 571, 572, 573 or 574.

(2) As soon as practicable after a forensic patient is transported to the receiving designated mental health service, the authorised psychiatrist of the receiving designated mental health service must ensure that reasonable steps are taken to notify the Health Secretary that the forensic patient has been received at that designated mental health service.

(3) The designated mental health service must ensure that the primary non-legal mental health advocacy service provider is notified as soon as practicable after the forensic patient is received at the receiving designated mental health service.

(4) The authorised psychiatrist must ensure that reasonable steps are taken when a forensic patient is received at a designated mental health service to give the patient a statement of rights.

571 Authorised psychiatrist may direct forensic patient be transported to another designated mental health service

(1) Subject to subsection (2), an authorised psychiatrist may make a direction that a forensic patient be transported to another designated mental health service if—

(a) the authorised psychiatrist is satisfied that this is necessary for the forensic patient's treatment; and

(b) the authorised psychiatrist for the designated mental health service which is to provide the treatment to the forensic patient approves.

(2) The authorised psychiatrist must not make a direction under subsection (1) in respect of a forensic patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth but may recommend to the Attorney-General for the Commonwealth the making of an order under section 20BJ(2) or 20BM(7) of that Act varying the designated mental health service in which the forensic patient is detained.

(3) In determining whether transporting a forensic patient to another designated mental health service is necessary for the forensic patient's treatment, to the extent that is reasonable in the circumstances, the authorised psychiatrist must have regard to all of the following—

(a) the forensic patient's views and preferences and the reasons for those views and preferences, including any recovery outcomes the patient would like to achieve;

(b) the views or preferences expressed by the forensic patient in the patient's advance statement of preference;

(c) the views of the forensic patient's nominated support person;

(d) the views of a guardian of the forensic patient;

(e) the views of a carer of the forensic patient, if the authorised psychiatrist is satisfied that the direction will directly affect the carer and the care relationship;

(f) the views of a parent, if the forensic patient is under the age of 16 years;

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the forensic patient under a relevant child protection order.

(4) A direction of the authorised psychiatrist under subsection (1) must be in writing.

572 Chief psychiatrist may direct forensic patient to be transported to another designated mental health service

(1) Subject to subsection (2), the chief psychiatrist may direct an authorised psychiatrist to arrange for a forensic patient to be transported to another designated mental health service if the chief psychiatrist is satisfied that this is necessary for the forensic patient's treatment.

(2) The chief psychiatrist must not make a direction under subsection (1) in respect of a forensic patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth but may recommend to the Attorney-General for the Commonwealth the making of an order under section 20BJ(2) or 20BM(7) of that Act varying the designated mental health service in which the forensic patient is detained.

(3) In determining to make a direction under subsection (1), to the extent that is reasonable in the circumstances, the chief psychiatrist must have regard to the matters referred to in section 571(3).

(4) A direction of the chief psychiatrist under subsection (1) must be in writing.

573 Role of authorised psychiatrist in transferring forensic patient

(1) As soon as practicable after making a direction under section 571 or receiving a direction under section 572, the authorised psychiatrist must—

(a) ensure reasonable steps are taken to give the forensic patient a copy of the direction to transport the forensic patient to another designated mental health service and ensure its purpose and effect is explained; and

(b) ensure reasonable steps are taken to give a copy of the direction to the following persons in relation to the direction for the forensic patient—

(i) the nominated support person;

(ii) a guardian;

(iii) a carer, if the authorised psychiatrist is satisfied that the direction will directly affect the carer and the care relationship;

(iv) a parent, if the forensic patient is under the age of 16 years;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the forensic patient under a relevant child protection order; and

(c) ensure the primary non-legal mental health advocacy service provider is notified in relation to direction for the forensic patient; and

(d) ensure the forensic patient is transported to the receiving designated mental health service; and

(e) ensure any documents relevant to the treatment of the forensic patient are forwarded to the receiving designated mental health service.

(2) As soon as practicable after a forensic patient is transported to the receiving designated mental health service, the authorised psychiatrist of the receiving designated mental health service must take reasonable steps to ensure the Health Secretary is notified that the forensic patient has been received at that designated mental health service.

Note

The duty to communicate still applies even if a written direction has been provided to a person.

574 Application to Forensic Leave Panel for review of decision to transport forensic patient to another designated mental health service

(1) A forensic patient who is subject to a direction made under section 571 or 572 to be transported to another designated mental health service may apply to the Forensic Leave Panel within 20 business days after the direction is made for a review of the direction.

(2) The following persons may apply to the Forensic Leave Panel for a review of a direction made under section 571 or 572 on behalf of a forensic patient referred to in subsection (1) within 20 business days after the direction is made—

(a) any person, at the request of the forensic patient;

(b) a guardian of the forensic patient;

(c) a parent of the forensic patient, if the forensic patient is under the age of 16 years;

(d) the DFFH Secretary, if that Secretary has parental responsibility for the forensic patient under a relevant child protection order.

(3) As soon as practicable after an application is made, the Forensic Leave Panel must hear and determine the application.

(4) On hearing the application, the Forensic Leave Panel must have regard to the matters referred to in section 571(3).

(5) The Forensic Leave Panel must—

(a) grant the application and overturn the direction if the Panel is not satisfied that transporting the forensic patient to another designated mental health service is necessary for the forensic patient's treatment; or

(b) refuse the application and confirm the direction if the Panel is satisfied that transporting the forensic patient to another designated mental health service is necessary for the forensic patient's treatment.

(6) If the Forensic Leave Panel overturns the direction which is the subject of the application and the forensic patient has been transported to another designated mental health service, the Panel must direct that the forensic patient be returned to the original designated mental health service.

(7) If the Forensic Leave Panel confirms the direction which is the subject of the application and the forensic patient has not been transported to another designated mental health service, the forensic patient must be transported to another designated mental health service.

(8) Division 3 of Part 7 of, and Schedule 2 to, the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** apply to an application under this section as if references in that Division and Schedule to the applicant for leave were references to the forensic patient subject to the direction to be transported to another designated mental health service.

Note

Division 3 of Part 7 of, and Schedule 2 to, the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** deal with procedure of the Forensic Leave Panel.

575 Security conditions

(1) A forensic patient is subject to those security conditions which the authorised psychiatrist is satisfied are necessary to protect—

(a) the health and safety of the forensic patient; or

(b) the safety of any other person.

(2) The security conditions apply while the forensic patient is, in accordance with this Act—

(a) detained in a designated mental health service; or

(b) absent on leave from a designated mental health service; or

(c) transported to and from such places as may be necessary for the administration of this Act or any other Act.

576 Leave of absence for forensic patient

A forensic patient may apply for and be granted leave of absence in accordance with Part 7 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**.

576A Authorised psychiatrist may arrange for forensic patient who is absent without leave to be transported to a designated mental health service

S. 576A inserted by No. 20/2023 s. 31.

An authorised psychiatrist may arrange for a forensic patient who is absent without leave from a designated mental health service to be transported to a designated mental health service.

Chapter 12—Intensive monitored supervision

577 What is an intensive monitored supervision order?

An intensive monitored supervision order—

(a) is an order made by the Mental Health Tribunal in respect of a person who is a forensic patient, a security patient or a treatment patient; and

(b) authorises the Institute to—

(i) place the patient in intensive monitored supervision in a supervision unit located at premises where the Institute provides secure services to security patients, forensic patients or treatment patients; and

(ii) limit the patient's contact with others for a period not exceeding 28 days beginning on and including the day the order is made.

578 Intensive monitored supervision criteria

The ***intensive monitored supervision criteria*** for a patient to be made subject to an intensive monitored supervision order are that—

(a) the patient poses an unacceptable risk of seriously endangering the safety of another person; and

(b) the risk is ongoing; and

(c) the patient requires an immediate period of supervision in a supervision unit that limits contact with others to mitigate the risk; and

(d) all less restrictive options have been tried to mitigate the risk and have been found to be ineffective; and

(e) the patient is able to receive treatment or therapeutic interventions in a supervision unit.

579 Examination before application for an intensive monitored supervision order

(1) An application for an intensive monitored supervision order may be made in respect of a patient who—

(a) is detained at the Institute; and

(b) is of or over the age of 18 years; and

(c) is a forensic patient, a security patient or a treatment patient.

(2) Before the authorised psychiatrist of the Institute applies for an intensive monitored supervision order to be made in respect of a patient, the authorised psychiatrist must examine the patient to determine whether the intensive monitored supervision order criteria apply to the patient.

(3) In determining the following, the authorised psychiatrist must have regard to matters specified in subsection (4)—

(a) whether all less restrictive options have been tried to mitigate the risk and have been found to be ineffective; and

(b) the recommended period of the order.

(4) For the purposes of subsection (3), the following matters are specified—

(a) the patient's views and preferences about the treatment or therapeutic interventions they will be provided and the reasons for those views, including any recovery outcomes they would like to achieve; and

(b) the views and preferences of the patient expressed in their advance statement of preferences; and

(c) the views of the patient's nominated support person; and

(d) the views of a guardian of the patient; and

(e) the views of a carer of the patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the carer and the care relationship; and

(f) the likely impact on the patient, considering the patient's views and preferences, and any past experience of trauma; and

(g) the patient's culture, beliefs, values and personal characteristics.

580 Information which must be provided with an application for an intensive monitored supervision order

(1) An application for an intensive monitored supervision order must be accompanied by—

(a) a report by the authorised psychiatrist—

(i) setting out the reasons why the authorised psychiatrist is satisfied that each element of the intensive monitored supervision order criteria apply to the patient; and

(ii) attaching any supporting evidence; and

(iii) specifying the date on which the authorised psychiatrist last examined the patient; and

(b) a supervision plan to support the mental health and wellbeing of the patient detailing—

(i) the proposed treatment and other therapeutic interventions to be provided while the patient is subject to an intensive monitored supervision order; and

(ii) measures proposed for—

(A) reducing the risk posed by the patient and to support the patient to transition from intensive monitored supervision to the hospital environment; and

(B) the patient to no longer be subject to an intensive monitoring order;

(iii) any anticipated harmful effects of being subject to the intensive monitored supervision order and the actions to be taken to reduce those harmful effects.

(2) The application may be accompanied by any other information or material that is relevant to the application.

581 Application to Mental Health Tribunal for intensive monitored supervision order

(1) Subject to this Chapter, the authorised psychiatrist of the Institute may apply to the Mental Health Tribunal for an intensive monitored supervision order to be made in respect of a patient.

(2) The authorised psychiatrist must provide the chief psychiatrist with a copy of the application on the same day that the application is made.

S. 581(3) amended by No. 20/2023 s. 32.

(3) The authorised psychiatrist must notify the following of the application as soon as practicable after the application is made—

(a) the patient in respect of whom the application is made;

(b) the patient's nominated support person;

(c) a guardian of the patient;

(d) a carer of the patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the carer and the care relationship.

(4) The Institute must notify the primary non-legal mental health advocacy service of the making of the application.

582 Mental Health Tribunal powers in respect of applications under this Chapter

(1) The Mental Health Tribunal must list and complete the hearing of an application under this Chapter as soon as practicable and within 5 business days after receiving the application.

(2) After hearing the application, the Mental Health Tribunal may—

S. 582(2)(a) substituted by No. 20/2023 s. 33.

(a) grant the application and make an intensive monitored supervision order in respect of the patient; or

S. 582(2)(b) substituted by No. 20/2023 s. 33.

(b) refuse the application.

(3) The Mental Health Tribunal must not make an intensive monitored supervision order unless it is satisfied that intensive monitored supervision criteria apply to the patient.

(4) In determining the following, the Mental Health Tribunal must have regard to matters specified in subsection (5)—

(a) whether all less restrictive options have been tried to mitigate the risk and have been found to be ineffective; and

(b) the period of the order.

(5) For the purposes of subsection (4), the following matters are specified—

(a) the patient's views and preferences about the treatment or therapeutic interventions they will be provided and the reasons for those views, including any recovery outcomes they would like to achieve;

(b) the views and preferences of the patient expressed in their advance statement of preferences;

(c) the views of the patient's nominated support person;

(d) the views of a guardian of the patient;

(e) the views of a carer of the patient, if the Mental Health Tribunal is satisfied that the making of the order will directly affect the carer and the care relationship;

(f) the likely impact on the patient, considering the patient's views and preferences, and any past experience of trauma;

(g) the patient's culture, beliefs, values and personal characteristics.

583 Intensive monitored supervision order

(1) An intensive monitored supervision order must—

(a) be in writing; and

(b) specify the date on which the order commences; and

(c) specify the date on which the order ends, being no more than 28 days after the day on which the order is made, beginning on and including the day the order is made; and

(d) identify the supervision plan prepared for the patient which will operate at the same time as the order; and

(e) include any other prescribed matter.

(2) An intensive monitored supervision order authorises the authorised psychiatrist of the Institute, for the period specified in the order—

(a) to place the patient in intensive monitored supervision in a supervision unit located at premises where the Institute provides secure services to security patients, forensic patients or treatment patients; and

(b) limit the patient's contact with others.

(3) In doing so, the authorised psychiatrist must—

(a) consider the safety of others and act to prevent the possible harm with which the order is concerned; and

(b) confine the patient in the supervision unit in the least restrictive way possible; and

(c) act to advance the patient's supervision plan.

(4) An intensive monitored supervision order does not prevent a patient from moving outside the supervision unit or having contact with other persons if permitted to do so by the authorised psychiatrist subject to any conditions determined by the authorised psychiatrist.

Example

The authorised psychiatrist may permit the patient to spend time in in a secure outdoor area with one other person.

584 Notice of making of order

(1) As soon as practicable after an intensive monitored supervision order is made, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the patient that the patient is subject to an intensive monitored supervision order; and

(b) to explain the purpose and effect of the order to the patient; and

(c) to give a copy of the order and a statement of rights to the patient.

(2) The authorised psychiatrist must ensure that all reasonable steps are taken to notify the following of the making of an intensive monitored supervision order—

(a) the patient's nominated support person;

(b) a guardian of the patient;

(c) a carer of the patient, if the authorised psychiatrist is satisfied that the making of the order will directly affect the carer and the care relationship.

(3) The Institute must ensure all reasonable steps are taken to notify the primary non-legal mental health advocacy service.

585 Facilities and supplies to be provided to patient subject to intensive monitored supervision order

(1) The authorised psychiatrist of the Institute must ensure that a patient in respect of whom an intensive monitored supervision order is made is—

(a) provided with facilities and supplies—

(i) that meet the patient's needs and maintain the patient's dignity; and

(ii) subject to any safety requirements, reflect the patient's interests and be of a kind that may reduce the effects of isolation; and

(b) permitted to spend a reasonable period of time outdoors every day.

(2) The authorised psychiatrist may determine conditions for the provision of supplies and facilities to the patient subject to the intensive monitored supervision order.

(3) For the purposes of subsection (1), the authorised psychiatrist must have regard to the following—

(a) the patient's supervision plan;

(b) the likely impact the intensive monitored supervision order will have on the patient considering the patient's views and preferences, and any past experience of trauma;

(c) the patient's culture, beliefs, values and personal characteristics;

(d) any other relevant information.

(4) For the purposes of subsection (1) and (2) the facilities provided to the patient must not be more restrictive than necessary to achieve the purposes of the intensive monitored supervision order.

586 Intensive monitored supervision clinical committee

(1) The Institute must establish a clinical committee for the purposes of this Chapter comprising—

(a) an authorised psychiatrist of the Institute; and

(b) a senior clinical staff member in an executive role employed by the Institute, or their nominee; and

(c) a person who identifies as experiencing, or as having experienced, mental illness or psychological distress, and whose experience is relevant to patients who are subject to intensive monitored supervision orders; and

(d) any other person nominated by the authorised psychiatrist to be on the committee.

(2) The committee has the following functions—

(a) to provide reports to the chief psychiatrist on a weekly basis;

(b) to conduct reviews.

(3) For the purposes of subsection (2)(a), a report must review—

(a) the progress of the patient's treatment or therapeutic intervention having regard to the patient's supervision plan; and

(b) the progress towards the patient no longer being subject to an intensive monitored supervision order.

587 Monitoring of patient subject to intensive monitored supervision order

(1) A patient in respect of whom an intensive monitored supervision order is made must be monitored in accordance with this section.

(2) A registered medical practitioner or a registered nurse must clinically review the patient as frequently as is appropriate having regard to the patient's condition but not less than every 15 minutes.

(3) However, if it is not practicable for the patient to be clinically reviewed as specified in subsection (2), the registered medical practitioner or registered nurse must notify the authorised psychiatrist as soon as practicable.

(4) An authorised psychiatrist must—

(a) examine the patient as frequently as the authorised psychiatrist considers appropriate but not less than every 24 hours; or

(b) if it is not practicable for the authorised psychiatrist to do so—ensure that another registered medical practitioner does.

588 Intensive monitored supervision must end if patient no longer poses unacceptable risk

(1) An intensive monitored supervision order ends when it expires or when it is revoked by—

(a) the authorised psychiatrist if the authorised psychiatrist is satisfied that the criteria specified in section 578 no longer apply to the patient; or

(b) the authorised psychiatrist as directed by the chief psychiatrist if the chief psychiatrist is satisfied that the criteria specified in section 578 no longer apply to the patient; or

(c) the Mental Health Tribunal under section 589.

(2) When an intensive monitored supervision order ends, the authorised psychiatrist must take immediate steps to release the patient to whom it applied from intensive monitored supervision.

(3) The authorised psychiatrist must immediately revoke an intensive monitored supervision order if the authorised psychiatrist is satisfied that the criteria no longer apply to the patient who is subject to the order.

(4) As soon as practicable after an intensive monitored supervision order is revoked, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the patient that the order has been revoked; and

(b) to explain the purpose and effect of the revocation to the patient.

(5) The authorised psychiatrist must ensure that all reasonable steps are taken to notify the following of the revocation of the intensive monitored supervision order—

(a) the patient's nominated support person;

(b) a guardian of the patient;

(c) a carer of the patient, if the authorised psychiatrist is satisfied that the revocation of the order will directly affect the carer and the care relationship.

589 Application for revocation of intensive monitored supervision order

(1) The patient who is subject an intensive monitored supervision order, or a person specified in subsection (5), may apply to the Mental Health Tribunal for the revocation of the order.

(2) The Mental Health Tribunal must hold a hearing to determine the application as soon as practicable after the application is made.

(3) The Mental Health Tribunal must—

(a) grant the application and revoke the order; or

(b) refuse the application and direct that the patient remain subject to the order.

(4) The Mental Health Tribunal must not revoke an intensive monitored supervision order if it is satisfied that the intensive monitored supervision criteria apply to the patient.

(5) For the purposes of subsection (1), the following persons are specified—

(a) a guardian of the patient who is subject to the order;

(b) a nominated support person of the patient who is subject to the order;

(c) a mental health advocate;

(d) any other person chosen by the patient who is subject to the order.

590 Review of use of intensive monitored supervision

(1) As soon as practicable after an intensive monitored supervision order ends, the intensive monitored supervision clinical committee referred to in section 586 must conduct a review to determine—

(a) the effectiveness of the patient's supervision plan; and

(b) the experience of the patient while subject to the intensive monitored supervision order.

(2) The intensive monitored supervision clinical committee must ensure that the following persons are invited to make submissions and provide information in the review—

(a) the patient subject to the intensive monitored supervision order;

(b) any nominee of the patient;

(c) a mental health advocate acting in accordance with any instructions given to the advocate by the patient;

S. 590(2)(c) amended by No. 20/2023 s. 34.

(d) any nominated support person of the patient;

(e) any guardian of the patient.

(3) The committee must provide a written report of its findings to the Institute and to the chief psychiatrist.

591 Report on use of intensive monitored supervision to be given to chief psychiatrist

(1) The authorised psychiatrist must give a written report to the chief psychiatrist on the use of intensive monitored supervision on a patient if requested to do so by the chief psychiatrist.

(2) The report must—

(a) contain the details required by the chief psychiatrist; and

(b) be given to the chief psychiatrist within the time specified by the chief psychiatrist.

592 Immunity

(1) An authorised psychiatrist is not personally liable for any thing done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function under this Chapter; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the performance of a function under this Chapter.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to the authorised psychiatrist, attaches instead to the State.

Chapter 13—Interstate application of mental health provisions

Part 13.1—General

593 Corresponding laws and orders

(1) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may declare that a law of a State (other than this State) or of a Territory is a corresponding law for the purposes of this Chapter.

(2) An Order made under subsection (1) in respect of a law of another State or a Territory may include a declaration that an order under that corresponding law that is substantially similar to an assessment order, a temporary treatment order or a treatment order is a corresponding order for the purposes of this Chapter.

594 Ministerial agreements

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 Chapter or a corresponding law.

595 Victorian officers may exercise powers under corresponding laws

Subject to the provisions of any Ministerial agreement, the following persons may exercise any power conferred on them by or under a corresponding law or a Ministerial agreement—

(a) an authorised psychiatrist;

(b) the chief psychiatrist;

(c) an authorised person.

596 Interstate officers may perform functions or exercise powers in Victoria

A person who is authorised to perform functions or exercise powers under a corresponding law or a corresponding order may perform those functions or exercise those powers in this State.

Part 13.2—Assessment under Victorian orders interstate and corresponding orders in Victoria

597 Assessment of person from Victoria at interstate mental health facility

(1) A person who is subject to an assessment order may be transported to an interstate mental health facility for assessment if—

(a) the interstate mental health facility is the most appropriate facility in the circumstances; and

(b) this course of action is permitted by or under a corresponding law.

(2) A person may be transported to an interstate mental health facility under subsection (1) by—

(a) an authorised person; or

(b) a person authorised to do so by or under a corresponding law.

Note

See Chapter 5 in relation to transport.

598 Assessment of interstate person in Victoria

A person who may be transported to, and detained in, an interstate mental health facility under a corresponding law in a participating State or Territory may instead—

(a) be transported to a registered medical practitioner or authorised mental health practitioner in this State; and

(b) be examined by the practitioner to determine whether the compulsory assessment criteria apply to the person.

Part 13.3—Interstate transfers

599 Transfer out of Victoria of responsibility for treatment—with person's consent

(1) An authorised psychiatrist or the chief psychiatrist may direct that responsibility for treatment of a person who is subject to a community temporary treatment order or a community treatment order be transferred to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that this is necessary for the person's treatment; and

(b) the person consents to the transfer of responsibility; and

(c) the transfer of responsibility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to the transfer of responsibility for treatment.

(2) A person in relation to whom responsibility for treatment is transferred under this section ceases to be subject to a community temporary treatment order or a community treatment order (as the case requires) on becoming subject to a corresponding order.

(3) The authorised psychiatrist or chief psychiatrist must ensure that any documents relevant to the person in relation to whom responsibility for treatment is transferred under this section are forwarded to the interstate mental health facility.

600 Interstate transfer of person—with person's consent

(1) An authorised psychiatrist or the chief psychiatrist may direct that a person who is subject to an inpatient temporary treatment order or an inpatient treatment order be transported to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that this is necessary for the person's treatment; and

(b) the person consents to being transported to the interstate mental health facility; and

(c) transporting the person to the interstate mental health facility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to receive the person.

(2) A person who is transported to an interstate mental health facility under this section ceases to be subject to an inpatient temporary treatment order or an inpatient treatment order—

(a) on admission to the interstate mental health facility; or

(b) on becoming subject to a corresponding order.

(3) A person who is transported to an interstate mental health facility under this section may be transported to the interstate mental health facility by—

(a) an authorised person; or

(b) a person who, under the corresponding law, is authorised to transport the person to the interstate mental health facility.

(4) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person who is transported to the interstate mental health facility under this section are forwarded to the interstate mental health facility.

601 Transfer out of Victoria of responsibility for treatment (interstate transfer of treatment order)—without person's consent

(1) An authorised psychiatrist or the chief psychiatrist may apply to the Mental Health Tribunal for an interstate transfer of treatment order to transfer responsibility for treatment of a person who is subject to a community temporary treatment order or a community treatment order to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that the transfer of the responsibility for treatment is necessary for the person's treatment; and

(b) the person does not have capacity to give informed consent or does not consent to the transfer of responsibility; and

(c) the transfer of responsibility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to the transfer of responsibility for treatment.

(2) The Mental Health Tribunal must hear and determine the application for an interstate transfer of treatment order as soon as practicable.

(3) In determining an application for an interstate transfer of treatment order, to the extent that reasonable in the circumstances, the Mental Health Tribunal must have regard to—

(a) the person's views and preferences about the proposed transfer and the reasons for those views and preferences, including the recovery outcomes that the person would like to achieve; and

(b) the person's views and preferences expressed in the person's advance statement of preferences; and

(c) any of the person's views and preferences expressed by the person's nominated support person; and

(d) the views of a guardian of the person; and

(e) the views of a carer of the person, if the Tribunal is satisfied that the transfer will directly affect the carer and the care relationship; and

(f) the views of a parent of the person, if the person is under the age of 16 years; and

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

(4) The Mental Health Tribunal must—

(a) make an interstate transfer of treatment order if the Tribunal is satisfied that—

(i) the transfer of responsibility is necessary for the person's treatment; and

(ii) the person does not have capacity to give informed consent or does not consent to the transfer; and

(iii) the transfer is permitted by or under a corresponding law; and

(iv) the interstate authority for the interstate mental health facility agrees to the transfer; or

(b) refuse to make an interstate transfer of treatment order if the Tribunal is not satisfied as to the matters referred to in paragraph (a).

(5) A person in relation to whom responsibility for treatment is transferred in accordance with this section ceases to be subject to a community temporary treatment order or community treatment order on becoming subject to a corresponding order made under a corresponding law.

(6) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person in relation to whom responsibility for treatment is transferred in accordance with this section are forwarded to the interstate mental health facility.

602 Interstate transfer of person—without person's consent

(1) An authorised psychiatrist or the chief psychiatrist may apply to the Mental Health Tribunal for an interstate transfer order for a person who is subject to an inpatient temporary treatment order or an inpatient treatment order to be transferred to an interstate mental health facility if—

(a) the authorised psychiatrist or chief psychiatrist is satisfied that transferring the person is necessary for the person's treatment; and

(b) the person does not have capacity to give informed consent or does not consent to being transferred to the interstate mental health facility; and

(c) transferring the person to the interstate mental health facility is permitted by or under a corresponding law; and

(d) the interstate authority for the interstate mental health facility agrees to admit the person.

(2) The Mental Health Tribunal must hear and determine an application for an interstate transfer order as soon as practicable.

(3) In determining an application for an interstate transfer order, to the extent that is reasonable in the circumstances, the Mental Health Tribunal must have regard to—

(a) the person's views and preferences about being transferred to an interstate mental health facility and the reasons for those views and preferences, including the recovery outcomes that the person would like to achieve; and

(b) the person's views and preferences expressed in the person's advance statement of preferences; and

(c) any of the person's views and preferences expressed by the person's nominated support person; and

(d) the views of a guardian of the person; and

(e) the views of a carer of the person, if the authorised psychiatrist or chief psychiatrist (as the case may be) is satisfied that the transfer will directly affect the carer and the care relationship; and

(f) the views of a parent of the person, if the person is under the age of 16 years; and

(g) the views of the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order.

(4) The Mental Health Tribunal must—

(a) make an interstate transfer order if the Tribunal is satisfied that—

(i) transferring or transporting the person to an interstate mental health facility is necessary for the person's treatment; and

(ii) the person does not have capacity to give informed consent or does not consent to being transferred; and

(iii) transferring the person to the interstate mental health facility is permitted by or under a corresponding law; and

(iv) the interstate authority for the interstate mental health facility agrees to admit the person; or

(b) refuse to make an interstate transfer order if the Tribunal is not satisfied as to the matters referred to in paragraph (a).

(5) A person who is transferred or transported to an interstate mental health facility under this section ceases to be subject to an inpatient temporary treatment order or an inpatient treatment order—

(a) on admission to the interstate mental health facility; or

(b) on becoming subject to a corresponding order under a corresponding law.

(6) A person may be transported to an interstate mental health facility under this section by—

(a) an authorised person; or

(b) a person who, under the corresponding law, is authorised to transport the person to the interstate mental health facility.

(7) The authorised psychiatrist or the chief psychiatrist must ensure that any documents relevant to the person who is transferred or transported to the interstate mental health facility under this section are forwarded to the interstate mental health facility.

603 Information to be given to transferring patient

S. 603 amended by No. 20/2023 s. 35.

As soon as practicable after a transfer order is made, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to inform the patient that the patient is subject to the transfer order and will be transferred to receive treatment for the patient's mental illness; and

(b) to explain the purpose and effect of the order to the patient; and

(c) to give a copy of the order and a statement of rights to the patient.

604 Other entities to be notified of making of transfer order

S. 604 amended by No. 20/2023 s. 36.

As soon as practicable after a transfer order is made, the authorised psychiatrist must ensure that all reasonable steps are taken—

(a) to notify the following persons of the transfer order—

(i) any nominated support person of the patient;

(ii) any guardian of the patient;

(iii) any carer of the patient, if the authorised psychiatrist is satisfied that the order will directly affect the care relationship between the carer and the patient;

(iv) a parent of the patient, if the patient is under 16 years of age;

(v) the DFFH Secretary, if that Secretary has parental responsibility for the patient under a relevant child protection order; and

(b) to give a copy of the transfer order and a statement of rights to the persons referred to in paragraph (a).

S. 605 repealed by No. 20/2023 s. 37.

* * * * *

606 Transfer of a person to Victoria

(1) A person who is compulsorily detained in an interstate mental health facility under a corresponding law or who is subject to a corresponding order, if approved by the authorised psychiatrist of a designated mental health service, may be—

(a) transported to this State in accordance with the corresponding law; and

(b) examined by the authorised psychiatrist at a designated mental health service or in the community as soon as practicable after the person enters this State to determine whether the person should be made subject to a temporary treatment order.

(2) A person referred to in subsection (1) may be taken to an authorised psychiatrist by—

(a) an authorised person; or

(b) a person who is authorised under the corresponding law to transport the person to an authorised psychiatrist.

(3) A person who is transported to this State under this section ceases to be subject to a corresponding order when the person is made subject to a temporary treatment order.

Part 13.4—Interstate application of Victorian orders

607 Interstate application of Victorian orders

A community temporary treatment order or a community treatment order—

(a) may be made in respect of a person who lives in a participating State or Territory; and

(b) may provide for the person living in a participating State or Territory to receive treatment either—

(i) in that State or Territory; or

(ii) both in that State or Territory and in Victoria; and

(c) may provide for the person to receive treatment in accordance with the community temporary treatment order or community treatment order from any person who is authorised under this Act to perform functions or exercise powers in relation to a community temporary treatment order or community treatment order.

Part 13.5—Persons absent without leave who are interstate

608 Persons absent without leave from interstate facilities

(1) A person who is absent without leave or other lawful authority from an interstate mental health facility in a participating State or Territory may be taken into care and control in this State if—

(a) the person may be taken into care and control under a corresponding law in the participating State or Territory; or

(b) a warrant that authorises the apprehension of the person is issued in respect of the person under the corresponding law in the participating State or Territory.

(2) The power to apprehend a person or take a person into care and control under subsection (1) may only be exercised by—

(a) an authorised person; or

(b) a person who is authorised under the corresponding law to apprehend the person or take the person into care and control.

(3) As soon as it is reasonably practicable to do so, a person who is apprehended or taken into care and control under subsection (1) must—

(a) be informed of why the person has been apprehended or taken into care and control; and

(b) be transported to an interstate mental health facility in the participating State or Territory.

Note

See Chapter 5 in relation to further obligations applying to being taken into care and control and transport under this Act.

(4) Pending the person's return to the participating State or Territory under subsection (3), the person may be transported to a designated mental health service for examination by an authorised psychiatrist to determine whether the person requires treatment before being returned.

(5) If an authorised psychiatrist determines under subsection (4) that the person requires treatment before being returned to the participating State or Territory, the person may be detained, assessed and treated in accordance with Chapter 4 in the designated mental health service until the person is returned.

(6) For the purposes of this section, a person is taken to be absent without lawful authority from an interstate mental health facility if the person did not return to the facility when required to do so under a corresponding law.

609 Persons absent without leave from designated mental health service

A person who is absent without leave from a designated mental health service and who is taken into care and control in a participating State or Territory may be transported back to the designated mental health service by—

(a) a person who is authorised under a corresponding law in that State or Territory to transport the person to an interstate mental health facility; or

(b) an authorised person.

Note

See Chapter 5 in relation to further obligations applying to being taken into care and control and transport under this Act.

Chapter 14—Victorian Institute of Forensic Mental Health

Part 14.1—Preliminary

610 Victorian Institute of Forensic Mental Health

(1) The Victorian Institute of Forensic Mental Health is established.

Note

See section 777.

(2) The Institute—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) The official seal of the Institute must be kept in custody as directed by the Institute and must only be used as authorised by the Institute.

(4) All courts must take judicial notice of the official seal of the Institute affixed to a document and, until the contrary is proved, presume that it was duly affixed.

611 Trading name

Despite anything to the contrary in the Business Names Registration Act 2011 of the Commonwealth or any other Act or law, the Institute may carry on business under the name "Forensicare".

612 Institute represents the Crown

In performing its functions and exercising its powers, the Institute represents the Crown.

613 Functions of the Institute

The Institute has the following functions—

(a) to provide, promote and assist in the provision of forensic mental health and wellbeing services and related services in Victoria;

(b) to provide clinical assessment services to courts, the Adult Parole Board and other relevant government agencies;

(c) to provide inpatient and community forensic mental health and wellbeing services and specialist assessment and treatment services;

(d) to provide community education in relation to the services provided by the Institute and forensic mental health and wellbeing generally;

(e) to provide, promote and assist in undergraduate and postgraduate education and training of professionals in the field of forensic mental health and wellbeing;

(f) to provide, promote and assist in the teaching of, and training in, clinical forensic mental health and wellbeing within medical, legal, general health and other education programs;

(g) to conduct research in the fields of forensic mental health and wellbeing, forensic health, forensic behavioural science and associated fields;

(h) to promote continuous improvement in the quality and safety of forensic mental health and wellbeing services and related services provided in Victoria;

(i) to promote innovations in the provision of forensic mental health and wellbeing services and related services in Victoria;

(j) to perform any other functions conferred on the Institute under this Act or any other Act.

614 Powers of the Institute

(1) The Institute has the power to do all things that are necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.

(2) Without limiting subsection (1), the Institute may—

(a) enter into arrangements for services provided by the Institute; and

(b) impose fees and charges for the provision of services; and

(c) seek and accept funds from any person for the purposes of performing its functions.

(3) In performing its functions and exercising its powers, the Institute must have regard to—

(a) the needs and views of—

(i) persons receiving mental health and wellbeing services and related services provided by the Institute; and

(ii) the communities served by the Institute; and

(iii) providers of mental health and wellbeing services and related services; and

(iv) any other relevant persons; and

(b) the need to ensure that the Institute uses its resources in an effective and efficient manner; and

(c) the need to ensure that the Institute continuously strives—

(i) to improve the quality and safety of the services it provides; and

(ii) to promote innovation.

(4) In performing its functions and exercising its powers, the Institute must comply with the duty of candour.

615 Consideration of mental health and wellbeing principles

In the performance of a function or duty or the exercise of a power under this Act, the Institute must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

Part 14.2—Institute Board

616 Institute Board

(1) The Institute has a board of directors.

(2) The Institute Board—

(a) is responsible for setting the strategic direction of the Institute; and

(b) is responsible for—

(i) establishing a governance framework for the Institute to perform its functions and exercise its powers; and

(ii) monitoring compliance with that governance framework; and

(c) may exercise the powers of the Institute.

617 Functions of Institute Board

The functions of the Institute Board are—

(a) to develop statements of priorities and strategic plans for the operation of the Institute and to monitor compliance with those statements and plans; and

(b) to develop financial and business plans, strategies and budgets to ensure the accountable and efficient performance of the functions of the Institute and the long-term financial viability of the Institute; and

(c) to monitor the performance of the Institute to ensure that—

(i) the Institute operates within its budget; and

(ii) the audit and accounting systems of the Institute accurately reflect the financial position and viability of the Institute; and

(iii) the Institute adheres to—

(A) its financial and business plans; and

(B) its strategic plans; and

(C) its statements of priorities; and

(iv) effective and accountable risk management systems are in place; and

(v) effective and accountable systems are in place to monitor and improve the quality, safety and effectiveness of mental health and wellbeing services provided by the Institute; and

(vi) any problems identified with the quality, safety or effectiveness of the mental health and wellbeing services provided by the Institute are addressed in a timely manner; and

(vii) the Institute continuously strives to improve the quality and safety of the mental health and wellbeing services it provides and to promote innovation; and

(viii) committees established or appointed by the Institute operate effectively; and

(d) during each financial year, to monitor the performance of the chief executive officer of the Institute (including at least one formal assessment in relation to that financial year), having regard to the objectives, priorities and key performance outcomes specified in the

Institute's statement of priorities under section 634; and

(e) to develop arrangements with other relevant agencies and service providers to enable effective and efficient service delivery and continuity of care; and

(f) to establish a finance committee, an audit committee and a quality and safety committee; and

(g) to provide appropriate training for its directors.

618 Constitution of Institute Board

The Institute Board consists of the following persons—

(a) a nominee of the Attorney-General;

(b) a nominee of the Minister administering the **Corrections Act 1986**;

(c) at least 4 other directors, but not more than 8, of whom—

S. 618(c) amended by No. 20/2023 s. 38.

(i) at least one is a person who identifies as experiencing, or as having experienced, mental illness or psychological distress; and

(ii) at least one is a person who identifies as caring for or supporting, or as having cared for or supported, a person with mental illness or psychological distress; and

(iii) at least one has knowledge of, or experience in, accountancy or financial management.

619 Appointment of directors

(1) The directors must be appointed by the Governor in Council on the recommendation of the Minister.

(2) The Governor in Council, on the recommendation of the Minister, must appoint one of the directors to be the chairperson of the Institute Board.

(3) In making a recommendation to the Governor in Council, the Minister must have regard to any prescribed matters.

620 Terms and conditions of appointment of directors

(1) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director in respect of the office of director.

(2) A director—

(a) holds office for the term (not exceeding 3 years) that is specified in the instrument of appointment; and

(b) subject to subsection (3), is eligible for reappointment.

(3) A director must not serve on the Institute Board for more than 3 terms.

(4) A director is entitled to be paid any remuneration and allowances as fixed by the Governor in Council.

621 Resignation and removal from office

(1) A director may resign from office by written notice given to the Governor in Council.

(2) The Governor in Council, on the recommendation of the Minister, may remove a director from office.

(3) The Minister must recommend the removal of a person from the office of director if the Minister is satisfied that the person—

(a) is unable to fulfil the role of director; or

(b) has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the person unsuitable to be a director; or

(c) has been absent, without approval of the Institute Board, from all meetings of the Institute Board held during a period of 6 months; or

(d) is an insolvent under administration.

622 Protection from liability

(1) A director is not personally liable for any thing done or omitted to be done in good faith—

(a) in the performance of a function or the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that the act or omission was in the performance of a function or the exercise of a power or the discharge of a duty under this Act.

(2) Any liability resulting from an act or omission that would but for subsection (1) attach to a director attaches instead to the Institute.

623 Validity of acts or decisions

An act or a decision of the Institute Board is not invalid only because of—

(a) a vacancy in the membership of the Institute Board, including a vacancy arising from the failure to appoint a director; or

(b) a defect or irregularity in, or in connection with, the appointment of a director.

624 Procedure of Institute Board

Subject to this Act, the Institute Board may regulate its own procedure.

625 Guidelines of Minister

The Minister may publish in the Government Gazette guidelines relating to the role and procedure of the Institute Board and how the Institute Board may carry out its functions.

626 Appointment of delegate to Institute Board

(1) The Minister may appoint not more than 2 delegates to the Institute Board if the Minister considers that the appointment will assist the Institute Board to improve the performance of the Institute.

(2) A delegate is not a director of the Institute Board.

(3) In determining if an appointment of a delegate under subsection (1) will assist the Institute Board to improve the performance of the Institute, the Minister must have regard to—

(a) the financial performance of the Institute; and

(b) the quality and safety of the mental health and wellbeing services provided by the Institute, including compliance with the duty of candour; and

(c) whether the Institute Board has requested the appointment.

(4) The Minister may appoint a delegate irrespective of whether the Institute Board has requested the appointment.

(5) The instrument of appointment of a delegate—

(a) must be published in the Government Gazette; and

(b) must specify the terms and conditions of appointment; and

(c) may specify any remuneration to which the delegate is entitled.

(6) A delegate—

(a) subject to subsections (8) and (9), holds office for the period specified in the instrument of appointment, being a period of not more than 12 months from the date of appointment; and

(b) is eligible for reappointment; and

(c) is entitled to be reimbursed reasonable expenses incurred in holding office as delegate.

(7) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a delegate in respect of the office of delegate.

(8) A delegate may resign by written notice given to the Minister.

(9) The Minister may revoke the appointment of a delegate.

627 Functions of delegate

The functions of a delegate appointed to the Institute Board are—

(a) to attend meetings of the Institute Board and observe its decision making processes; and

(b) to provide advice or information to the Institute Board to assist the Institute Board in understanding its obligations under this Act; and

(c) to advise the Minister and the Health Secretary on any matter relating to the Institute or the Institute Board.

628 Obligations of Institute Board to delegate

The Institute Board must—

(a) permit a delegate appointed to the Institute Board to attend any meeting of the Institute Board or any meeting of its committees; and

(b) provide a delegate appointed to the Institute Board with information or a copy of any notice or other document provided to the directors or to the members of any of the committees of the Institute Board at the same time as the information, notice or other document is provided to the directors or members.

Part 14.3—General

629 Chief executive officer

(1) Subject to the Health Secretary's approval, the Institute Board must—

(a) appoint a chief executive officer of the Institute; and

(b) determine the remuneration for the chief executive officer and the terms and conditions of the appointment.

(2) The functions of the chief executive officer are—

(a) to prepare material for consideration by the Institute Board, including strategic plans and statements of priorities; and

(b) to ensure that the Institute uses its resources effectively and efficiently; and

(c) to implement service development and planning; and

(d) to implement effective and accountable systems to monitor and improve the services provided by the Institute; and

(e) to ensure that any problem in relation to the quality, safety or effectiveness of services provided by the Institute is addressed in a timely manner; and

(f) to ensure that the Institute continuously strives—

(i) to improve the quality and safety of the services it provides; and

(ii) to promote innovation; and

(g) to manage the Institute in accordance with—

(i) the financial and business plans, strategies and budgets developed by the Institute Board; and

(ii) the instructions of the Institute Board; and

(h) to ensure that the Institute Board and the committees established or appointed by the Institute Board are assisted and provided with relevant information to enable them to perform their functions effectively and efficiently; and

(i) to ensure that the decisions of the Institute Board are implemented effectively and efficiently throughout the Institute; and

(j) to inform the Institute Board in a timely manner of any issues of public concern or risks that affect or may affect the Institute; and

(k) to inform the Institute Board, the Health Secretary and the Minister without delay of any significant issues of public concern or significant risks affecting the Institute; and

(l) any other functions specified by the Institute Board.

(3) The chief executive officer has the power to do all things that are necessary or convenient to be done to perform the chief executive officer's functions.

(4) The chief executive officer is subject to the direction of the Institute Board in controlling and managing the Institute.

630 Other employees

The Institute may employ any other staff necessary for the performance of its functions on the terms and conditions that are determined by the Institute.

631 Minister may issue directions to Institute

(1) The Minister may issue a written direction to the Institute on any matter in relation to the Institute that the Minister is satisfied is necessary.

(2) As soon as practicable after giving a direction to the Institute, the Minister must cause the direction to be published in the Government Gazette.

(3) The Institute must comply with a direction given under this section.

(4) Despite subsection (3), an act or a decision of the Institute or the Institute Board is not invalid only because of a failure to comply with a direction.

632 Health Secretary may issue directions to Institute

(1) The Health Secretary may issue written directions to the Institute in relation to the following matters for the purpose of carrying out the Health Secretary's functions under this Act—

(a) the requirements for a specified person, or a specified class of person, employed or engaged by the Institute to be vaccinated against or prove immunity to specified diseases, including the consequences of non-compliance for that person as an employee or person engaged by the Institute;

(b) the facilities, services, equipment or supplies which the Institute should use or should refrain from using;

(c) the extent to which and the conditions on which the Institute should make use of facilities, services, equipment or supplies provided by another entity, or should allow another entity to make use of its facilities, services, equipment or supplies;

(d) the extent to which and the conditions on which the Institute is required to obtain or purchase facilities, services, equipment or supplies provided by another entity;

(e) the carrying out of audits for case mix funding purposes;

(f) action to be taken or avoided to enable the State to comply with the terms of any agreement made between it and the Commonwealth or any other State.

(2) A direction issued under subsection (1)(a) and compliance by the Institute or a person with that direction, does not constitute discrimination on the basis of political belief or activity or religious belief or activity for the purposes of the **Equal Opportunity Act 2010**.

(3) The Health Secretary must ensure that a direction issued under subsection (1)(d) to the Institute is not inconsistent with an HPV direction or a purchasing policy that applies to the Institute.

(4) The Health Secretary must give a copy of a direction issued under this section to the Institute.

(5) The Institute Board must comply with a direction issued by the Health Secretary under this section.

(6) A direction issued by the Health Secretary under this section has effect despite anything to the contrary contained in any interim funding statement in relation to the Institute.

(7) To avoid doubt, nothing under this section limits the power of the Minister to make a direction under section 631.

633 Strategic plan

(1) At the direction of the Minister, the Institute Board must prepare and submit to the Minister a strategic plan for the operation of the Institute.

(2) A strategic plan must be prepared at the frequency determined by the Minister and in accordance with guidelines determined by the Minister.

(3) The Minister must—

(a) approve the strategic plan as submitted or subject to amendments; or

(b) refuse to approve the strategic plan.

(4) The Institute Board must advise the Minister if the Institute Board intends to exercise its functions in a manner that is inconsistent with the most recently approved strategic plan.

634 Statement of priorities

(1) In consultation with the Health Secretary, the Institute Board must prepare a proposed statement of priorities for the Institute for each financial year in accordance with subsection (4).

(2) The Institute Board must give a copy of the proposed statement of priorities to the Minister for approval on or before 1 October in each year.

(3) If the Institute Board and the Minister do not agree on a statement of priorities on or before 1 October, the Minister may make a statement of priorities for the relevant financial year in accordance with subsection (4).

(4) A proposed statement of priorities must specify—

(a) the services to be provided by the Institute and the funds to be provided to the Institute; and

(b) the objectives, priorities and key performance outcomes to be met by the Institute; and

(c) the performance indicators, targets or other measures against which the Institute's performance is to be assessed and monitored; and

(d) how and when the Institute must report to the Minister and the Health Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(e) any other matters as are—

(i) agreed by the Minister and the Institute Board; or

(ii) determined by the Minister.

(5) A statement of priorities may be varied at any time if the Institute Board and the Minister agree.

(6) If the Institute Board and the Minister fail to agree to a proposed variation of a statement of priorities within 28 days after the variation is proposed, the Minister may—

(a) vary the statement of priorities; or

(b) refuse to vary the statement of priorities.

(7) The Minister may publish the statement of priorities on the Department's Internet site.

635 Institute Board to give notice of significant events

The Institute Board must notify the Minister and the Health Secretary about any issue of public concern or risk that may affect the Institute as soon as practicable after the Institute Board becomes aware of that issue.

Part 14.4—Duty of candour

636 Definitions

In this Part—

apology means an expression of compassion, regret or sympathy in connection with any matter, whether or not the apology admits or implies an admission of fault in connection with the matter;

civil proceeding includes—

(a) a proceeding before a tribunal; and

(b) a proceeding under an Act regulating the practice or conduct of a profession or occupation; and

(c) a proceeding of a Royal Commission, whether established under the **Inquiries Act 2014** or under the prerogative of the Crown; and

(d) a proceeding of a Board of Inquiry or Formal Review established under the **Inquiries Act 2014**;

serious adverse patient safety event has the same meaning as in the **Health Services Act 1988**;

Victorian Duty of Candour Guidelines means the guidelines made under section 128ZF of the **Health Services Act 1988**.

637 Duty of candour

(1) If a patient suffers a serious adverse patient safety event in the course of receiving mental health and wellbeing services from the Institute, the Institute owes a duty of candour to the patient and must do the following unless the patient has opted out in accordance with subsection (2)—

(a) provide the patient with—

(i) a written account of the facts regarding the serious adverse patient safety event; and

(ii) an apology for the harm suffered by the patient; and

(iii) a description of the Institute's response to the event; and

(iv) the steps that the Institute has taken to prevent re-occurrence of the event; and

(v) any prescribed information; and

(b) comply with any steps set out in the Victorian Duty of Candour Guidelines.

(2) A patient referred to in subsection (1) may choose not to receive information in accordance with this Part by providing the Institute with a signed statement.

(3) A patient who has signed a statement in accordance with subsection (2) may later elect to receive information under subsection (1).

638 Apology not admission of liability

(1) In a civil proceeding where the death or injury of a person is in issue or is relevant to an issue of fact or law, an apology—

(a) does not constitute an express or implied admission of liability for the death or injury; and

(b) is not relevant to the determination of fault or liability in connection with that proceeding.

(2) Subsection (1) applies whether the apology—

(a) is made orally or in writing; or

(b) is made before or after the civil proceeding was in contemplation or commenced.

(3) Evidence of an apology made by or on behalf of a person or the Institute in connection with any matter alleged to have been caused by the person or the Institute is not admissible in any civil or disciplinary proceeding as evidence of the fault or liability of the person or the Institute in connection with that matter.

(4) Nothing in this section affects the admissibility of a statement with respect to a fact in issue or tending to establish a fact in issue.

639 Non-compliance with duty of candour

The Minister or the Health Secretary may take into account the failure of the Institute to comply with the duty of candour when assessing the following matters under this Act—

(a) whether the Institute provides safe, patient-centred and appropriate mental health and wellbeing services;

(b) the quality and safety of mental health and wellbeing services provided by the Institute.

Chapter 15—Victorian Collaborative Centre for Mental Health and Wellbeing

Part 15.1—Victorian Collaborative Centre for Mental Health and Wellbeing

Division 1—Establishment, functions and powers

640 Establishment

(1) The Victorian Collaborative Centre for Mental Health and Wellbeing is established.

(2) The Centre—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

641 Official seal

(1) The official seal of the Centre must—

(a) be kept in custody as directed by the Centre; and

(b) not be used except as authorised by the Centre.

(2) All courts must take judicial notice of the official seal of the Centre affixed to a document and, until the contrary is proved, presume that it was duly affixed.

642 Centre represents the Crown

In performing its functions and exercising its powers, the Centre represents the Crown.

643 Functions of the Centre

The Centre has the following functions—

(a) to provide, promote and coordinate the provision of mental health and wellbeing services;

(b) to assist service providers to facilitate and improve access to mental health and wellbeing services;

(c) to provide or arrange the provision of specialist support services and care for persons who have experienced trauma;

(d) to develop strategies for conducting research, and applying and disseminating research findings, in the field of mental health and wellbeing having regard to any priorities for research determined by the Centre Board in accordance with section 648(f);

(e) to conduct, promote and coordinate research in the field of mental health and wellbeing, including in collaboration with other persons and entities;

(f) to provide, promote and coordinate activities that support the continuing education and professional development of service providers and persons who work or conduct research in the field of mental health and wellbeing;

(g) to provide advice and guidance to service providers and practitioners in relation to the provision of mental health and wellbeing services;

(h) to report to the Minister and the Health Secretary on matters relevant to its functions;

(i) to perform any other function conferred on the Centre by or under this Act or any other Act.

644 Powers of the Centre

The Centre has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

645 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, the Centre must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

646 Centre to enter into agreements with designated mental health service and academic institution

(1) Subject to the Minister's approval, the Centre must enter into an agreement with a designated mental health service to assist the Centre in performing its functions.

S. 646(1) amended by No. 20/2023 s. 39.

(2) Subject to the Minister's approval, the Centre must enter into an agreement with an academic institution that conducts research in the field of mental health and wellbeing to assist the Centre in performing its functions.

Division 2—Centre Board

647 Centre Board

(1) The Centre must have a governing body called the Board.

(2) The Board—

(a) is responsible for the management of the Centre; and

(b) may exercise the powers of the Centre.

(3) The Board consists of—

(a) a chairperson; and

(b) a deputy chairperson; and

(c) not fewer than 7, and not more than 10, other members.

(4) The members of the Board must be appointed by the Governor in Council on the recommendation of the Minister.

(5) In making a recommendation to the Governor in Council, the Minister must have regard to the need for members of the Board—

(a) to have experience, skills or knowledge that are relevant to the functions of the Board; and

(b) to collectively have understanding and experience of—

(i) the diverse needs of Aboriginal communities, the importance of self-determination, the importance of connection to culture, family, community and Country and the importance of culturally responsive, safe and appropriate services; and

(ii) the diverse backgrounds and needs of persons using mental health and wellbeing services in Victoria, including age, disability, neurodiversity, culture, language, communication, religion, race, sex, gender identity and sexual orientation.

(6) In making a recommendation to the Governor in Council, the Minister must be satisfied that—

(a) at least 2 members of the Board are persons who identify as experiencing, or as having experienced, mental illness or psychological distress; and

(b) at least 2 members of the Board are persons who identify as caring for or supporting, or as having cared for or supported, a person with mental illness or psychological distress.

(7) In making a recommendation to the Governor in Council, the Minister must be satisfied that at least one member of the Board is a representative of the designated mental health service with which the Centre has entered into an agreement under section 646(1).

(8) In making a recommendation to the Governor in Council, the Minister must be satisfied that at least one member of the Board is a representative of the academic institution with which the Centre has entered into an agreement under section 646(2).

(9) A person is not eligible to be appointed to the Board if the person is a member of the Parliament of Victoria, of another State or a Territory or of the Commonwealth.

648 Functions of the Centre Board

The functions of the Centre Board are—

(a) to determine the strategic direction and priorities of the Centre; and

(b) to establish a governance framework for the Centre and to monitor the Centre's compliance with that governance framework; and

(c) to prepare strategic plans and statements of priorities for the Centre; and

(d) to advise the Minister and the Health Secretary of any significant decisions of the Centre Board and any issues of public concern or risk that affect or may affect the Centre; and

(e) to monitor the performance of the Centre and the Directors; and

(f) to determine, in consultation with the Health Secretary, priorities for research in the field of mental health and wellbeing; and

(g) to establish committees to assist or advise the Centre Board in performing any of its functions; and

(h) to determine standards and indicators to assess each Director's performance of their duties.

649 Remuneration

(1) A member of the Centre Board (including a member who is a public sector employee) is entitled to be paid any remuneration, and any travelling and other allowances, that are fixed by the Governor in Council.

(2) For the purposes of subsection (1), the Governor in Council may fix different remuneration for different classes of member.

650 Terms of office

(1) A member of the Centre Board—

(a) holds office for the period (not exceeding 3 years) that is specified in the instrument of appointment; and

(b) subject to subsection (2), is eligible for reappointment.

(2) A member of the Centre Board may not hold office for more than 9 consecutive years unless the Minister is satisfied that exceptional circumstances exist which justify the member holding office for a longer period.

651 Resignation

A member of the Centre Board may resign from office by written notice given to the Governor in Council.

652 Removal from office

The Governor in Council, on the recommendation of the Minister, may remove a member of the Centre Board from office if the member—

(a) becomes unable, for any reason, to perform the duties of the office; or

(b) engages in improper conduct; or

(c) is found guilty of an offence, the commission of which makes them, in the Minister's opinion, unsuitable to be a member of the Centre Board; or

(d) becomes an insolvent under administration; or

(e) fails to attend meetings of the Centre Board without the approval of the Centre Board for a period of 6 months.

653 Chairperson

(1) The Governor in Council, on the recommendation of the Minister, must appoint a member of the Centre Board to be the chairperson.

(2) The chairperson—

(a) holds office for the period (not exceeding 3 years) that is specified in the instrument of appointment; and

(b) is eligible for reappointment but may not hold office for more than 9 consecutive years unless the Minister is satisfied that exceptional circumstances exist which justify the member holding office for a longer period.

(3) The chairperson may resign from the office of chairperson by written notice given to the Governor in Council.

654 Acting chairperson

(1) If the office of chairperson is vacant, the Centre Board must appoint one of the members as acting chairperson.

(2) An acting chairperson—

(a) holds office for the period (not exceeding 6 months) that is determined by the Centre Board; and

(b) may not be appointed for a further period unless the Minister approves the appointment.

(3) An acting chairperson has and may exercise all the powers, and has and must perform all the functions, of the chairperson.

655 Meetings of the Centre Board

(1) The chairperson—

(a) may at any time convene a meeting of the Centre Board; and

(b) must convene a meeting of the Centre Board when requested by a member of the Centre Board to do so.

(2) Subject to this Chapter, the Centre Board may regulate its own procedure.

(3) The chairperson or, in the chairperson's absence, the acting chairperson or, in the absence of both the chairperson and the acting chairperson, a member elected by the members at the meeting, must preside at a meeting of the Centre Board.

(4) The quorum for a meeting of the Centre Board—

(a) is a majority of the members of the Board for the time being; and

(b) must include at least 2 members referred to in section 647(6).

(5) A question arising at a meeting of the Centre Board is determined by a majority of votes of the members present and voting on the question.

(6) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes on any question, a second or casting vote.

(7) The Centre Board may permit members to participate in a particular meeting by—

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of electronic or instantaneous communication.

(8) A member of the Centre Board who participates in a meeting under subsection (7) is taken to be present at the meeting.

656 Establishment of committees

(1) The Centre Board may establish one or more committees—

(a) to assist the Centre Board in performing any of its functions; or

(b) to provide expert advice on any matter relating to the Centre Board's functions.

(2) The members of a committee are to be appointed by the Centre Board.

(3) Each member of a committee is—

(a) to have expertise in the matters to be considered by the committee; or

(b) to identify as experiencing, or having experienced, mental illness or psychological distress; or

(c) to identify as caring for or supporting, or having cared for or supported, a person with mental illness or psychological distress.

(4) The Centre Board may decide the matters to be considered by a committee.

657 Guidelines

(1) The Centre Board may issue guidelines for or with respect to the performance of the Directors' functions including the sharing of responsibilities.

(2) In issuing guidelines, the Centre Board may have regard to each Director's experience and professional skills.

(3) The Centre Board may vary or revoke any guidelines issued under this section.

(4) The Directors must comply with any guidelines issued under this section.

658 Delegation

The Centre Board, by instrument, may delegate to any of the following persons any function or power of the Centre Board—

(a) a member of the Centre Board;

(b) a Director;

(c) both Directors (either jointly or jointly and severally);

(d) a person referred to in section 663.

Division 3—Directors and staff

659 Directors

(1) The chairperson, in consultation with the Centre Board, and with the approval of the Minister, may employ under Part 3 of the **Public Administration Act 2004** 2 Directors of the Centre of whom—

(a) one is a person who—

(i) has worked, or is working, in academia in the field of mental health; and

(ii) has worked, or is working, in clinical practice in the field of mental health; and

S. 659(1)(a)(ii) amended by No. 20/2023 s. 40(1).

(b) one is a person who—

(i) identifies as experiencing, or as having experienced, mental illness or psychological distress; and

(ii) has demonstrated the ability to apply their experience with mental illness or psychological distress to improve systems that deliver health or human services or to develop policy.

Note

The chairperson has the functions of public service body Head under the **Public Administration Act 2004** in relation to the Centre.

(2) A person who is employed as a Director must not be a member of the Centre Board.

(3) A Director is to be employed as an executive within the meaning of the **Public Administration Act 2004**.

S. 659(4) repealed by No. 20/2023 s. 40(2).

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660 Acting Director

(1) If either office of Director is vacant, the Centre Board—

(a) in the case of a vacancy of less than 3 months—may appoint an acting Director; or

(b) in the case of a vacancy of 3 months or more—must appoint an acting Director.

(2) An acting Director holds office—

(a) if the vacancy is less than 3 months, for a period that is determined by the Centre Board; or

(b) if the vacancy is 3 months or more, for a period that is determined by the Centre Board and approved by the Minister.

(3) An acting Director has and must perform all the functions, and has and may exercise all the powers, of a Director.

661 Functions and powers of the Directors

(1) The functions of the Directors are—

(a) to manage the day-to-day operation of the Centre; and

(b) to ensure that the Centre uses its resources effectively and efficiently; and

(c) to establish and maintain the organisational structure of the Centre; and

(d) to ensure that the Centre Board's decisions are implemented; and

(e) to implement the Centre Board's plans for the development of services; and

(f) to assist the Centre Board in the performance of its functions including by providing a secretariat; and

(g) to prepare material for consideration by the Centre Board including reports, statements of priorities and strategic plans; and

(h) to inform the Centre Board of any issues of public concern or risk that affect or may affect the Centre; and

(i) to perform any function delegated by the Centre Board.

(2) A Director has the power to do all things that are necessary or convenient to be done to perform their functions.

662 Delegation

The Directors, by instrument, may jointly delegate to a person referred to in section 663 any function or power of the Directors.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

663 Staff

(1) In addition to the employment of 2 Directors under section 659, there may be employed under Part 3 of the **Public Administration Act 2004** any other staff necessary for the performance the Centre's functions.

(2) The Centre may enter into agreements or arrangements for the use of any staff of a Department, statutory authority or other public sector body.

(3) The Centre may engage a person with suitable qualifications or experience to assist the Centre in the performance of its functions or the exercise of its powers under this Act or any other Act.

Division 4—Directions, guidelines, statements of priorities and strategic plans

664 Minister may issue directions

(1) The Minister may issue a written direction to the Centre about the performance of the Centre's functions.

(2) The Centre must comply with a direction issued under this section.

665 Minister may issue guidelines

(1) The Minister may issue guidelines about the performance of the Centre's, or the Centre Board's, functions.

(2) The Minister must ensure that the guidelines are published in the Government Gazette.

(3) The Minister may amend or revoke any guidelines issued under this section by notice published in the Government Gazette.

(4) The Centre or the Centre Board (as the case requires) must comply with any guidelines issued under this section.

666 Statement of priorities

(1) The Centre Board, in consultation with the Health Secretary, must prepare a statement of priorities for the Centre for each financial year.

(2) The Centre Board must give a copy of the statement of priorities to the Minister for approval on or before 1 October in each year.

(3) If the Centre Board and the Minister do not agree on a statement of priorities on or before 1 October, the Minister may make a statement of priorities for the financial year.

(4) A statement of priorities must specify—

(a) the services to be provided by the Centre and the funds to be provided to the Centre; and

(b) the objectives, priorities and key performance outcomes to be met by the Centre; and

(c) the performance indicators, targets or other measures against which the Centre's performance is to be assessed and monitored; and

(d) how and when the Centre must report to the Minister and the Health Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(e) such other matters as are—

(i) agreed by the Minister and the Centre Board; or

(ii) determined by the Minister.

(5) A statement of priorities may be amended at any time if the Centre Board and the Minister agree.

(6) If the Centre Board and the Minister fail to agree to a proposed amendment of a statement of priorities within 28 days after the amendment is proposed, the Minister may—

(a) amend the statement of priorities; or

(b) refuse to the amend the statement of priorities.

(7) The Minister may publish the statement of priorities on the Department's website.

667 Strategic plan

(1) The Centre Board must—

(a) prepare a strategic plan for the Centre every 3 years; and

(b) submit the strategic plan to the Minister for approval on or before the date determined by the Minister.

(2) A strategic plan must include—

(a) a statement of intent, being information about the objectives, activities and performance measures of the Centre for the next 3-year period; and

(b) any other information that the Minister directs.

(3) The Minister may—

S. 667(3) amended by No. 20/2023 s. 41.

(a) approve the strategic plan—

(i) as submitted; or

(ii) subject to any amendment specified by the Minister; or

(b) refuse to approve the strategic plan and direct the Centre Board to amend it—

(i) as specified by the Minister; and

(ii) within the time specified by the Minister.

(4) The Minister may revoke a direction under subsection (3)(b) if, following advice from the Centre Board, the Minister is satisfied that the direction would result in a strategic plan that is unreasonable or not possible to implement.

(5) A strategic plan may be amended at any time with the Minister's agreement.

(6) The Centre Board must publish a strategic plan that has been approved by the Minister on the Centre's website.

Division 5—Reports

668 Annual report

(1) As soon as practicable after the end of each financial year, the Centre Board must submit a report to the Minister that includes—

(a) a review of its activities during the financial year; and

(b) a review of its implementation of its strategic plan; and

(c) a summary of actions it has taken that demonstrate that reasonable efforts have been made to comply with the mental health and wellbeing principles; and

(d) any other information specified in writing by the Minister.

(2) The Minister must cause a report under subsection (1) to be laid before each House of the Parliament within 14 sitting days of that House after it is received by the Minister.

669 Reports to the Minister and the Health Secretary

(1) The Centre Board must report to the Minister and the Health Secretary—

(a) any significant decisions of the Centre Board; and

(b) any issues of public concern or risk that affect, or may affect, the Centre.

(2) The Centre Board must include in a report under subsection (1) any advice that the Minister or the Health Secretary may require on the matters contained in it.

670 Reports to the Minister

(1) The Minister, by written notice, may request the Centre Board to report to the Minister on—

(a) its activities; and

(b) compliance with its duties and obligations; and

(c) implementation of its strategic plan; and

(d) any other matter specified by the Minister.

(2) The Centre Board must comply with a request under subsection (1) within the time specified in the notice.

Division 6—Information collection

671 Centre may collect information

(1) To the extent necessary to conduct research in the field of mental health and wellbeing, the Centre may collect any of the following information about an individual from a body specified in subsection (2)—

(a) health information;

(b) personal information;

(c) identifiers;

(d) unique identifiers.

(2) For the purposes of subsection (1), the following bodies are specified—

(a) a mental health and wellbeing service provider;

(b) a public service body;

(c) a public entity within the meaning of the **Public Administration Act 2004**;

(d) Victoria Police;

(e) a body prescribed for the purposes of paragraph (d) of the definition of ***data sharing body*** in section 3(1) of the **Victorian Data Sharing Act 2017**;

(f) a court or tribunal.

(3) This section does not affect the operation of—

(a) the **Health Records Act 2001**; or

(b) the **Privacy and Data Protection Act 2014**; or

(c) the **Victorian Data Sharing Act 2017**.

Part 15.2—Review of operation

672 Review of operation of Centre's governance model

(1) The Minister must cause a review to be conducted of the first 5 years of operation of—

(a) Division 2 of Part 15.1; and

(b) Division 3 of Part 15.1 (other than section 663); and

(c) Division 4 of Part 15.1 (other than section 667).

(2) The person who undertakes the review must give the Minister a written report of the review.

(3) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 12 months after the fifth anniversary of the commencement of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**.

Chapter 16—Youth Mental Health and Wellbeing Victoria

Part 16.1—Youth Mental Health and Wellbeing Victoria

Division 1—Establishment, functions and powers

673 Establishment

(1) Youth Mental Health and Wellbeing Victoria is established.

(2) Youth Mental Health and Wellbeing Victoria—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

674 Official seal

(1) The official seal of Youth Mental Health and Wellbeing Victoria must—

(a) be kept in custody as directed by the Youth Mental Health and Wellbeing Board; and

(b) only be used as authorised by the Youth Mental Health and Wellbeing Board.

(2) All courts must take judicial notice of the seal of Youth Mental Health and Wellbeing Victoria affixed to a document and, until the contrary is proved, presume that it was duly affixed.

675 Youth Mental Health and Wellbeing Victoria represents the Crown

In performing its functions and exercising its powers, Youth Mental Health and Wellbeing Victoria represents the Crown.

676 Functions of Youth Mental Health and Wellbeing Victoria

Youth Mental Health and Wellbeing Victoria has the following functions—

(a) to provide strategic advice and recommendations to the Minister, Chief Officer, the Health Secretary, the Centre and the regional mental health and wellbeing boards on—

(i) youth mental health and wellbeing issues; and

(ii) the provision of youth mental health and wellbeing services;

(b) to consult and collaborate on youth mental health and wellbeing issues and the provision of youth mental health and wellbeing services with—

(i) the regional mental health and wellbeing boards; and

(ii) mental health and wellbeing service providers; and

(iii) young persons with lived experience of mental illness or psychological distress; and

(iv) the families, carers and supporters of young persons with lived experience of mental illness or psychological distress; and

(v) young persons who are family, carers and supporters of persons who are experiencing mental illness or psychological distress;

(c) through collaboration with the youth mental health and wellbeing sector, workforce development organisations and academic research institutes and entities, to—

(i) advise on, promote and support the coordination of workforce capability and growth activities in the field of youth mental health and wellbeing; and

(ii) promote, commission, analyse, and coordinate research in the field of mental health and wellbeing; and

(iii) develop and implement or contribute to the development or implementation of research strategies to translate research into practice in the field of youth mental health and wellbeing;

(d) to enter into service agreements for the provision of youth mental health and wellbeing services and other services to young people and for the provision of other services related to its functions;

(e) to oversee the services provided under a service agreement referred to in paragraph (d).

677 Powers of Youth Mental Health and Wellbeing Victoria

(1) Youth Mental Health and Wellbeing Victoria has the power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions.

(2) Without limiting subsection (1), Youth Mental Health and Wellbeing Victoria may—

(a) enter into agreements or arrangements for the provision of youth mental health and wellbeing services and other services related to its functions; and

(b) impose fees and charges for the provision of services; and

(c) seek and accept funds from any person for the purpose of performing its functions.

(3) In performing its functions and exercising its powers, Youth Mental Health and Wellbeing Victoria must have regard to—

(a) the needs and views of the following—

(i) persons with lived experience of mental illness or psychological distress, including—

(A) young persons; and

(B) families, carers and supporters of young persons who are experiencing or have experienced mental illness or psychological distress; and

(C) young persons who are carers or supporters of adults or other young persons who are experiencing mental illness or psychological distress;

(ii) the diverse communities served by Youth Mental Health and Wellbeing Victoria;

(iii) providers of youth mental health and wellbeing services and the broader service system for young persons;

(iv) the youth mental health and wellbeing workforce; and

(b) the need to ensure that Youth Mental Health and Wellbeing Victoria uses its resources in an effective and efficient manner; and

(c) the need to ensure that resources of the Victorian public health sector generally are used effectively and efficiently; and

(d) the need to ensure that it continuously strives—

(i) to improve the quality and safety of the services provided under service agreements with mental health and wellbeing service providers; and

(ii) to promote innovation.

678 Consideration of mental health and wellbeing principles

In the performance of a function or duty, or the exercise of a power under this Act, Youth Mental Health and Wellbeing Victoria must—

(a) give proper consideration to the mental health and wellbeing principles; and

(b) ensure that decision making processes are transparent, systematic and appropriate; and

(c) consider ways to promote good mental health and wellbeing.

Division 2—The Youth Mental Health and Wellbeing Board

679 Youth Mental Health and Wellbeing Board

(1) Youth Mental Health and Wellbeing Victoria has a board of directors.

(2) The Youth Mental Health and Wellbeing Board—

(a) is responsible for the management of Youth Mental Health and Wellbeing Victoria; and

(b) is responsible for setting the strategic direction of Youth Mental Health and Wellbeing Victoria; and

(c) is responsible for establishing a governance framework for Youth Mental Health and Wellbeing Victoria to perform its functions and exercise its powers, and for monitoring compliance with the governance framework; and

(d) may exercise the powers of Youth Mental Health and Wellbeing Victoria including the power to enter into agreements to provide youth mental health and wellbeing services and other services, and to oversee the provision of those services.

680 Constitution and appointment of Youth Mental Health and Wellbeing Board

(1) The Youth Mental Health and Wellbeing Board is constituted by 7 to 9 directors.

(2) The directors of the Youth Mental Health and Wellbeing Board must—

(a) be appointed by the Governor in Council on the recommendation of the Minister; and

(b) include—

(i) at least 2 young persons who identify as experiencing, or as having experienced mental illness or psychological distress and who have an understanding of the diverse experiences and needs of people living with mental illness or psychological distress; and

(ii) one young person who identifies as caring for or supporting, or having cared for or supported, a person with mental illness or psychological distress and who has an understanding of the diverse needs of families, carers and supporters of people living with mental illness or psychological distress—

which may inform their decisions as a Youth Mental Health and Wellbeing Board member; and

(c) one member of the Centre Board.

Note

See definition of ***Centre Board*** in section 3(1).

(3) In making a recommendation to the Governor in Council for the appointment of a member to the Youth Mental Health and Wellbeing Board—

(a) the Minister must ensure that, for the purposes of subsection (2)(b)(ii), at least one member has the relevant lived experience but other persons are not excluded from appointment only because they identify as caring for or supporting, or having cared for or supported, a person with mental illness or psychological distress; and

(b) the Minister must have regard to the need for members of the Youth Mental Health and Wellbeing Board—

(i) to have experience, skills or knowledge that are relevant to the functions of the Youth Mental Health and Wellbeing Board; and

(ii) to collectively have understanding and experience of—

(A) the diverse needs of Aboriginal communities, the importance of self-determination, the importance of connection to culture, family, community and Country and the importance of culturally responsive, safe and appropriate services; and

(B) the diverse backgrounds and needs of persons using mental health and wellbeing services in Victoria, including age, disability, neurodiversity, culture, language, communication, religion, race, gender identity and sexual orientation; and

(c) the Minister must have regard to any other prescribed matters.

681 Functions of the Youth Mental Health and Wellbeing Board

The functions of the Youth Mental Health and Wellbeing Board are—

(a) to provide strategic advice and recommendations to the Minister, the Chief Officer, the Centre, the regional mental health and wellbeing boards and the Health Secretary on youth mental health and

wellbeing issues and the provision of youth mental health and wellbeing services through—

(i) consultation with people with lived experience, including young people and families, carers and supporters; and

(ii) consultation and collaboration with regional mental health and wellbeing boards and mental health and wellbeing service providers on youth mental health and wellbeing issues and services; and

(iii) commissioning, conducting and advising on interdisciplinary research to guide new treatments and services; and

* * * * *

S. 681(a)(iv) repealed by No. 20/2023 s. 42(1).

(ab) to advise on education of the youth mental health and wellbeing workforce through practice improvement, training and professional development programs; and

S. 681(ab) inserted by No. 20/2023 s. 42(2).

(b) to develop statements of priorities and strategic plans for the operation of Youth Mental Health and Wellbeing Victoria and to monitor compliance with those statements and plans; and

(c) to develop financial and business plans, strategies and budgets to ensure the accountable and efficient performance of the functions of Youth Mental Health and Wellbeing Victoria and the long-term financial viability of Youth Mental Health and Wellbeing Victoria; and

(d) to monitor the performance of Youth Mental Health and Wellbeing Victoria to ensure that—

(i) Youth Mental Health and Wellbeing Victoria operates within its budget; and

(ii) its audit and accounting systems accurately reflect the financial position and viability of Youth Mental Health and Wellbeing Victoria; and

(iii) Youth Mental Health and Wellbeing Victoria adheres to its financial and business plans, its strategic plans and its statement of priorities; and

(iv) effective and accountable risk management systems are in place; and

(v) effective and accountable systems are in place to monitor and improve the quality, safety and effectiveness of youth mental health and wellbeing services and other services provided under service agreements entered into by Youth Mental Health and Wellbeing Victoria; and

(vi) any problems identified with the quality, safety and effectiveness of the youth mental health and wellbeing services or other services provided are addressed in a timely manner; and

(vii) Youth Mental Health and Wellbeing Victoria continuously strives to improve the quality and safety of youth mental health services and to promote innovation; and

(viii) committees established or appointed by Youth Mental Health and Wellbeing Victoria operate effectively; and

(e) to oversee the provision of youth mental health and wellbeing services and other services by one or more declared operators under a service agreement with Youth Mental Health and Wellbeing Victoria by—

(i) developing statements of priorities for the provision of youth mental health and wellbeing services; and

(ii) monitoring the performance of the declared operators in carrying out their functions and complying with any relevant statement of priorities; and

(iii) ensuring effective and accountable risk management systems are in place; and

(iv) ensuring any quality, safety or effectiveness issues in relation to the provision of youth mental health and wellbeing services and other services by one or more declared operators are addressed in a timely manner; and

(f) to report to the Minister, the Chief Officer and the Health Secretary on any matters relating to the oversight of the provision of services by a service provider under a service agreement with Youth Mental Health and Wellbeing Victoria under section 677(2)(a); and

(g) to develop arrangements with other relevant agencies and mental health and wellbeing service providers to enable effective and efficient service delivery of youth mental health and wellbeing services.

682 Remuneration

(1) A director of the Youth Mental Health and Wellbeing Board is entitled to be paid—

(a) any remuneration and any travelling and other allowances that are fixed by the Governor in Council from time to time; and

(b) any reasonable expenses incurred in holding office as a director of the Youth Mental Health and Wellbeing Board.

(2) For the purposes of subsection (1), the Governor in Council may fix different remuneration for different classes of director.

683 Terms of office

(1) A director of the Youth Mental Health and Wellbeing Board—

(a) holds office for the period (not exceeding 3 years) that is specified in the instrument of appointment; and

(b) subject to subsection (2), is eligible for reappointment.

(2) A director of the Youth Mental Health and Wellbeing Board may not hold office for more than 9 consecutive years unless the Minister is satisfied that exceptional circumstances exist which justify the director holding office for a longer period.

(3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a director appointed to the Youth Mental Health and Wellbeing Board under section 679 in respect of the office of the director.

684 Resignation

A member of the Youth Mental Health and Wellbeing Board may resign from office by written notice given to the Governor in Council.

685 Removal from office

(1) The Governor in Council, on the recommendation of the Minister, may remove a director of the Youth Mental Health and Wellbeing Board from office.

(2) The Minister must recommend the removal of person from the office of director if the Minister is satisfied that the person—

(a) is unable, for any reason, to perform or fulfil the duties of the office; or

(b) has engaged in improper conduct; or

(c) has been convicted of an offence, the commission of which makes them, in the Minister's opinion, unsuitable to be a member of the Youth Mental Health and Wellbeing Board; or

(d) has been absent, without leave of the Youth Mental Health and Wellbeing Board, from all meetings of the Youth Mental Health and Wellbeing Board held during a period of 6 months; or

(e) becomes an insolvent under administration.

686 Delegation

The directors of the Youth Mental Health and Wellbeing Board, by instrument, may jointly delegate to a person referred to in section 692 any function or power of the directors.

Note

See also section 42A of the **Interpretation of Legislation Act 1984**.

687 Validity of acts or decisions

An act or decision of the Youth Mental Health and Wellbeing Board is not invalid only because of—

(a) a vacancy in the directors of the Youth Mental Health and Wellbeing Board, including a vacancy arising from the failure to appoint a director; or

(b) a defect or irregularity in or in connection with the appointment of a director.

688 Chairperson

(1) The Governor in Council, on the recommendation of the Minister, must appoint a director of the Youth Mental Health and Wellbeing Board to be the chairperson.

(2) The chairperson—

(a) holds office for the period (not exceeding 3 years) that is specified in the instrument of appointment; and

(b) is eligible for reappointment but may not hold office for more than 9 consecutive years unless the Minister is satisfied that exceptional circumstances exist which justify the chairperson holding office for a longer period.

(3) The chairperson may resign from the office of chairperson by written notice given to the Governor in Council.

689 Procedure of the Youth Mental Health and Wellbeing Board

(1) A quorum at a meeting of the Youth Mental Health and Wellbeing Board is half the number of directors appointed plus one additional appointed director.

(2) The chairperson of the Youth Mental Health and Wellbeing Board has an additional or casting vote in the event of an equality of votes.

(3) Subject to this section, the procedure of the Youth Mental Health and Wellbeing Board is otherwise at the discretion of the Board.

690 Establishment of committees

(1) The Youth Mental Health and Wellbeing Board may establish one or more committees—

(a) to assist the Youth Mental Health and Wellbeing Board in performing any of its functions; or

(b) to provide expert advice on any matter relating to the Youth Mental Health and Wellbeing Board's functions.

(2) The members of a committee are to be appointed by the Youth Mental Health and Wellbeing Board.

(3) Each member of a committee is—

(a) to have expertise in the matters to be considered by the committee; or

(b) to identify as experiencing, or having experienced, mental illness or psychological distress; or

(c) to identify as caring for or supporting, or having cared for or supported, a person with mental illness or psychological distress.

(4) The Youth Mental Health and Wellbeing Board may decide the matters to be considered by a committee.

691 Guidelines

(1) The Minister may issue guidelines in relation to the role and procedure of the Youth Mental Health and Wellbeing Board and how the Board carries out its functions, duties and responsibilities.

(2) Guidelines issued under subsection (1) must be published in the Government Gazette.

(3) The Minister may amend or revoke any guidelines issued under this section by notice published in the Government Gazette.

(4) Youth Mental Health and Wellbeing Victoria and the Youth Mental Health and Wellbeing Board must comply with any guidelines issued under this section.

692 Staff

(1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees who are necessary to enable Youth Mental Health and Wellbeing Victoria or the Youth Mental Health and Wellbeing Board to carry out its functions or powers.

(2) Youth Mental Health and Wellbeing Victoria may enter into an agreement or arrangement for the use of any staff of a Department, statutory authority or other public sector body.

(3) Youth Mental Health and Wellbeing Victoria may engage a person with suitable qualifications or experience to assist Youth Mental Health and Wellbeing Victoria or the Youth Mental Health and Wellbeing Board in carrying out its functions and powers under this Act.

Division 3—Delegates

693 Appointment of delegates

(1) The Minister may appoint a maximum of 2 delegates to the Youth Mental Health and Wellbeing Board if the Minister considers that the appointment will—

(a) assist the Youth Mental Health and Wellbeing Board in carrying out its functions; or

(b) improve the performance of Youth Mental Health and Wellbeing Victoria.

(2) A delegate is not a director of the Youth Mental Health and Wellbeing Board.

(3) In determining if an appointment of a delegate under subsection (1) will assist the Youth Mental Health and Wellbeing Board in carrying out its functions or improving the performance of Youth Mental Health and Wellbeing Victoria, the Minister must have regard, if relevant, to the following—

(a) the support required for the establishment of the Youth Mental Health and Wellbeing Board;

(b) the support required to assist the Youth Mental Health and Wellbeing Board in engaging with newly declared operators who are to provide youth mental health and wellbeing services;

(c) whether Youth Mental Health and Wellbeing Victoria is meeting the objectives, priorities and key performance outcomes specified in the statement of priorities;

(d) the financial performance of Youth Mental Health and Wellbeing Victoria;

(e) the quality and safety of the services provided by a service provider under a service agreement with Youth Mental Health and Wellbeing Victoria under section 677(2)(a);

(f) whether the Youth Mental Health and Wellbeing Board has requested the appointment.

(4) The Minister may appoint a delegate without a request from the Youth Mental Health and Wellbeing Board for the appointment.

(5) The instrument of appointment of a delegate—

(a) must be published in the Government Gazette; and

(b) must specify the terms and conditions of the appointment; and

(c) may specify any remuneration to which the delegate is entitled.

694 Term of appointment

(1) A delegate appointed to the Youth Mental Health and Wellbeing Board—

(a) holds office for the period specified in the instrument of appointment, being a period of not more than 12 months from the date of appointment; and

(b) is eligible for reappointment; and

(c) is entitled to be reimbursed reasonable expenses incurred in holding office as delegate.

(2) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a delegate of the Youth Mental Health and Wellbeing Board in respect of the office of delegate.

695 Resignation and revocation of appointment

(1) A delegate of the Youth Mental Health and Wellbeing Board may resign by written notice and given to the Minister.

(2) The Minister may revoke the appointment of a delegate to the Youth Mental Health and Wellbeing Board.

696 Functions of delegate

A delegate of the Youth Mental Health and Wellbeing Board has the following functions—

(a) to attend meetings of the Youth Mental Health and Wellbeing Board and observe its decision making processes;

(b) to provide advice or information to the Youth Mental Health and Wellbeing Board to assist in understanding its obligations under this Act; and

(c) to advise the Minister on any matter relating to Youth Mental Health and Wellbeing Victoria or the Youth Mental Health and Wellbeing Board.

697 Obligations of the Youth Mental Health and Wellbeing Board to a delegate

The Youth Mental Health and Wellbeing Board must—

(a) permit a delegate appointed to the Youth Mental Health and Wellbeing Board to attend any meeting of the Youth Mental Health and Wellbeing Board or any meeting of its committees; and

(b) provide a delegate appointed to the Youth Mental Health and Wellbeing Board with information or a copy of any notice or other document provided to the directors of the

Youth Mental Health and Wellbeing Board or to the members of any of the Youth Mental Health and Wellbeing Board's committees at the same time as the information, notice or other document is provided to the directors of the Youth Mental Health and Wellbeing Board or the members of its committees.

Part 16.2—Directions, guidelines, statements of priorities, strategic plans and service agreements

698 Minister may issue directions

(1) The Minister may issue a written direction to Youth Mental Health and Wellbeing Victoria on any matter in relation to Youth Mental Health and Wellbeing Victoria that the Minister is satisfied is necessary.

(2) The Minister must cause a direction issued under subsection (1) to be published in the Government Gazette as soon as practicable after issuing the direction to Youth Mental Health and Wellbeing Victoria.

(3) Youth Mental Health and Wellbeing Victoria must comply with a direction issued under subsection (1).

(4) Despite subsection (3), an act or decision of the Youth Mental Health and Wellbeing Board is not invalid only because of a failure to comply with a direction.

(5) A declared operator must take all reasonable steps to assist Youth Mental Health and Wellbeing Victoria to comply with any directions issued by the Minister to the extent that they relate to services being performed by the declared operator.

699 Strategic plan

(1) At the direction of the Minister, the Youth Mental Health and Wellbeing Board must prepare and submit to the Minister a strategic plan for the operation of Youth Mental Health and Wellbeing Victoria.

(2) A strategic plan must be prepared at the frequency determined by the Minister and in accordance with guidelines determined by the Minister.

(3) The Minister must—

(a) approve the strategic plan submitted by Youth Mental Health and Wellbeing Victoria under subsection (1) as submitted or subject to amendments; or

(b) refuse to approve the strategic plan.

(4) The Youth Mental Health and Wellbeing Board must advise the Minister if it intends to exercise its functions in a manner that is inconsistent with the most recently approved strategic plan.

700 Statement of priorities

(1) In consultation with the Health Secretary, the Youth Mental Health and Wellbeing Board must prepare a proposed statement of priorities for Youth Mental Health and Wellbeing Victoria for each financial year in accordance with subsection (4).

(2) The Youth Mental Health and Wellbeing Board must give a copy of the statement of priorities prepared under subsection (1) to the Minister on or before 1 October in each year for approval.

(3) If the Youth Mental Health and Wellbeing Board and the Minister do not agree on a statement of priorities on or before 1 October, the Minister may make a statement of priorities for the relevant financial year in accordance with subsection (4).

(4) A proposed statement of priorities must specify—

(a) the services to be provided under service agreements with Youth Mental Health and Wellbeing Victoria and the funds to be provided to Youth Mental Health and Wellbeing Victoria; and

(b) the objectives, priorities and key performance outcomes to be met by Youth Mental Health and Wellbeing Victoria; and

(c) the performance indicators, targets or other measures against which the performance of Youth Mental Health and Wellbeing Victoria is to be assessed and monitored; and

(d) how and when Youth Mental Health and Wellbeing Victoria must report to the Minister and the Health Secretary on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(e) any other matters—

(i) agreed from time to time by the Minister and the Youth Mental Health and Wellbeing Board; or

(ii) determined by the Minister.

(5) A statement of priorities may be varied at any time if the Youth Mental Health and Wellbeing Board and the Minister agree.

(6) If the Youth Mental Health and Wellbeing Board and the Minister fail to agree to a proposed variation of a statement of priorities within 28 days after the variation is proposed, the Minister may—

(a) vary the statement of priorities; or

(b) decline to vary the statement of priorities.

(7) The Minister must publish a statement of priorities on the Department's Internet site.

701 Notice to Minister and Health Secretary of matters of public concern or risk

The Youth Mental Health and Wellbeing Board must notify the Minister and the Health Secretary as soon as practicable about any issues of public concern or risk that affect, or may affect, Youth Mental Health and Wellbeing Victoria.

702 Health Secretary may issue directions to Youth Mental Health and Wellbeing Victoria

(1) The Health Secretary may issue written directions to Youth Mental Health and Wellbeing Victoria in relation to the following matters for the purpose of carrying out the Health Secretary's functions under this Act—

(a) the requirements for a specified person, or a specified class of person, employed or engaged by Youth Mental Health and Wellbeing Victoria to be vaccinated against or prove immunity to specific diseases, including the consequences of non-compliance for that person as an employee or person engaged by Youth Mental Health and Wellbeing Victoria;

(b) the extent to which and the conditions on which Youth Mental Health and Wellbeing Victoria should make use of facilities, services, equipment or supplies provided by another entity, or should allow another entity to make use of its facilities, services, equipment or supplies;

(c) the extent to which and the conditions on which Youth Mental Health and Wellbeing Victoria is required to obtain or purchase facilities, services, equipment or supplies provided by another person or body;

(d) the accounts and records which should be kept by Youth Mental Health and Wellbeing Victoria and the returns and other information which should be supplied to the Health Secretary;

(e) the inspection of its facilities and its accounts and records by the Health Secretary;

(f) the carrying out of audits for case mix funding purposes;

(g) action to be taken to ensure that the mental health and wellbeing services provided through service agreements are safe, patient centred and appropriate;

(h) action to be taken or avoided to enable the State to comply with the terms of any agreement made between it and the Commonwealth or any other State.

(2) A direction issued under subsection (1)(a) and compliance by Youth Mental Health and Wellbeing Victoria or a person with that direction, does not constitute discrimination on the basis of political belief or activity or religious belief or activity for the purposes of the **Equal Opportunity Act 2010**.

(3) The Health Secretary must ensure that a direction issued under subsection (1)(c) to Youth Mental Health and Wellbeing Victoria is not inconsistent with a HPV direction or a purchasing policy that applies to Youth Mental Health and Wellbeing Victoria.

(4) The Health Secretary must give a copy of a direction issued under this section to Youth Mental Health and Wellbeing Victoria.

(5) The Youth Mental Health and Wellbeing Board must comply with a direction issued by the Health Secretary under this section.

(6) A direction issued by the Health Secretary under this section has effect despite anything to the contrary contained in any service agreement or interim funding statement in relation to Youth Mental Health and Wellbeing Victoria.

(7) A declared operator must take all reasonable steps to assist Youth Mental Health and Wellbeing Victoria to comply with any direction issued by the Health Secretary under this section to the extent that they relate to services being performed by the declared operator.

(8) To avoid doubt, nothing under this section limits the power of the Minister to make a direction under section 698.

703 Service agreements

(1) Before Youth Mental Health and Wellbeing Victoria enters into a service agreement with a mental health and wellbeing service provider, the Youth Mental Health and Wellbeing Board must consider the following—

(a) whether the provider has appropriate governance and governance policies;

(b) any arrangements made by the provider—

(i) to ensure that the provider makes efficient use of its resources; and

(ii) to monitor and improve the quality and safety of youth mental health and wellbeing services provided by the provider; and

(iii) to make the provider's services—

(A) accessible, inclusive and equitable to all; and

(B) responsive and able to meet a person's needs in a safe and sensitive manner; and

(C) informed by the lived experience of young people; and

(iv) to enable users of the provider's services to make informed decisions about health care; and

(v) to enable the provider's employees to participate in decisions about their work environment;

(c) whether the provider has links with the local communities to which it provides youth mental health and wellbeing services;

(d) whether the provider has appropriate knowledge and experience in relation to the complex, diverse and intersecting needs of young persons in the provision of mental health and wellbeing services;

(e) whether the provider has an appropriate understanding of the broader service system for young people.

(2) Youth Mental Health and Wellbeing Victoria may make it a term of a service agreement that the agreement not take effect until a mental health and wellbeing service provider is declared to be a declared operator under section 704.

Note

See also section 706 for functions a declared operator may be required to carry out under a service agreement.

Part 16.3—Declared operators providing youth mental health and wellbeing services

Division 1—Declared operators

704 Declared operators

(1) On the recommendation of the Minister, the Governor in Council, by notice published in the Government Gazette, may declare an entity specified in subsection (2) to be a declared operator for the purposes of providing youth mental health and wellbeing services under a service agreement with Youth Mental Health and Wellbeing Victoria.

(2) For the purposes of subsection (1), the following are specified—

S. 704(2)(a) amended by No. 20/2023 s. 43.

(a) an entity specified in paragraph (a), (b), (c), (d) or (e) of the definition of ***designated mental health service***;

(b) a mental health and wellbeing service provider that meets any prescribed requirements.

(3) A declaration under subsection (1) may—

(a) specify a geographic area in respect of which a declared operator may provide youth mental health and wellbeing services;

(b) impose any conditions the Minister considers appropriate on a declared operator in relation to the provision of youth mental health and wellbeing services under a service agreement with Youth Mental Health and Wellbeing Victoria.

(4) An entity declared to be a declared operator under subsection (1) ceases to be a declared operator if—

(a) the declaration is revoked; or

(b) the service agreement the entity has entered into with Youth Mental Health and Wellbeing Victoria is terminated.

705 Entities that are designated mental health services as a result of declaration under section 704

(1) Subject to subsection (2), for the purposes of this Act, an entity specified in section 704(2)(b) that is declared to be a declared operator is a designated mental health service.

(2) An entity specified in subsection (1) ceases to be a designated mental health service if the entity ceases to be a declared operator in accordance with section 704(4).

706 Functions of a declared operator under a service agreement with Youth Mental Health and Wellbeing Victoria

A service agreement between Youth Mental Health and Wellbeing Victoria and a declared operator may require the declared operator to carry out any of the following functions—

(a) to provide youth mental health and wellbeing services across community, specialist and inpatient services (both voluntary and compulsory) within a geographic area specified in a declaration made under section 704;

(b) to undertake research into the design, delivery and evaluation of youth mental health and wellbeing services;

(c) to conduct consultations with people with lived experience, young people and families, carers and supporters and mental health and wellbeing service providers on youth mental health and wellbeing issues and services, and contribute to policy and service model development in relation to the design, delivery and evaluation of youth mental health and wellbeing services;

(d) to provide advice to the Youth Mental Health and Wellbeing Board, at the board's request, on any matter related to the Youth Mental Health and Wellbeing Board's functions;

(e) any function that Youth Mental Health and Wellbeing Victoria determines will assist Youth Mental Health and Wellbeing Victoria to achieve the objectives specified in its statement of priorities.

707 Statement of priorities with declared operators

(1) The Youth Mental Health and Wellbeing Board and a declared operator must prepare a statement of priorities—

(a) for each financial year in accordance with subsection (3); and

(b) that is consistent with the statement of priorities prepared by the Youth Mental Health and Wellbeing Board under section 700.

(2) If the Youth Mental Health and Wellbeing Board and the declared operator do not agree on a statement of priorities on or before 1 October, the Youth Mental Health and Wellbeing Board may make a statement of priorities for the relevant financial year.

(3) A proposed statement of priorities must specify—

(a) the services to be provided under the service agreement between Youth Mental Health and Wellbeing Victoria and the declared operator and the funds to be provided to the declared operator under the agreement; and

(b) the objectives, priorities and key performance outcomes to be met by the declared operator; and

(c) the performance indicators, targets or other measures against which the performance of the declared operator is to be assessed and monitored; and

(d) how and when the declared operator must report to Youth Mental Health and Wellbeing Victoria on its performance in relation to the specified objectives, priorities and key performance outcomes; and

(e) any other matters—

(i) agreed from time to time by Youth Mental Health and Wellbeing Victoria and the declared operator; or

(ii) determined by the Minister.

(4) A statement of priorities may be varied at any time if the Youth Mental Health and Wellbeing Board and the declared operator agree.

(5) If the Youth Mental Health and Wellbeing Board and the declared operator fail to agree to a proposed variation of a statement of priorities within 28 days after the variation is proposed, the Youth Mental Health and Wellbeing Board may—

(a) vary the statement of priorities; or

(b) decline to vary the statement of priorities.

(6) The Youth Mental Health and Wellbeing Board must publish a statement of priorities prepared under this section on Youth Mental Health and Wellbeing Victoria's Internet site.

Division 2—Suspension of services or appointment of administrator

708 Powers of Minister

(1) The Minister may take any of the actions specified in subsection (2) if, on the advice of the chief psychiatrist or the Chief Officer, the Minister is satisfied of any of the following in relation to a declared operator providing youth mental health and wellbeing services under a service agreement with Youth Mental Health and Wellbeing Victoria—

(a) that the declared operator is inefficiently or incompetently managed in relation to the services it provides under the service agreement;

(b) that the declared operator is failing to provide effective, safe, patient-centred and appropriate youth mental health and wellbeing services;

(c) that the declared operator has failed to comply with the service agreement.

(2) For the purposes of subsection (1), the specified actions are—

(a) to direct that the admission of patients, or a class of patients, to a service or services provided by the declared operator in relation to services provided under the service agreement with Youth Mental Health and Wellbeing Victoria be suspended in accordance with section 709; or

(b) to recommend to the Governor in Council that an administrator of the declared operator be appointed in relation to services provided under the service agreement with Youth Mental Health and Wellbeing Victoria in accordance with section 710.

709 Suspension of admission of patients

(1) If the Minister decides that the admission of patients or any class of patients to any youth mental health and wellbeing service provided by a declared operator should be suspended, the Minister may give a written direction to the declared operator to suspend admissions—

(a) immediately; or

(b) on or after a specified date.

(2) The declared operator may make an oral or written submission to the Minister in respect of the Minister's direction within 7 days after the Minister gives the direction.

(3) Before making a decision under subsection (4), the Minister must consider—

(a) any submission made under subsection (2); and

(b) any other submissions or matters the Minister considers appropriate.

(4) After considering any submissions or other matters under subsection (3), the Minister must either—

(a) withdraw the suspension; or

(b) confirm the suspension and specify the period for which the suspension should operate.

(5) The Minister must ensure that written notice of the Minister's decision under subsection (4) is given to the declared operator.

710 Appointment of administrator

(1) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may appoint a person as administrator of a declared operator in relation to its provision of youth mental health and wellbeing services under a service agreement with Youth Mental Health and Wellbeing Victoria.

(2) The Minister must not make a recommendation under subsection (1) unless the Minister has given reasonable notice in the circumstances to the declared operator specifying in writing—

(a) the grounds on which the Minister intends to make a recommendation to appoint an administrator; and

(b) that the declared operator may apply in accordance with section 712 for review of the Minister's decision to make a recommendation to appoint an administrator.

(3) An administrator appointed under this section is taken to be—

(a) the board of directors of the declared operator to the extent that the Minister considers it necessary for the purpose of the declared operator providing youth mental health and wellbeing services under the service agreement; and

(b) the designated mental health service for the purpose of the declared operator providing youth mental health and wellbeing services under the service agreement.

(4) On the day on which an administrator is appointed under this section in respect of the part of the business of the company that provides youth mental health and wellbeing services as the declared operator, the members of the board of directors cease to constitute the board of directors to the extent that the administrator is taken to be the board of directors.

(5) If an administrator is appointed in respect of part of the business of the company that is the declared operator, the administrator and the board of directors must ensure that there is in place a process for consultation and decision making to enable the continuity of operation of the whole of the business of the company.

(6) The salary of the administrator and any expenses of the administrator necessarily incurred in an administration under this section are to be paid by the Health Secretary.

(7) Subject to subsection (8), on the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may extend the appointment of an administrator appointed under this section for a further period as is specified in the Order.

(8) Before making a recommendation under subsection (7), the Minister must give written notice to the declared operator of the Minister's intention to recommend the extension of the administrator's appointment.

(9) On the recommendation of the Minister, the Governor in Council, by Order published in the Government Gazette, may declare that on the day specified in the Order—

(a) the board of directors is reinstated as the board of directors of the declared operator in relation to the provision of mental health and wellbeing services under the service agreement; and

(b) the administrator ceases to be the administrator.

711 Administrator may recommend termination of service agreement

(1) An administrator appointed under section 710 may recommend that the service agreement between the declared operator in respect of which the administrator was appointed and Youth Mental Health and Wellbeing Victoria be terminated.

(2) If the administrator makes a recommendation under subsection (1), Youth Mental Health and Wellbeing Victoria may terminate the service agreement with the declared operator.

(3) If a service agreement between the declared operator and Youth Mental Health and Wellbeing Victoria is terminated under this section, the administrator must take any necessary steps to ensure that the provision of youth mental health and wellbeing services are continued as was required under the service agreement.

712 Application for review by VCAT

(1) A declared operator may apply to VCAT for a review of a decision by the Minister to recommend the appointment of an administrator under section 710.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made; or

(b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the declared operator requests a statement of reasons for the decision, the day on which the statement of reasons is given to the operator or the operator is informed under section 46(5) of that Act that a statement of reasons will not be given.

713 Displacement of other law—appointment of administrator provisions

Section 708(1) and (2)(b), 710, 711 and 712 are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

Part 16.4—General

714 Youth Mental Health and Wellbeing Victoria may collect information

(1) To the extent necessary to perform its functions, Youth Mental Health and Wellbeing Victoria may collect any of the following information about an individual from a body specified in subsection (2)—

(a) health information;

(b) personal information;

(c) identifiers;

(d) unique identifiers.

(2) For the purposes of subsection (1), the following bodies are specified—

(a) a mental health and wellbeing service provider;

(b) a public service body;

(c) a public entity within the meaning of the **Public Administration Act 2004**;

(d) Victoria Police;

(e) a body prescribed for the purposes of paragraph (d) of the definition of ***data sharing body*** in section 3(1) of the **Victorian Data Sharing Act 2017**;

(f) a court or tribunal.

(3) This section does not affect the operation of—

(a) the **Health Records Act 2001**; or

(b) the **Privacy and Data Protection Act 2014**; or

(c) the **Victorian Data Sharing Act 2017**.

715 Disclosure of information

(1) A mental health and wellbeing service provider providing youth mental health and wellbeing services under a service agreement with Youth Mental Health and Wellbeing Victoria must disclose any information relating to the provision of those services in accordance with any reasonable written direction given by Youth Mental Health and Wellbeing Victoria to the mental health and wellbeing service provider.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) In this section—

information includes personal information and health information.

716 Mental health and wellbeing service provider may be audited

(1) Youth Mental Health and Wellbeing Victoria may authorise any person with the qualifications, skills or expertise which, in the opinion of the Youth Mental Health and Wellbeing Board, are appropriate to carry out an audit under this Division to determine whether a mental health and wellbeing service provider is carrying its functions as required under any service agreement it has entered with Youth Mental Health and Wellbeing Victoria.

(2) In authorising a person to be auditor, Youth Mental Health and Wellbeing Victoria must determine—

(a) the terms of reference for the auditor which must relate to the provision of youth mental health and wellbeing services under the service agreement; and

(b) the terms and conditions on which the auditor is to carry out the audit.

(3) Youth Mental Health and Wellbeing Victoria must give the mental health and wellbeing service provider written notice of the audit which includes a copy of the authorisation specifying—

(a) the name of the auditor; and

(b) the terms of reference for, and terms and conditions on which, the auditor will carry out the audit.

(4) After completing an audit on the mental health and wellbeing service provider, the auditor must give a written report of their results to Youth Mental Health and Wellbeing Victoria.

717 Powers of auditors

(1) An auditor authorised under section 716 to audit a mental health and wellbeing service provider may enter the premises of the provider at any time, and with any assistance the auditor reasonably requires—

(a) inspect the premises; or

(b) inspect, seize, make copies of or take extracts from any document that relates to the service agreement with Youth Mental Health and Wellbeing Victoria and the provision of, or capacity to provide, services under that agreement; or

(c) ask questions of any person employed or engaged by the service provider or a member or director of the board of the service provider.

(2) If any document is seized under subsection (1), the auditor must return the document to the mental health and wellbeing service provider within 7 days after it is seized.

(3) A person must not refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by an auditor in the performance or exercise of any power under this section.

Penalty: 60 penalty units.

(4) A person must not obstruct or hinder an auditor in the performance or exercise of the auditor's powers under this section.

Penalty: 60 penalty units.

(5) An answer to a question by an auditor is not admissible in evidence against the person in any criminal proceeding other than a proceeding under this section.

(6) An auditor must produce a copy of the auditor's authorisation to act as an auditor if requested to do so.

718 Confidentiality requirements

(1) A person who is, or was, an auditor under this Part must not, either directly or indirectly, make a record of or disclose or communicate to any person any information that is or was acquired by the person by reason of being, or having been, an auditor or make use of that information for any purpose other than the performance of official duties or the performance or exercise of a function or power under sections 716 and 717.

Penalty: 100 penalty units.

(2) Subsection (1) does not apply to the following disclosures—

(a) a disclosure made to a court in the course of a criminal proceeding;

(b) a disclosure made to a court in the course of any criminal proceeding of a matter or thing coming under the notice of the person in the performance of official duties or in the performance or exercise of a function or power referred to in subsection (1);

(c) a disclosure made, or production of a document, with the consent of the person to whom it relates, or if that person has died, with the consent of the senior available next of kin of that person.

719 Annual report

Youth Mental Health and Wellbeing Victoria must include any prescribed matters in its report of operations for a financial year under Part 7 of the **Financial Management Act 1994**.

Chapter 17—General

Part 17.1—Disclosure of health information

Division 1—Information sharing principles

720 Information sharing principles

This Part sets out the information sharing principles.

721 Entity to give proper consideration to information sharing principles

An entity that makes a decision, performs a function or exercises a power related to the disclosure, use or collection of health information or personal information under this Act must give proper consideration to the information sharing principles.

Note

See definition of ***entity*** in section 38 of the **Interpretation of Legislation Act 1984** which includes a person and an unincorporated body.

722 Disclosure, collection and use of information principle

The disclosure, use or collection of personal information or health information about a person receiving mental health and wellbeing services should be directed at the following—

(a) enhancing the person's ability to access, understand and self-manage their information, and support their autonomy and empowerment;

(b) improving the person's experience of engaging with the mental health and wellbeing system;

(c) supporting the person to transition between services or care levels;

(d) supporting the provision of safe, integrated, high-quality treatment, care and support;

(e) if the circumstances are appropriate, through engagement and inclusion, supporting family, carers and supporters of the person to fulfil their role in relation to the person.

Note to s. 722 amended by No. 20/2023 s. 44.

Note

See also section 31 for the limitation on the sharing of health information or personal information if there is a risk that a person may be subjected to family violence or other serious harm.

723 Dignity of person paramount principle

Mental health and wellbeing service providers are to uphold the dignity of a person including by ensuring that the person's health information or personal information are recorded accurately and respectfully.

724 Aboriginal and Torres Strait Islander information principle

The health information or personal information of Aboriginal and Torres Strait Islander peoples is to be treated in a manner that—

(a) promotes self-determination; and

(b) is culturally safe, acknowledging connections to family, kin and community.

725 Accessibility of information principle

So far as reasonably practicable, information is to be provided to people in a format that is accessible and acknowledges the needs of people in relation to—

(a) age; and

(b) disability; and

(c) neurodiversity; and

(d) culture; and

(e) language; and

(f) communication; and

(g) religion; and

(h) ethnicity; and

(i) sex; and

(j) gender identity; and

(k) sexual orientation.

726 Accuracy of information principle

Reasonable steps are to be taken to ensure that any information relating to a person receiving mental health and wellbeing services that is recorded or shared is accurate, relevant and up to date.

Division 2—Electronic health information system

727 Electronic health information system

(1) There is an electronic health information system.

(2) The purpose of the electronic health information system is—

(a) to maintain the records of a person who receives mental health and wellbeing services from a designated mental health service or prescribed mental health and wellbeing service provider; and

(b) to enable access to, and sharing of, information between persons authorised or permitted to access and share information under this Act; and

(c) to assist the Health Secretary and statutory bodies established under this Act in the performance of their functions.

(3) The Health Secretary is responsible for maintaining and has general oversight over the electronic health information system.

(4) For the purposes of subsection (3), the Health Secretary may—

(a) collect and store information required or authorised by this Act or any other Act to be stored in the electronic health information system; and

(b) require a designated mental health service or prescribed mental health and wellbeing service provider to provide information to be stored in the electronic health information system in accordance with this Act; and

(c) require a designated mental health service or prescribed mental health and wellbeing service provider to access information in the electronic health information system in accordance with this Act; and

(d) require information to be stored in the electronic health information system to be in the prescribed form; and

(e) use and disclose information stored in the electronic health information system for the following purposes—

(i) to implement and oversee the system; and

(ii) to enable the sharing of a person's personal or health information as permitted under this Act; and

(iii) to perform the Health Secretary's functions and duties or exercise the Health Secretary's powers; and

(iv) to enable statutory bodies established under this Act to perform their functions and duties and exercise their powers; and

(f) receive information from mental health and wellbeing service providers from another State or a Territory under a corresponding law to be stored in the electronic health information system; and

(g) disclose information from the electronic health information system to mental health and wellbeing service providers from another State or a Territory under a corresponding law; and

(h) do any other things reasonably necessary to maintain and oversee the electronic health information system and to further the purposes of the system.

728 Information from electronic health information system

(1) A person who is employed or engaged by a mental health and wellbeing service provider or a prescribed emergency service provider may enter a person's health information into the electronic health information system.

(2) A person must not collect or use, or attempt to collect or use, health information from the electronic health information system unless the collection or use of the health information is reasonably required by—

(a) a mental health and wellbeing service provider for the purposes of providing mental health and wellbeing services, including integrated care, to the person to whom that information relates; or

(b) an emergency service provider referred to in subsection (1)—

(i) for the purposes of providing an emergency service to the person to whom that information relates; or

(ii) in relation to a function performed by the emergency service provider under this Act; or

(c) the chief psychiatrist, the Health Secretary or the Chief Officer to perform their functions or exercise their powers under this Act; or

(d) the Mental Health Tribunal for the purposes of performing its functions or exercising its powers under this Act; or

(e) the Mental Health and Wellbeing Commission for the purposes of performing its functions or exercising its powers under this Act; or

(f) the Forensic Leave Panel for the purposes of performing its functions or exercising its powers under this Act or the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(g) the primary non-legal mental health advocacy service provider.

Division 3—Disclosure of health information

729 Disclosure of health information with consent of person

(1) Subject to subsection (3), a mental health and wellbeing service provider may disclose the health information of a person to another person or entity if the person to whom the information relates consents to the disclosure of their health information.

(2) A person may withdraw their consent to the disclosure of their health information by a mental health and wellbeing service provider at any time.

(3) If a person withdraws their consent under subsection (2) and the person has communicated that withdrawal to the mental health and wellbeing service provider, the provider must ensure the person's health information held by the provider is no longer disclosed to another person or entity unless the disclosure is in accordance with this Act.

(4) To avoid doubt, subsection (3) does not apply to a person's health information disclosed by a provider before the withdrawal of consent by the person.

730 Permitted disclosure of health information without consent of person

(1) Subject to subsection (2), the following must not disclose the health information of a person to an entity without that person's consent—

(a) the mental health and wellbeing service provider;

(b) any member of staff or former member of staff of the mental health and wellbeing service provider;

(c) any person who is or was a contractor of the mental health and wellbeing service provider;

(d) any volunteer or former volunteer at the mental health and wellbeing service provider;

(e) any member of the board or former member of the board of the mental health and wellbeing service provider.

Penalty: 60 penalty units.

(2) A mental health and wellbeing service provider or a person referred to in subsection (1)(b), (c), (d) or (e) may disclose the health information of a person to an entity without that person's consent if—

(a) the disclosure is reasonably necessary for the mental health and wellbeing service provider to perform functions or exercise powers under this Act or any other Act; or

(b) the disclosure is permitted by HPP 2.1, 2.2(a), (f), (g) or (k) or 2.5; or

(c) the disclosure is—

(i) made in accordance with any guidelines issued by the Health Complaints Commissioner under section 22 of the **Health Records Act 2001**; and

(ii) reasonably necessary to lessen or prevent—

(A) a serious threat to a person's life, health, safety or welfare; or

(B) a serious threat to public health, public safety or public welfare; or

(d) the disclosure is reasonably required by another mental health and wellbeing service provider or a health service provider to provide health services to the person; or

(e) the disclosure is permitted by an Act other than the **Health Records Act 2001**; or

(f) subject to section 31, the disclosure is made in general terms to family, a carer or supporter of the person and the disclosure is not contrary to the views and preferences expressed by the person that the health information must not be disclosed to family, a carer or supporter; or

(g) the person is a patient and—

(i) the disclosure is reasonably required by a carer of the patient to determine the nature and scope of the care to be provided to the patient and to make the necessary arrangements in preparation for that role or to provide care to the patient; and

(ii) regard has been had to the patient's views and preferences, including those expressed in any advance statement of preferences that the patient may have prepared; or

(h) the disclosure is made to a parent of the person and the person is under 16 years of age; or

(i) the disclosure is made to the DFFH Secretary, if that Secretary has parental responsibility for the person under a relevant child protection order; or

(j) the disclosure is made to a psychiatrist giving a second psychiatric opinion for the purpose of the psychiatrist giving the second opinion and the disclosure includes—

(i) providing access to the clinical records of a patient; or

(ii) discussing the treatment of a patient with the psychiatrist giving a second psychiatric opinion; or

(k) the disclosure is required in connection with the performance of a function or duty or the exercise of a power under this Act by the following—

(i) the Minister;

(ii) the Health Secretary;

(iii) the Mental Health and Wellbeing Commission;

(iv) the chief psychiatrist;

(v) an authorised officer;

(vi) the Chief Officer;

(vii) an authorised investigator; or

(l) the disclosure is required in connection with a proceeding before the Mental Health Tribunal, VCAT or the Forensic Leave Panel; or

(m) the disclosure is required by a court in connection with a proceeding under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

(n) the disclosure is made to a guardian of the person and the disclosure is reasonably required in connection with the performance of a duty or the exercise of a power by the guardian; or

(o) the disclosure is—

(i) made to the medical treatment decision maker of the person; and

(ii) reasonably required in connection with the performance of a duty or the exercise of a power by the medical treatment decision maker; or

(p) the disclosure is—

(i) made to a support person (within the meaning of the **Medical Treatment Planning and Decisions Act 2016**) of the person to whom the health information relates; and

(ii) reasonably required in connection with the performance of a duty or the exercise of a power by the support person; or

(q) the person is deceased and the senior available next of kin of the person consents to the disclosure; or

(r) the disclosure is required in connection with a notification, claim or possible claim to a person or body providing insurance or indemnity (including discretionary indemnity) for any possible liability of the mental health and wellbeing service provider arising out of the provision of mental health and wellbeing services.

731 Disclosure at key points of care

S. 731(1) amended by No. 20/2023 s. 45.

(1) A person may consent to the disclosure of some or all of their health information to family, a carer or a supporter during the course of receiving a mental health and wellbeing service—

(a) following the admission of the person to a bed based service; or

(b) before the discharge of the person from a bed based service; or

(c) following the performance of a task or function specified by the Health Secretary in a notice published on the Department's website.

(2) A mental health and wellbeing service provider must disclose the health information of a person to family, a carer or supporter in accordance with the consent given by the person under this section unless section 732 applies.

732 Mental health and wellbeing service provider may refuse to disclose despite consent

A mental health and wellbeing service provider is not required to disclose the health information of a person to family, a carer or a supporter despite consent being given for that disclosure under section 731 if the provider is of the opinion that any of the following applies—

(a) the disclosure poses a threat to the life or health of any person;

(b) the disclosure could unreasonably impact on the privacy of other persons;

(c) the disclosure is unlawful;

(d) the disclosure is inconsistent with a requirement or authorisation by or under law;

(e) the disclosure may prejudice an investigation of unlawful activity;

(f) the disclosure may prejudice a law enforcement function by or on behalf of law enforcement agency;

(g) the disclosure is likely to cause damage to the security of Australia in the course of a law enforcement agency performing a function.

Division 4—Information sharing between mental health and wellbeing service providers and specified service providers

733 Collection, use and disclosure of personal or health information

S. 733 (Heading) amended by No. 20/2023 s. 46(1).

(1) Subject to subsection (4), a mental health and wellbeing service provider may collect and use and disclose the personal information or health information of a person to a specified service provider that the mental health and wellbeing service provider holds in respect of the person for the purposes specified in subsection (3).

S. 733(1) amended by No. 20/2023 s. 46(2)(3).

(2) A specified service provider may collect and use and disclose the personal information or health information of a person to a mental health and wellbeing service provider that the specified service provider holds in respect of the person for the purposes specified in subsection (3).

S. 733(2) amended by No. 20/2023 s. 46(2)(3).

(3) The personal information or health information of a person may be used and disclosed between mental health and wellbeing service providers and specified service providers if it is reasonably necessary—

(a) to assist in the transfer of the person between mental health and wellbeing service providers and specified service providers; or

(b) to ensure integrated services are provided to the person by mental health and wellbeing service providers and specified service providers providing services to the person.

S. 733(4) amended by No. 20/2023 s. 46(3).

(4) A mental health and wellbeing service provider must inform a person who is receiving services from the provider that the provider may disclose the personal information or health information of

a person to specified service providers providing services to the person unless the person elects that the information not be disclosed.

(5) If a person elects to not have their personal information or health information disclosed under subsection (4), the mental health and wellbeing service provider must keep a written record of that election.

734 Health information to be shared with emergency service providers

(1) A mental health and wellbeing service provider may share health information with an emergency service provider for the purposes of—

(a) facilitating the provision of an emergency service to a person; or

(b) performing a function under this Act.

(2) Subsection (1) applies despite an election by a person that their personal information or health information not be disclosed under section 733(4).

Division 5—Offences

735 Offence to use or disclose electronic health information system information without authorisation

A person must not knowingly access the electronic health information system or use or disclose health information or personal information on the system unless the person is authorised to do so under this Act.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

736 Offence to use electronic health information system in a manner unauthorised

A person who is authorised under this Act to access the electronic health information system, or use or disclose health information or personal information on the system, must not knowingly access the system or use or disclose health information or personal information on the system other than in accordance with that authorisation.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

737 Offence to damage, destroy or remove electronic health information system information without authorisation

A person must not knowingly or intentionally damage, destroy or remove health information or personal information from the electronic health information system unless the person is authorised to do so under this Act or the regulations.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

738 Destroying or damaging information held by mental health and wellbeing service providers

(1) A person must not, without lawful authority, access, use, disclose, damage or destroy any health information or personal information held by a mental health and wellbeing service provider unless the health information or personal information is accessed, used, disclosed, damaged or destroyed in accordance with this Act or any other Act.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) Subsection (1) does not apply to a person who accesses, uses, damages or destroys any health information or personal information held by a mental health and wellbeing service provider—

(a) for the purpose of, or in connection with, the performance of a function or duty or the exercise of a power under this Act or any other Act; or

(b) with the written consent of the person to whom the health information or personal information relate; or

(c) as required by a court or tribunal in relation to a criminal proceeding.

Part 17.2—Health information statements

739 Statement following health information refusal

If a mental health and wellbeing service provider refuses to amend or correct the health information of a person following a request made to the provider by the person under section 39 of the **Freedom of Information Act 1982** or in accordance with HPP 6, the provider must by written notice—

(a) inform the person of the provider's decision to refuse to amend or correct the health information of the person and the reasons for that refusal; and

(b) inform the person that they may make a health information statement.

740 Health information statement

(1) A person who receives a notice under section 739 may make a health information statement in relation to the health information of the person held by the mental health and wellbeing service provider that the provider has refused to amend or correct.

(2) A health information statement must—

(a) be made no later than 12 months after the person receives a notice under section 739; and

(b) be in writing; and

(c) be given to the mental health wellbeing service provider that holds the health information of the person and that refused the person's request to amend the information under section 39 of the **Freedom of Information Act 1982** or in accordance with HPP 6.

(3) The mental health and wellbeing service provider—

(a) must accept a health information statement given to the provider under subsection (2) unless the statement does not relate to the information that was the subject of the request made under section 39 of the **Freedom of Information Act 1982** or in accordance with HPP 6; and

(b) must include the health information statement on the person's health information record.

Part 17.3—Notification of reportable deaths

741 Chief psychiatrist to be notified of reportable deaths

(1) The person in charge of a clinical mental health service provider must ensure that the chief psychiatrist is notified in writing of the death of any person receiving mental health services from the clinical mental health service provider that is a reportable death within the meaning of section 4 of the **Coroners Act 2008** as soon as practicable after the person in charge becomes aware of the death.

(2) A notice under subsection (1) must specify—

(a) the name of the deceased; and

(b) the date of the death; and

(c) any other information required by the chief psychiatrist.

742 Notification of death of security patient or forensic patient

(1) An authorised psychiatrist, by written notice, must advise whoever of the following is relevant in the circumstances of the death of any security patient who receives treatment from the designated mental health service—

(a) the Justice Secretary;

(b) the Health Secretary;

(c) the Chief Commissioner of Police.

(2) The notice under subsection (1) must specify—

(a) the name of the security patient; and

(b) the date of the death.

(3) An authorised psychiatrist, by written notice, must advise the Health Secretary of the death of any forensic patient who receives treatment from the designated mental health service and specify—

(a) the name of the forensic patient; and

(b) the date of the death.

Part 17.4—Mental health and wellbeing surcharge

743 Mental health and wellbeing surcharge—appropriation of Consolidated Fund

(1) The Consolidated Fund is appropriated to the extent necessary to enable amounts equal to the amounts credited to the Consolidated Fund as the mental health and wellbeing surcharge to be spent on the provision of outputs that are consistent with and promote the objectives of this Act and the mental health and wellbeing principles.

(2) Any amount credited to the Consolidated Fund as the mental health and wellbeing surcharge under the **Mental Health Act 2014** as in force immediately before its repeal may be spent on the provision of outputs that are consistent with and promote the objectives of this Act and the mental health and wellbeing principles.

(3) In this section—

mental health and wellbeing surcharge has the meaning given by clause 1 of Schedule 1 to the **Payroll Tax Act 2007**;

outputs has the meaning given by section 3 of the **Financial Management Act 1994**.

Part 17.5—Miscellaneous provisions

Division 1—General

744 Power to commence a proceeding

(1) The Health Secretary may commence a proceeding for an offence against this Act (other than under Chapter 7 or 9) or the regulations.

(2) The Mental Health Tribunal may commence a proceeding for an offence under Chapter 7.

(3) The Mental Health and Wellbeing Commission may commence a proceeding for an offence under Chapter 9 related to the functions and powers of the Commission.

(4) A police officer may commence a proceeding for an offence against this Act or the regulations.

745 Payment for examination

If a registered medical practitioner has performed an examination for the purposes of this Act and is not otherwise entitled to receive payment for the provision of medical services, the registered medical practitioner may apply to the Health Secretary for payment at the prescribed rate.

746 Offence to give false or misleading information

(1) A person must not—

(a) give information, prepare a document or make a statement required to be given or made under this Act (other than Chapters 7 and 9) that the person believes to be false or misleading in any material particular; or

(b) produce a document under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Note

See sections 387 and 515.

(2) In a proceeding for an offence against subsection (1), it is a defence to the charge for the accused to show that, at the time at which the offence is alleged to have been committed, the accused believed on reasonable grounds that the information, document or statement was true or was not misleading.

747 Destroying or damaging records

A person must not, without lawful authority, destroy or damage any record required to be kept in accordance with this Act or the regulations.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

748 Privilege against self-incrimination

A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act or the regulations if giving the information or doing the other thing would tend to incriminate the person.

749 Validity of order if there is an error

(1) The validity of an order made under this Act (other than an order made by the Mental Health Tribunal) or any other document made or prepared under this Act is not affected by an error in it unless—

(a) the error relates to the grounds on which the order or document was made and proper grounds for making the order or document do not exist; or

(b) as a result of the error, the order or document does not comply with a mandatory requirement of this Act relating to the making of the order or document.

(2) If an error in an order or other document does not affect the validity of the order or document, the person who made the order or document may correct the error.

750 Defect in appointment or delegation

(1) An appointment or a delegation of powers or functions made under this Act (other than an appointment or delegation made under Chapter 7) is not invalid only because of a defect or irregularity in the form or process of the appointment or delegation.

(2) An act or a decision of a person under this Act is not invalid only because of any defect or irregularity in the form or process of the person's appointment.

751 Conflict of interest

A person must not perform functions or duties or exercise powers under this Act in respect of another person if the person would have a conflict of interest in performing functions or duties or exercising powers in respect of that other person.

752 Service of documents

A notice or other document that is required to be given under this Act is taken to be given to—

(a) a natural person if it is—

(i) given to the person; or

(ii) left at, or sent by post to, the person's last known postal or residential address or place of employment; or

(iii) emailed to the person's email address; and

(b) a body corporate if it is—

(i) left at, or sent by post to, the principal or registered office of the body corporate or its principal place of business; or

(ii) faxed to the fax number of the body corporate; or

(iii) emailed to the email address of the body corporate.

753 Immunity—Part 17.1

(1) A person employed or engaged by a mental health and wellbeing service provider who discloses personal information or health information under this Act or the regulations in good faith and in the reasonable belief that the disclosure is in accordance with this Act or the regulations is not

personally liable for any loss, damage or injury suffered by another person as a result.

(2) Any liability resulting from a disclosure referred to in subsection (1) that, but for that subsection, would attach to the person employed or engaged by a mental health and wellbeing service provider attaches instead to the State.

Division 2—Codes of Practice

754 Purpose of Codes of Practice

(1) The purpose of a Code of Practice is to provide practical guidance to any person or body performing functions and duties or exercising powers under this Act to promote best practice.

(2) A Code of Practice must not—

(a) impose a duty on any person; or

(b) create an enforceable legal right; or

(c) impose any liability or penalty.

755 Making of Codes of Practice

(1) The following persons may make a Code of Practice—

(a) the Health Secretary;

(b) the Chief Officer.

(2) Before making a Code of Practice, the Health Secretary or the Chief Officer may consult one or more of the following—

(a) the Mental Health and Wellbeing Commission;

(b) the chief psychiatrist;

(c) the President;

(d) a designated mental health service;

(e) a carer support group;

(f) a consumer advocacy group;

(g) any other person that the Health Secretary or the Chief Officer (as the case may be) considers should be consulted.

756 Commencement and availability of Codes of Practice

(1) As soon as practicable after making a Code of Practice, the Health Secretary or the Chief Officer must publish on the Department's Internet site—

(a) a notice that states—

(i) the date of commencement of the Code of Practice; and

(ii) the place where copies of the Code of Practice may be obtained; and

(b) the Code of Practice.

(2) The date of commencement of a Code of Practice is the date that the notice under subsection (1)(a) is published on the Department's Internet site or a later date specified in the notice.

(3) To the extent that a Code of Practice published by the Health Secretary is inconsistent with a Code of Practice published by the Chief Officer, the Code of Practice published by the Health Secretary prevails to the extent of the inconsistency.

757 Codes of Practice may apply, adopt or incorporate

A Code of Practice may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether—

(a) wholly or partially or as amended by the Code of Practice; or

(b) as formulated, issued, prescribed or published at the time that the Code of Practice is made or at any time before then; or

(c) as formulated, issued, prescribed or published from time to time.

Division 3—Review of this Act

758 Review of this Act

(1) The Minister must cause a review of the operation of this Act to be commenced within one year after the fifth anniversary of the day this Act came into operation.

(2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament no later than 7 years after this Act came into operation.

Division 4—Regulations

759 Regulations

(1) The Governor in Council may make regulations for or with respect to the following matters—

(a) prescribing forms to be used for the purposes of this Act;

(b) prescribing fees for the purposes of this Act;

(c) prescribing the keeping and the form of any records or other documents as may be necessary for the administration of this Act;

(d) the collection, provision, transfer, disclosure or use of information for the purposes of this Act;

(e) prescribing persons or classes of persons necessary to be prescribed for the purposes of this Act;

(f) prescribing the remuneration and allowances of Tribunal members, including remuneration and allowances that differ for different classes of Tribunal member;

(g) prescribing entities or classes of entity to be specified service providers or emergency service providers;

(h) prescribing types of health information for the purposes of sharing it with emergency service providers;

(i) prescribing circumstances triggering a notification to the primary non-legal mental health advocacy service provider;

(j) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations may—

(a) be of limited or general application; and

(b) differ according to differences in time, place or circumstance; and

(c) confer a discretionary authority or impose a duty on a specified person or a specified class of person; and

(d) provide in a specified case or class of case for the exemption of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions, and either wholly or to such extent as is specified; and

(e) in the case of a regulation made under subsection (1)(f), provide for different classes of member whether or not those classes are the same as the classes referred to in Chapter 7; and

(f) apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time; and

(g) impose a penalty not exceeding 20 penalty units for any contravention of the regulations.

760 Fees

(1) A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters—

(a) specific fees;

(b) maximum or minimum fees;

(c) maximum and minimum fees;

(d) a scale of fees;

(e) the payment of fees either generally or under specified conditions or in specified circumstances, including conditions or circumstances relating to the late lodgement of any application, or the late payment of fees, under this Act;

(f) the reduction, waiver or refund, in whole or in part, of the fees.

(2) If the regulations provide for a reduction, waiver or refund, in whole or in part, of a fee, the reduction, waiver or refund—

(a) may be expressed to apply either generally or specifically—

(i) in respect of certain matters or transactions or classes of matters or transactions; or

(ii) in respect of certain documents or classes of documents; or

(iii) when an event happens; or

(iv) in respect of certain persons or classes of persons; or

(v) in respect of any combination of matters, transactions, documents, events or persons; and

(b) may be expressed to apply subject to specified conditions or in the discretion of any specified person.

(3) If the regulations provide for a refund of a fee the Consolidated Fund is appropriated to the necessary extent to enable any refund to be paid.

Chapter 18—Repeal, savings and transitional provisions

Part 18.1—Repeals

761 Repeal of Mental Health Act 2014 and Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021

(1) The **Mental Health Act 2014** is **repealed**.

(2) The **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021** is **repealed**.

Part 18.2—Savings and transitional provisions

762 Application of Interpretation of Legislation Act 1984

Except where the contrary intention appears, this Part and any regulations made under this Part do not affect or take away from the **Interpretation of Legislation Act 1984**.

763 Mental Health Tribunal

(1) Despite the repeal of section 152 of the **Mental Health Act 2014**, the Mental Health Tribunal as established and in existence under that section as in force immediately before its repeal continues on and from that repeal as the Mental Health Tribunal under section 330 as if it had been established under that section.

(2) Any application made to the Mental Health Tribunal under the **Mental Health Act 2014** and not heard or determined on the repeal of that Act may be heard and determined, on and from that repeal, as if it were an application under the corresponding provision of this Act.

764 Rules Committee

Despite the repeal of section 207 of the **Mental Health Act 2014**, the Rules Committee of the Mental Health Tribunal as established and in existence under that section as in force immediately before its repeal continues on and from that repeal as the Rules Committee under section 389 as if it had been established under that section.

765 Chief psychiatrist and authorised officers

(1) The person appointed as the chief psychiatrist under section 119 of the **Mental Health Act 2014** immediately before the repeal of that Act is, on and after that repeal, taken to be the chief psychiatrist appointed under section 265 for the remainder of that person's term of appointment.

(2) A person appointed as an authorised officer under section 146 of the **Mental Health Act 2014** immediately before the repeal of that Act is, on and after that repeal, taken to be an authorised officer appointed under section 275.

766 Reportable deaths

(1) On and after the commencement of Part 17.3, a reportable death within the meaning of section 4 of the **Coroners Act 2008** that occurred before that commencement and has not reported in accordance with section 348 of the **Mental Health Act 2014** must be reported in accordance with section 741 of this Act.

(2) On and after the commencement of Part 17.3, a reportable death within the meaning of section 4 of the **Coroners Act 2008** that occurred immediately before that commencement and is not reported in accordance with section 349 of the **Mental Health Act 2014** must be reported in accordance with section 742 of this Act.

767 Victorian Collaborative Centre for Mental Health and Wellbeing

(1) Despite the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, the Victorian Collaborative Centre for Mental Health and Wellbeing established under that Act continues on and from that repeal as the the Victorian Collaborative Centre for Mental Health and Wellbeing under this Act and no act,

matter or thing is affected merely because of that repeal.

(2) On and after the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, a member of the Board of the Victorian Collaborative Centre for Mental Health and Wellbeing appointed under that Act and holding office immediately before that repeal is taken to be a member of the Centre Board appointed under this Act for the remainder of that member's original appointment.

(3) On and after the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, a director of the Victorian Collaborative Centre for Mental Health and Wellbeing appointed under that Act and holding office immediately before its repeal is taken to be a director of the Centre appointed under this Act, on the same terms and conditions, for the remainder of that director's term of appointment.

(4) On and after the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, any person who immediately before that repeal was employed under that Act is taken to be employed by the Centre under this Act until the person ceases to be so employed.

(5) On and after the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, a person holding office as a member of a committee of the Board of the Victorian Collaborative Centre for Mental Health and Wellbeing immediately before that repeal continues, subject to this Act, to hold that office for the balance of the term for which the person was appointed and on the same terms and

conditions as those on which the person held that office immediately before that repeal.

(6) On and after the repeal of the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, an agreement entered into under section 10 of that Act is taken to be an agreement entered into under section 646 of this Act.

768 Community visitors

(1) Despite the repeal of section 221 of the **Mental Health Act 2014**, the Community Visitors Mental Health Board as established and in existence under that section as in force immediately before its repeal continues on and from that repeal as the Community Visitors Mental Health Board under section 404 as if it had been established under that section.

(2) A person holding office as a community visitor immediately before the repeal of the **Mental Health Act 2014** continues, subject to this Act, to hold that office on and after that repeal for the balance of the term for which the person was appointed and on the same terms and conditions as those on which the person held that office immediately before that repeal.

(3) If, immediately before the repeal of the **Mental Health Act 2014**, a person receiving mental health and wellbeing services at a prescribed premises, or any person on their behalf, made a request under section 219 of the **Mental Health Act 2014** to be visited by a community visitor and the person in charge of the prescribed premises had not yet advised a community visitor that a request had been made, that request, on and after that repeal is taken to be a request made under section 402.

769 Right to communicate

On and after the repeal of the **Mental Health Act 2014**, a direction under section 16 of that Act restricting an inpatient's right to communicate that was in effect immediately before that day is taken to be a direction given under section 54.

770 Advance statements

On and after the repeal of the **Mental Health Act 2014**, an advance statement under Division 3 of Part 3 of that Act that was in effect immediately before that repeal is taken to be an advance statement of preferences in effect under this Act.

771 Nominated persons

On and after the repeal of the **Mental Health Act 2014**, a person who is a nominated person under Division 4 of Part 3 of that Act immediately before that repeal is taken to be a nominated support person under this Act.

772 Medical treatment

If, immediately before the repeal of the **Mental Health Act 2014**, consent is given under Division 3 of Part 5 of that Act and the course of medical treatment to which the consent relates has not commenced or been completed, that consent is taken to be, for the purposes of that course of medical treatment, consent given under this Act.

773 Second psychiatric opinions

If, immediately before the repeal of the **Mental Health Act 2014**, a report under section 84 of that Act has been prepared, and that report recommends changes to an eligible patient's current treatment, that report is taken to be, for the purposes of this Act, a report under section 72.

774 Electroconvulsive treatment

(1) Despite the repeal of the **Mental Health Act 2014**, if, immediately before that repeal, a person gives informed consent to a course of electroconvulsive treatment in accordance with Division 5 of Part 5 of that Act, that Part continues to apply to that person in relation to the course of electroconvulsive treatment to which the person gave informed consent.

(2) Despite the repeal of the **Mental Health Act 2014**, if, immediately before that repeal, the Tribunal authorises a course of electroconvulsive treatment for a person in accordance with Division 5 of Part 5 of that Act, that Part continues to apply to that person in relation to the course of electroconvulsive treatment authorised by the Tribunal.

775 Neurosurgery for mental illness

(1) On and after the repeal of the **Mental Health Act 2014**, an application made under section 100(2) of that Act is taken to be an application made under section 120 if, immediately before that day the Mental Health Tribunal—

(a) has not started to hear the matter in relation to the application; or

(b) has started to hear the matter in relation to the application but not determined it.

(2) If, immediately before the repeal of the **Mental Health Act 2014**, the Tribunal has approved any application under section 100(2) of that Act and given approval for the performance of neurosurgery on a person, and that neurosurgery is not yet performed, on and after that repeal the approval is taken to be an approval for the performance of neurosurgery given under this Act.

(3) A psychiatrist who, immediately before the repeal of the **Mental Health Act 2014** arranges for a neurosurgeon to perform neurosurgery on a person and has not complied with the requirements of section 104 of that Act must comply with section 123.

776 Seclusion and bodily restraint

(1) On and after the repeal of the **Mental Health Act 2014**, an authorisation to use a bodily restraint on a person under section 114 of that Act is taken to be an authorisation under section 132 with respect to the person.

(2) On and after the repeal of the **Mental Health Act 2014**, an authorisation for the use of seclusion on a person under section 111 of that Act is taken to be an authorisation under section 132 with respect to the person.

777 Victorian Institute of Forensic Mental Health

(1) Despite the repeal of section 328 of the **Mental Health Act 2014**, the Victorian Institute of Forensic Mental Health as continued and in existence under that section as in force immediately before its repeal continues, on and after that repeal, as the Victorian Institute of Forensic Mental Health established under section 610 as if it had been established under that section, and no act, matter or thing is affected merely because of that repeal.

(2) On and after the repeal of the **Mental Health Act 2014**, a director of the board of the Victorian Institute of Forensic Mental Health appointed under section 334 of that Act and holding office immediately before that repeal is taken to be, despite Part 14.2, a director of the Institute Board appointed under this Act for the remainder of the director's current term of appointment.

778 Electronic health information system

On and after the repeal of the **Mental Health Act 2014**, the electronic health information system referred to in section 347 of that Act is taken to be the same electronic health information system established by section 727.

779 Assessment orders

On and after the repeal of the **Mental Health Act 2014**, an Assessment Order that was made under that Act and which is in force immediately before that repeal continues in force as if it were an assessment order made under Chapter 4.

780 Court assessment orders

(1) Despite the repeal of section 41 of the **Mental Health Act 2014**, if an authorised psychiatrist varied a Community Court Assessment Order to an Inpatient Court Assessment Order under that section and the Court Assessment Order is in force immediately before that repeal, the variation is taken to be a change of assessment under a community court assessment order in accordance with section 170(1).

(2) Despite the repeal of section 41 of the **Mental Health Act 2014**, if an authorised psychiatrist varied an Inpatient Court Assessment Order to a Community Court Assessment Order under that section and the Court Assessment Order is in force immediately before that repeal, the variation is taken to be a change of assessment under an inpatient court assessment order in accordance with section 170(2).

781 Temporary treatment orders

S. 781 amended by No. 20/2023 s. 47.

On and after the repeal of the **Mental Health Act 2014**, a Temporary Treatment Order that was made under that Act and which is in force for the period specified in the Order immediately before that repeal continues in force as if it were a temporary treatment order made under Chapter 4.

782 Treatment orders

S. 782 amended by No. 20/2023 s. 48(1)(2) (ILA s. 39B(1)).

(1) On and after the repeal of the **Mental Health Act 2014**, a Treatment Order that was made under that Act and which is in force for the period specified in the Order immediately before that repeal continues in force as if it were a treatment order made under Chapter 4.

S. 782(2) inserted by No. 20/2023 s. 48(2).

(2) Despite subsection (1), if the period specified in the Treatment Order is more than 6 months, the Mental Health Tribunal—

(a) in confirming the treatment order under section 204, must reduce the period as the Tribunal considers appropriate so that it is not more than 6 months; or

(b) in confirming the treatment order and determining that the order is an inpatient order under section 207, must reduce the period as the Tribunal considers appropriate so that it is not more than 6 months.

783 Regulations dealing with transitional matters

(1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of this Act, including any repeals and amendments made by or as a result of the enactment of this Act.

(2) Regulations made under this section may—

(a) have a retrospective effect to a day on or after a day that is not earlier than the day on which this Act receives the Royal Assent;

(b) be of limited or general application;

(c) differ according to time, place or circumstance;

(d) exempt entities or classes of entity from any of the regulations made under this section;

(e) leave any matter or thing to be decided by a specified person or class of person.

(3) To the extent to which regulations made under this section take effect from a date that is earlier than the date of their making, the regulations do not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of their making; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of any thing done or omitted to be done before the date of their making.

(4) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.

(5) This section is **repealed** on the second anniversary of its commencement.

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Ch. 19 (Headings and ss 784–885) amended by No. 20/2023 s. 49, repealed by No. 39/2022 s. 885.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 23 June 2022

Legislative Council: 4 August 2022

The long title for the Bill for this Act was "A Bill for an Act to re-enact, with amendments, the law relating to the treatment of persons living with mental illness or experiencing psychological distress, to repeal the **Mental Health Act 2014** and the **Victorian Collaborative Centre for Mental Health and Wellbeing Act 2021**, to consequentially amend other Acts and for other purposes."

The **Mental Health and Wellbeing Act 2022** was assented to on 6 September 2022 and came into operation on 1 September 2023: section 2(2).

Section 605 never proclaimed, repealed on 9 August 2023 by section 37 of the **Mental Health and Wellbeing Amendment Act 2023**, No. 20/2023.

2 Table of Amendments

This publication incorporates amendments made to the **Mental Health and Wellbeing Act 2022** by Acts and subordinate instruments.

Mental Health and Wellbeing Act 2022, No. 39/2022

Assent Date:	6.9.22
Commencement Date:	S. 885 on 1.9.23: s. 2(2)
Note:	S. 885 repealed Ch. 19 (ss 784–885) on 1.9.24
Current State:	This information relates only to the provision/s amending the **Mental Health and Wellbeing Act 2022**

Mental Health and Wellbeing Amendment Act 2023, No. 20/2023

Assent Date:	8.8.23
Commencement Date:	Ss 3–49 on 9.8.23: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Mental Health and Wellbeing Act 2022**

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3 Explanatory details

No entries at date of publication.