Serial Mental Health Bill 2024 Mr/Ms/Mrs/Dr

A Bill for an Act about the treatment and care and rights of people with a mental illness or mental disorder

**EXPOSURE DRAFT ONLY** 

PREPARED FOR THE DEPARTMENT OF HEALTH

# **NORTHERN TERRITORY OF AUSTRALIA**

# **MENTAL HEALTH ACT 2024**

Act No. [ ] of 2024

# **Table of provisions**

Part 1		Preliminary matters	
Division	1	Short title, commencement and main objects of Act	
1 2 3	Comme	lencementjects of Act	1
Division	2	Guiding principles	
4 5 6 7	Human Self-det Cultural	principles rights principle ermination principle safety principle	2
8 9 10 11	Islander Diversity Best into	es for treatment and care of Aboriginal or Torres Strait persons persons principle prests of child principle of least restriction	3
Division	3	Application and communication	
12 13 14 15	Commu Act bind	ion of main objects and guiding principles nication under Act s Crown ion of Criminal Code	5 5
Division	4	Interpretation and important concepts	
16 17		nsg of <i>mental disorder</i>	
18 19	When p	g of <i>mental illness</i> erson not to be considered to have mental illness or	
20 21	Meaning	disorder g of <i>treatment</i> g of <i>appropriate supports</i>	15
22		g of compulsory assessment criteria	

		•
23	Meaning of compulsory treatment criteria	17
24	Meaning of parent	
25	Meaning of parental responsibility for a child	
26	Examination or assessment of person	
Part 2	Decision making capacity and informed consent	
27	Presumption of decision making capacity	19
28	Decision making capacity of child or parent for child	19
29	Meaning of decision making capacity	
30	Meaning of informed consent	
Part 3	Protection of rights	
Division	1 Preliminary matters	
31	Purposes of Part	22
Division	2 Statement of rights	
32	Meaning of responsible person	23
33	Statement of rights	
34	Requirement to give statement of rights	24
35	Explanation of statement of rights	
36	Statement of rights to be given to others	
37	Display of signs about statements of rights	
Division	3 Right of person to communicate	
38	Right to communicate	25
39	Restriction on right to communicate	26
40	Explanation of restriction on right to communicate	27
41	Notice to other persons of restriction on right to communicate	27
42	Authorisation of restriction to be reviewed regularly	27
43	Application to NTCAT to review authorisation decision	28
Division	4 Communication about person	
44	Communication about person	
45	Communication with parent of child	28
Division	5 Nominated support persons	
46	Meaning of appointing person	
47	Appointment of nominated support person	
48	Acceptance of appointment	
49	When is appointment revoked?	30
50	Revocation by appointing person	30

E 1	Dooigna	stion by naminated augment parago	21
51 52		ation by nominated support personnominated support person	
53		support nominated support personsupport nominated support person	
33	Duty to	support normilated support person	02
Part 4		Examination and assessment	
Division	1	Preliminary matters	
54	Purpose	es of Part	33
Division	2	Assessment orders	
Subdivis	sion 1	Assessment order for person not admitted to approved mental health facility	
55	Applicat	tion of Subdivision	33
56		o conduct examination of person	
57		examination to be conducted?	
58		ation of Aboriginal or Torres Strait Islander person	
59	Making	of assessment order	34
60		pes assessment order authorise?	
61		n of assessment order	
62		ng order made outside major population centre	
63 64		on of person for transport of assessment order	
65		tion for person to whom order applies	
66		ed persons to be notified of assessment order	
67		to be notified of assessment order	
68		tion of assessment order	
69		n of order to change place of assessment	
			00
Subdivis	sion 2	Assessment order for person admitted to approved mental health facility	
70	Applicat	tion of Subdivision	38
71		of assessment order	
72		pes assessment order authorise?	
73		n of assessment order	
74	Content	of assessment order	39
75	Informa	tion for person to whom order applies	40
76	Specifie	ed persons to be given assessment order	40
77		to be notified of assessment order	
78	Revoca	tion of assessment order	41
Subdivis	sion 3	Restrictions on treatment while assessment order in force	
79	Restrict	ions on treatment while assessment order is in force	41

Mental Health Act 2024

iii

Division	3 Order for compulsory examination	
80	Application for order for compulsory examination	
81	Decision on application	
82	What does order for compulsory examination authorise?	
83	Duration of order for compulsory examination	43
Division	4 Psychiatric assessment	
84	Psychiatric assessment	43
85	Time for psychiatric assessment	43
86	How is psychiatric assessment to be conducted?	
87 88	Assessment of Aboriginal or Torres Strait Islander person Matters to have regard to in deciding whether compulsory	
	treatment criteria apply	
89	Extension of detention for additional assessment	_
90	Revocation of assessment order	
91	Information for person to whom order applied	
92	Others to be notified of revocation	46
93	Assessment order revoked on making of temporary treatment order	47
Part 5	Treatment orders	
Division	1 Preliminary matters	
94	Purposes of Part	47
Division	2 Temporary treatment orders	
95	Temporary treatment order	48
96	What does temporary treatment order authorise?	
97	Duration of temporary treatment order	
98	Content of temporary treatment order	
99	Information for person to whom order applies	
100	If person has advance consent decision	
101	NTCAT and specified persons to be notified of temporary	
	treatment order	51
102	Others to be notified of temporary treatment order	
103	Application to NTCAT to review temporary treatment order	
Division	3 Treatment orders	
104	NTCAT review of temporary treatment order or treatment	
	order	
105	NTCAT orders following review	
106	Discharge of person from facility if NTCAT revokes order	53
107	Community or inpatient treatment order	53
108	What does treatment order authorise?	54

Mental Health Act 2024

109	Duration	of treatment order	. 54
110	Content	of treatment order	. 54
111	Informat	tion for person to whom order applies	. 55
112		o be notified of treatment order	
Division	4	Duties of supervising psychiatrist and	
		psychiatric case manager	
113	Duties o	of supervising psychiatrist	. 56
114		appoint psychiatric case manager	
115	•	of psychiatric case manager	
Division	5	Variation and revocation of temporary treatment orders and treatment orders	
Subdivis	sion 1	Variation of terms of temporary community treatment orders and community treatment orders	
116		n of terms of temporary community treatment order or nity treatment order	57
117		of varied order	
118		varied order to be given to person to whom it applies	
110	оору ог	varied order to be given to person to whom it applies	. 01
Subdivis	sion 2	Variation of temporary treatment orders and treatment orders – change to type of order	
119		n of temporary treatment order or treatment order – t to community	. 58
120	Variatio	n of temporary treatment order or treatment order – nity to inpatient	
101		· ·	. 60 . 60
121 122			
123		tion for person to whom order applies	
123		and specified persons to be notified of variation	
124	Officis	o be notined of variation	. 02
Subdivis	sion 3	Revocation of temporary treatment orders and treatment orders	
125	Revocat	tion of temporary treatment order or treatment order	. 63
126		tion for person to whom order applied	
127		and specified persons to be notified of revocation	
128		o be notified of revocation	
Division	6	Leave of absence from approved mental	
	=	health facility	
129 130		f absence from approved mental health facility n of leave of absence	

131	Period and conditions of leave of absence	65
132	Information for person granted leave of absence	
133	Others to be notified of grant or variation of leave of absence	
134	Revocation of leave of absence	
135	Information for a person to whom leave of absence applied	
136	Others to be notified of revocation	
Division	7 Absence without leave from approved mental health facility	
137	Application of Division	67
138	Arrangement to transport person absent without leave to	
	approved mental health facility	68
139	Person in charge to be notified if person absent without leave	68
140	Others to be notified if person absent without leave	. 68
Division	8 Absence of person on temporary community treatment order or community treatment order	
	•	
141	Application of Division	
142	Supervising psychiatrist to seek person's cooperation	
143	Making of transport and detention order	69
144	Person in charge to be notified of transport and detention	70
145	Others to be notified of transport and detention order	
143	Others to be notified of transport and detention order	. 70
Part 6	Correctional patients	
Division	1 Preliminary matters	
146	Purposes of Part	71
Division	2 Assessment order for prisoner or detainee	
147	Making of assessment order	71
148	What does assessment order authorise?	72
149	Assessment order to specify place of psychiatric assessment	72
150	Content of assessment order	73
151	Information for prisoner or detainee to whom order applies	73
152	Revocation of assessment order	73
Division	3 Psychiatric assessment	
153	Psychiatric assessment	74
154	How is psychiatric assessment to be conducted?	
155	Assessment of Aboriginal or Torres Strait Islander person	
156	What if compulsory treatment criteria do not apply?	

Division	4	Transport of prisoner or detainee to approved mental health facility	
157		ort for admission of prisoner or detainee under ary inpatient treatment order	76
158		ort for voluntary admission of prisoner or detainee	
Division	5	Leave of absence of correctional patient	
159		of absence	
160		tion of leave of absence	
161	iniorma	tion for correctional patient about revocation	/ 8
Division	6	Absence without leave from approved mental health facility	
162	Applica	tion of Division	78
163	Arrange	ement to transport correctional patient absent without approved mental health facility	
164	Person	to be notified if correctional patient absent without	
	ieave		/ &
Division	7	General matters	
165	Notice t	to Commissioner of Correctional Services or Youth	
		CEO about certain matters	
166	Correct	ional patient to remain in lawful custody	80
167		e of correctional patient	80
168		of correctional patient to custodial correctional facility	
		ntion centre	
169	Arrange	ements for correctional patients	83
Part 7		Care and control and transport	
Division	1	Preliminary matters	
170	Purpose	es of Part	83
171	Least re	estrictive approach	83
172	Health I	led response	83
Division	2	Taking person into care and control in mental health crisis	
173	Taking	person into care and control	84
174	Exercis	e of clinical judgment	84
175	Examination of person taken into care and control		
176		e of person from care and control	

Mental Health Act 2024 EXPOSURE DRAFT ONLY PREPARED FOR THE DEPARTMENT OF HEALTH

vii

Division	Transport of persons within and to and from approved mental health facilities and other places	
177 178 179	Transport of persons within approved mental health facility  Transport of person to or from approved mental health facility  Transport of person to or from place (other than approved mental health facility) for psychiatric assessment	85
180	Transport of person from approved mental health facility to another approved mental health facility	
181	Application to NTCAT to review decision to authorise transport of person to another facility	87
182  Division	Transport of person to place in the community  4 Transport of person absent without leave or under transport and detention order	87
183	Transport of person absent without leave from approved	07
184 185	mental health facility  Transport of person under transport and detention order  Transport of correctional patient absent without leave from	
	approved mental health facility	87
Division	5 Powers of authorised persons	
Subdivis	sion 1 Preliminary matters	
186 187 188	Authorised person may exercise powers	88
Subdivis	sion 2 Detention and restraint	
189 190 191	Detention of person for transport  Use of bodily restraint to transport person  Use of chemical restraint to transport person	88
Subdivis	sion 3 Entry of premises	
192	Authorised person may enter premises	89
Subdivis	sion 4 Search and seizure	
193 194 195 196 197	Authorised person may search a person	90 91 91

Mental Health Act 2024
EXPOSURE DRAFT ONLY PREPARED FOR THE DEPARTMENT OF HEALTH viii

Division	6	Authorised person to give information	
198	Informat	tion to be given by authorised person	91
Part 8		Treatment and care	
Division	1	Preliminary matters	
199	Purpose	es of Part	92
Division	2	Treatment decisions	
Subdivis	sion 1	Making treatment decisions	
200 201 202 203	treatment Views of Other m	views and preferences of person to whom temporary nt order or treatment order applies	93 94
Subdivis	sion 2	Treatment and discharge planning	
204 205 206 207	Persons Prepara	tion, review and revision of treatment plans to be given copy of treatment plantion of discharge plans to be given copy of discharge plan	95 96
Division	3	Treatment and care for Aboriginal or Torres Strait Islander persons	
208	Treatme	ent and care	97
Division	4	Urgent health care	
209	Report of	of urgent health care given to person	97
Division	5	Approved research, clinical trials and experimental treatments	
210	Researc	ch, clinical trials and experimental treatments	98
Part 9		Regulated treatment	
Division	1	Preliminary matters	
211	Purpose	es	99

Division	2	Electroconvulsive therapy	
Subdivis	ion 1	Administration of electroconvulsive therapy	
212 213 214 215 216 217 218	Adult wi Adult wi Child wi Child wi Where r Two me therapy	th decision making capacity	. 99 100 100 101 101
Subdivis	ion 2	Electroconvulsive therapy orders	
220 221 222 223 224	Matters therapy Matters therapy Decision therapy	tion to NTCAT for electroconvulsive therapy order	102 103 104
Subdivis	ion 3	Emergency electroconvulsive therapy	
225	Adminis	tration of electroconvulsive therapy in emergency	105
Subdivis	sion 4	Report of administration of electroconvulsive therapy	
226	Person	in charge of approved mental health facility to report	106
Division	3	Neurosurgery for mental illness	
227 228 229 230 231 232 233	neurosu Applicat Matters Decision Notice of Reports	urgery for mental illness not to be performed without urgery order	107 107 108 108 109
Part 10		Restrictive interventions	
234 235		e of Part ons on use of restrictive interventions	

236	Restrictive intervention used only if no less restrictive way practicable	111
237 238	Matters to be considered in authorising restrictive intervention. Use of restrictive intervention must be authorised	111 111
239	Ending restrictive intervention.	
240	Record of use of restrictive intervention	
241	Report to Chief Psychiatrist	
242	Examination by authorised psychiatrist	
243	Monitoring of persons if mechanical restraint used	
244	Monitoring of persons kept in seclusion	115
245	Facilities and supplies to be given to person if restrictive	445
246	intervention used  Persons to be notified of use of restrictive intervention	I I I
246 247	Plan for reduction of use of restrictive interventions on children	
247	Restrictive intervention policy	
249	Offence to use restrictive intervention if Part not complied with.	
Part 11	Security at approved mental health facilities	
Division	1 Preliminary matters	
250	Purpose of Part	117
251	Definitions	
252	Authorised staff members	118
Division	2 Search of persons detained at or admitted to approved mental health facility	
	approved mental health facility	118
253	approved mental health facility  Search by authorised staff member	
253 254	approved mental health facility  Search by authorised staff member  Who may be searched?	118
253	approved mental health facility  Search by authorised staff member	118 119
253 254 255	approved mental health facility  Search by authorised staff member  Who may be searched?	118 119 119
253 254 255 256	approved mental health facility  Search by authorised staff member	118 119 119 119
253 254 255 256 257	approved mental health facility  Search by authorised staff member	118 119 119 119 120
253 254 255 256 257 258	approved mental health facility  Search by authorised staff member	118 119 119 119 120
253 254 255 256 257 258 259	approved mental health facility  Search by authorised staff member	118 119 119 120 121 121
253 254 255 256 257 258 259 260	approved mental health facility  Search by authorised staff member	118 119 119 120 121 121
253 254 255 256 257 258 259 260 261	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 122
253 254 255 256 257 258 259 260 261 262	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 122
253 254 255 256 257 258 259 260 261 262 263	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 122
253 254 255 256 257 258 259 260 261 262 263 264	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 123 123
253 254 255 256 257 258 259 260 261 262 263 264 <b>Division</b>	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 123 123 123
253 254 255 256 257 258 259 260 261 262 263 264 <b>Division</b>	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 123 123 123
253 254 255 256 257 258 259 260 261 262 263 264 <b>Division</b> 265 266	approved mental health facility  Search by authorised staff member	118 119 119 120 121 122 123 123 124 124

270 271	Return of thing to visitor	
Division	4 Search of things sent to person at approved mental health facility	
272 273 274 275	Person in charge may search mail or thing sent to person	126 126
Part 12	Disclosure of health information	
Division	1 Preliminary matters	
276 277 278	Purpose of Part	127
Division	2 Prohibited disclosure of health information	
279	Offence to disclose health information	128
Division	3 Permitted disclosure of health information	
280 281 282 283 284 285 286 287 288 289 290 291 292 293	Disclosure of health information with consent  Disclosure required or permitted by another law  Disclosure for treatment and care  Disclosure to person's adult guardian or decision maker  Disclosure to person's health care decision maker  Disclosure to parent of child  Disclosure to Families CEO  Disclosure required for criminal investigations  Disclosure for function under Coroners Act 1993  Disclosure to court or tribunal  Disclosure to health profession body  Disclosure to prevent risk of immediate serious harm  Disclosure for research or statistics  Disclosure to Minister, CEO or Chief Psychiatrist  Administration	130 130 131 131 131 132 132 133 133
Division		
294	Purposes of Part	134
	•	

Mental Health Act 2024

Χİİ

Division	2	Chief Psychiatrist	
Subdivis	ion 1	Appointment	
295 296 297	Resigna	ment of Chief Psychiatristtion of Chief Psychiatristtion of appointment of Chief Psychiatrist	.135
Subdivis	sion 2	Functions and powers	
298 299 300 301 302	Delegati Assistar Minister	ns and powers of Chief Psychiatrist ion nce may ask for report kecutive Officer may ask for report	. 136 . 136 . 136
Subdivis	sion 3	Guidelines, policies and standards	
303 304 305 306	Standar Guidelin	nes and policiesds ds nes, policies or standards may incorporate documents ion of guidelines, policies or standards	. 138 . 138
Subdivis	sion 4	Approved forms	
307 308		sychiatrist may approve formsion of approved forms	
Subdivis	sion 5	Advisory committees	
309 310 311	Member	hment of advisory committeesship of advisory committeess of advisory committeess	. 139
Subdivis	sion 6	Annual report	
312	Annual ı	report	139
Division	3	Approved mental health facilities and approved mental health services	
313 314 315 316	Approve High del Persons approve	ed mental health facilityed mental health service	. 141 . 141
		onvulsive therapy	142

Mental Health Act 2024
EXPOSURE DRAFT ONLY PREPARED FOR THE DEPARTMENT OF HEALTH xiii

Division	4	Authorised psychiatrists, authorised psychiatric practitioners and authorised mental health practitioners	
318 319 320	Authoris	ed psychiatristsed psychiatric practitionersed mental health practitioners	142
Division	5	Authorised officers	
321 322 323	Identity	cards for authorised officersbf identity card	144
Division	6	Investigation of clinical events	
324 325 326 327	Chief Ps Investiga	g of <i>clinical event</i> sychiatrist may investigate clinical eventation reportse of person in charge to recommendations	146 146
Division	7	Powers of entry and inspection	
328 329 330	Powers Power to	nay powers under this Division be exercised?of entryog give written direction to produce documents or questions	147
Part 14		Community visitors	
Division	1	Preliminary matters	
331	Purpose	e of Part	148
Division	2	Principal community visitor	
332 333 334 335	Resigna Termina	l community visitortion of principal community visitortion of appointment of principal community visitorns of principal community visitor	149 149
Division	3	Community visitors	
Subdivis	ion 1	Appointment of community visitors	
336 337 338	Resigna	ment of community visitorstion of community visitortion of appointment of community visitor	151

Mental Health Act 2024
EXPOSURE DRAFT ONLY PREPARED FOR THE DEPARTMENT OF HEALTH

Subdivis	ion 2	Functions and powers of community visitors	
339	Inquiry f	functions	152
340		int functions	
341	Power to	o visit approved mental health facilities and premises oved mental health services	
342		of inspection	
343		ts to see community visitors	
344		by community visitors	
Division	4	Community visitors panels	
Subdivis	ion 1	Establishment of community visitors panels	
345	Commu	nity visitors panels	155
346		ation of member of community visitors panel	
347	Termina	ation of appointment of member of community visitors	
348		appointment of member of community visitors panel	
Subdivis	sion 2	Functions and powers of community visitors panels	
349	Function	ns of community visitors panels	157
350		of community visitors panels	
351		by community visitors panels	
Subdivis	sion 3	Special community visitors panels	
352	Special	community visitors panels	159
353	Powers	of special community visitors panel	159
354	Report of	of special community visitors panel	160
		of appointment of members	
356	Re-esta	blishment of special community visitors panel	160
Division	5	General provisions	
357	Assistar	nce to be given	161
358		report	
359		ted offences	
Part 15		NTCAT proceedings	
Division	1	Preliminary matters	
360	Purpose	e of Part	162

Division	2	Jurisdiction of NTCAT	
361 362		ion of NTCATof original decision	
Division	3	Constitution of NTCAT	
363 364 365 366 367	Constitu Constitu Constitu	ments for constitution of NTCAT for proceeding	164 164 165
Division	4	Proceedings before NTCAT	
368 369	Certain	of person to be respectedhearings only to be adjourned in exceptional	
370 371	Appeara	tancesance and representationin absence of person	166
372 373	Hearing Sections	in absence of person or person's representatives 86 and 87 of NTCAT Act not to apply	167 167
374 375 376	Interpret	to medical records and reportster not open to public	168
377		to record of proceedings	
Division	5	General matters	
378 379 380	Oral rea	e not to be used in other proceedingssons and findings of faction of decision	169
Part 16		Appeal to Supreme Court	
381 382 383 384 385 386	Appeal to Determine Appears Hearing	e of Part	170 170 171 171
Part 17	ricaring	Interstate transfers	
387 388 389	Definitio Transfer	of Partnsr of person to whom treatment order applies to another Territory	172

Mental Health Act 2024 xvi

390	Transfer of person to whom interstate order applies from	71	
391	another State or TerritoryPsychiatric assessment of person transferred from another State or Territory		
392	Temporary treatment order for person transferred from		
393	another State or Territory1 Power to transport		
Part 18	General matters		
394	Liability of Chief Psychiatrist and specified health care providers1	76	
395	Protection from liability1	77	
396	Offence to disclose certain information		
397	Misleading information		
398	Who may commence proceedings under Act		
399	When proceedings under Act commence		
400	Delegations		
400	Regulations		
401	Review of Act		
402	Neview of Act	J 1	
Part 19	Repeals and transitional provisions		
Division	1 Repeals		
403	Acts repealed1	81	
Division	2 Transitional matters for Mental Health Act 2024		
404	Definitions 1		
405	Transitional regulations1	82	
Part 20	Consequential amendments		
Division	1 Health Care Decision Making Act 2023		
406	Act amended1	97	
407	Section 9A inserted		
407	9A Relationship with <i>Mental Health Act 2024</i>	02	
408	Section 11 amended (Authority of health care decision maker) 18	83	
409	Section 29 amended (Role of health care decision makers		
	regarding "restrictive practices")1	83	
410	Section 36 amended (Other laws allowing health care without consent not affected)	83	
411	Section 54 amended (Senior Practitioner directives and	_	
	approvals)1	83	

Mental Health Act 2024 xvii

Division	2	Disability Services Act 1993	
		ended	
413	Section	2 amended (Interpretation)	184
414	Section	5A inserted	184
	5A	Meaning of complex cognitive impairment and related terms	
415	Section	6 amended (Meaning of treatment plan)	185
416	Section	8 amended (Application for order)	185
417	Section	9 amended (Notice of application)	185
418	Section	14 amended (Effect of order)	186
419	Section	34 amended (Meaning of chemical restraint)	186
420	Section	50 amended (Appointment)	186
Division	3	Other laws amended	
421	Other la	ws amended	186
Division	4	Repeal of Part	
Schedul	le	Other laws amended	

Mental Health Act 2024 xviii



# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2024

An Act about the treatment and care and rights of people with a mental illness or mental disorder

[Assented to [ ] 2024] [Introduced [ ] 2024]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

Division 1 Short title, commencement and main objects of Act

## 1 Short title

This Act may be cited as the *Mental Health Act 2024*.

# 2 Commencement

- (1) Subject to subsection (2), this Act commences on the day fixed by the Administrator by *Gazette* notice.
- (2) If a provision of this Act does not commence before [date\*], it commences on that day.

## 3 Main objects of Act

The main objects of this Act are to provide for:

(a) the highest standard of treatment and care to be given to persons with a mental illness or mental disorder; and

- (b) treatment and care to be given to persons with a mental illness or mental disorder in a way that:
  - (i) is the least restrictive of their rights, freedoms, dignity and autonomy; and
  - (ii) promotes their recovery and full participation in the community, without the need for compulsory treatment.

# Division 2 Guiding principles

### 4 Guiding principles

This Division sets out guiding principles for this Act.

# 5 Human rights principle

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

### 6 Self-determination principle

- (1) The right of each person with a mental illness or mental disorder to self-determination must be recognised and taken into account in making decisions about the person's treatment and care.
- (2) A person with a mental illness or mental disorder who is receiving treatment and care is to be supported to make decisions and to be involved in decisions about the person's assessment, treatment and recovery including when the person is receiving compulsory treatment.
- (3) The wishes, views and preferences of a person with a mental illness or mental disorder who is receiving treatment and care are to be given priority in making decisions about the treatment and care.

# 7 Cultural safety principle

- (1) The treatment and care of a person with a mental illness or mental disorder must take into account the person's cultural and linguistic background, including the person's cultural, religious and spiritual beliefs and practices.
- (2) To the extent practicable and appropriate, communication with a person with a mental illness or mental disorder who is from a culturally or linguistically diverse background must be assisted by an interpreter.

# 8 Principles for treatment and care of Aboriginal or Torres Strait Islander persons

- (1) The treatment and care of an Aboriginal or Torres Strait Islander person with a mental illness or mental disorder must take into account and be respectful of the person's culture and identity including:
  - (a) the person's connections to family and kinship, community, Country and waters; and
  - (b) the importance of those connections to mental health and to the social and emotional wellbeing of Aboriginal and Torres Strait Islander persons.
- (2) To the extent practicable and appropriate, the treatment and care of an Aboriginal or Torres Strait Islander person with a mental illness or mental disorder must be decided and given taking into account the views of elders, traditional healers and Aboriginal or Torres Strait Islander mental health workers.
- (3) To the extent practicable and appropriate, communication with an Aboriginal or Torres Strait Islander person with a mental illness or mental disorder must be assisted by an interpreter.

# 9 Diversity principle

- (1) The treatment and care of a person with a mental illness or mental disorder must recognise, and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices and cultural, religious and spiritual beliefs and practices.
- (2) The treatment and care of a person with a mental illness or mental disorder must be given in a manner that:
  - 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 abilities, needs and experiences intersect with each other and with the person's mental health.

# 10 Best interests of child principle

(1) In the treatment and care of a child with a mental illness or mental disorder, the best interests of the child are the primary consideration.

(2) The health, wellbeing and autonomy of a child receiving treatment and care for a mental illness or mental disorder are to be promoted and supported, including by providing treatment and care in settings and ways appropriate to the age and development of the child.

# 11 Principle of least restriction

- (1) Treatment and care are to be given to a person with a mental illness or mental disorder in a way that is the least restrictive of the person's rights, freedoms, dignity and autonomy with the aim of promoting the person's recovery and full participation in the community.
- (2) For subsection (1), the wishes, views and preferences of a person with a mental illness or mental disorder are to be key determinants of the nature of the person's recovery and participation in the community.
- (3) For this Act, a way is the least restrictive of the rights, freedoms, dignity and autonomy of a person who has a mental illness or mental disorder if the way adversely affects the person's rights, freedoms, dignity and autonomy only to the extent required to protect the person's safety or the safety of anyone else.
- (4) Without limiting subsection (1), it is a less restrictive way for a person to be given treatment and care for the person's mental illness or mental disorder if, instead of receiving compulsory treatment and care, the person is given the treatment and care in one of the following ways:
  - (a) if the person has made an advance consent decision consenting to the treatment and care – in accordance with that decision;
  - (b) if the person has an adult guardian with the consent of the adult guardian;
  - (c) if the person has a decision maker with the consent of the decision maker;
  - (d) if the person is a child with the consent of the child's parent;
  - (e) if the person is a child in the Families CEO's care with the consent of the Families CEO.

Application and communication

#### Division 3 **Application and communication**

#### 12 Application of main objects and guiding principles

- (1) A person performing a function or exercising a power under this Act must:
  - have regard to the main objects of this Act and the guiding (a) principles; and
  - perform the function or exercise the power in a manner (b) consistent with the main object and guiding principles.
- (2) Without limiting subsection (1), an authorised psychiatrist or authorised psychiatric practitioner must have regard to the main objects of this Act and the guiding principles in making a decision about treatment and care for a person to whom a temporary treatment order or a treatment order applies.

#### 13 Communication under Act

- (1) A communication with a person under this Act must be in a language, form of communication and terms that the person is likely to understand using:
  - any means of communication that is practicable; and (a)
  - an interpreter if it is necessary and practicable.
- (2) In this section:

**communication** with a person includes the provision to a person of advice or an explanation, information, notice or reason.

#### 14 **Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) If the Crown commits an offence against this Act, the penalty to be imposed on the Crown is the penalty applicable to a body corporate.

Mental Health Act 2024

5

#### 15 **Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 15

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

#### **Division 4** Interpretation and important concepts

#### 16 **Definitions**

In this Act:

### Aboriginal or Torres Strait Islander person means:

- a descendant of the Aboriginal people of Australia; or
- a descendant of the Indigenous inhabitants of the Torres Strait Islands.

adult guardian, for a person, means a guardian (as defined in section 3 of the Guardianship of Adults Act 2016) of the person who has authority under that Act to make decisions about the treatment and care of the person.

advance consent decision, see section 3 of the Advance Personal Planning Act 2013.

advance personal plan, see section 8 of the Advance Personal Planning Act 2013.

appointing person, for Part 3, Division 5, see section 46.

appropriate supports, see section 21.

approved form means a form approved under section 307.

approved mental health facility means a place or premises or a part of a place or premises declared under section 313 to be an approved mental health facility.

approved mental health service means a body or organisation declared under section 314 to be an approved mental health service.

assessment order means an assessment order made under section 59, 71 or 147.

6

Mental Health Act 2024

authorised mental health practitioner means a person appointed as an authorised mental health practitioner under section 320.

**authorised officer** means a person appointed as an authorised officer under section 321.

### authorised person means:

- (a) a medical practitioner; or
- (b) a registered nurse; or
- (c) a paramedic; or
- (d) an authorised mental health practitioner; or
- (e) a police officer; or
- (f) for the transport of a prisoner to or from a custodial correctional facility or an approved mental health facility a correctional officer (as defined in section 4 of the *Correctional Services Act 2014*); or
- (g) for the transport of a detainee to or from a detention centre or an approved mental health facility – a staff member of the detention centre; or
- (h) a person in a class prescribed by regulation.

**authorised psychiatrist** means a person appointed as an authorised psychiatrist under section 318.

authorised psychiatric practitioner means a person appointed as an authorised psychiatric practitioner under section 319.

authorised staff member, for Part 11, see section 251.

**bodily restraint** means physical restraint or mechanical restraint of a person.

carer, see section 5 of the Carers Recognition Act 2016.

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

**Chief Psychiatrist** means a person appointed as the Chief Psychiatrist under section 295.

child means a person under 18 years of age.

### child is in the Families CEO's care means:

- the child is under a temporary placement arrangement or in provisional protection under the Care and Protection of Children Act 2007; or
- the Families CEO otherwise has daily care and control of the child under an order of the Court (for example, a protection order) or a law of the Territory.

clinical event, see section 324.

Commissioner for Health and Community Service Complaints, see section 9 of the Health and Community Service Complaints Act 1998.

community treatment order means a community treatment order made under section 105 or by variation under section 119.

community visitor means a person appointed as a community visitor under section 336 and includes the principal community visitor.

compulsory assessment criteria, see section 22.

compulsory treatment and care, means treatment and care given to a person under a temporary treatment order or treatment order.

compulsory treatment criteria, see section 23.

correctional patient means a prisoner or detainee who is:

- admitted to an approved mental health facility under a temporary inpatient treatment order or an inpatient treatment order; or
- admitted to an approved mental health facility under Part 6 with the consent of the prisoner or detainee.

corresponding law, for Part 17, see section 388.

custodial correctional facility, see section 11(1)(a) of the Correctional Services Act 2014.

decision maker, for a person, means a decision maker, as defined in section 3 of the Advance Personal Planning Act 2013, for the person who has authority under that Act to make decisions about the treatment and care of the person.

decision making capacity, see section 29.

detainee, see section 5(1) of the Youth Justice Act 2005.

detention centre, see section 5(1) of the Youth Justice Act 2005.

**electroconvulsive therapy** means the application of an electric current to specific areas of a person's head to produce a generalised seizure.

**electroconvulsive therapy order** means an electroconvulsive therapy order made under section 223.

**Families CEO** means the Chief Executive Officer of the Agency administering the Care and Protection of Children Act 2007.

### frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer clothing; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**guiding principles** means the guiding principles set out in Division 2.

**health care decision maker**, see section 4 of the *Health Care Decision Making Act 2023*.

**Health and Community Service Complaints Commission**, see section 8 of the *Health and Community Service Complaints Act* 1998.

health information, for Part 12, see section 277.

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

### health professional means:

- (a) a health practitioner; or
- (b) a social worker; or
- (c) for an Aboriginal or Torres Strait Islander person an Aboriginal or Torres Strait Islander mental health worker.

**high dependency unit** means a part of an approved mental health facility declared under section 315 as a high dependency unit.

informed consent, see section 30.

inpatient treatment order means an inpatient treatment order made under section 105 or by variation under section 120.

interstate mental health service, for Part 17, see section 388.

interstate order, for Part 17, see section 388.

least restrictive way, see section 11.

major population centre means an area of the Territory prescribed by regulation as a major population centre.

mechanical restraint means the use of a device to prevent or restrict a person's movement, but does not include the appropriate use of a medical or surgical appliance in the treatment of a physical illness or injury.

mental disorder, see section 17.

mental illness, see section 18.

### **neurosurgery for mental illness** means:

- a surgical technique or procedure by which a lesion is created in a person's brain to treat a mental illness; or
- the use of intracerebral electrodes to create a lesion in a person's brain to treat a mental illness: or
- the use of intracerebral electrodes to stimulate a person's brain without creating a lesion, to treat a mental illness.

neurosurgery order means a neurosurgery order made under section 230.

nominated support person means a person appointed as a nominated support person under section 47.

NTCAT Act means the Northern Territory Civil and Administrative Tribunal Act 2014.

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

ordinary search means a search of a person, or of items in a person's possession, that may include:

requiring the person to remove a bag or the person's coat, jacket, gloves, hat or shoes; and

Mental Health Act 2024 10 Division 4 Interpretation and important concept

(b) an examination of those items.

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

parent, see section 24.

parental responsibility for a child, see section 25.

personal search, for Part 11, see section 251.

**person in charge**, in relation to an approved mental health facility or approved mental health service, means a person appointed as the person in charge of the facility or service under section 316.

**physical restraint** means the use by a person of the person's 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 practicable to:

- (a) enable the person to be supported or assisted to carry out daily activities; or
- (b) redirect the person because the person is disoriented.

**principal community visitor** means a person appointed as the principal community visitor under section 332.

prisoner, see section 6 of the Correctional Services Act 2014.

**psychiatric case manager** means a psychiatric case manager appointed under section 114.

**psychiatrist** means a medical practitioner who:

- (a) is registered under the *Health Practitioner Regulation National*Law in the specialty of psychiatry; or
- (b) holds a limited registration under the *Health Practitioner* Regulation National Law that enables the medical practitioner to practise in the speciality of psychiatry.

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

**registered nurse** means a person registered under the *Health Practitioner Regulation National Law*:

- (a) to practise in the nursing profession (other than as a student); and
- (b) in the registered nurses division of that profession.

responsible officer, for Part 17, see section 388.

**responsible person**, for Part 3, Division 2, see section 32.

**restrictive intervention** means seclusion, bodily restraint or chemical restraint.

**restrictive intervention policy** means a policy of the Chief Psychiatrist published under section 248.

**scanning search** means a search of a person by electronic or other means that does not require the person to remove the person's clothing or to be touched by anyone else.

**seclusion** means the confinement of a person at any time alone in a room or area from which free exit is prevented but does not include a circumstance where a person is alone in a room or area that the person cannot leave only because of frailty, illness or mental or physical disability.

### senior registered nurse means:

- (a) for an approved mental health facility the senior registered nurse on duty on a ward at that facility; or
- (b) for an approved mental health service the senior registered nurse on duty at the premises of the service.

staff member, for Part 11, see section 251.

**statement of rights** means a statement of rights prepared and published under section 33.

**supervising psychiatrist** means the authorised psychiatrist named in a temporary community treatment order or community treatment order as the supervising psychiatrist for the order.

**temporary community treatment order** means a temporary community treatment order made under section 95 or 393(1) or by variation under section 119.

temporary inpatient treatment order means a temporary inpatient treatment order made under section 95 or 393(2) or by variation under section 120.

### temporary treatment order means:

- (a) a temporary community treatment order; or
- (b) a temporary inpatient treatment order.

**traditional healer**, in relation to an Aboriginal or Torres Strait Islander community, means an Aboriginal or Torres Strait Islander person who:

- (a) uses traditional (including spiritual) ways of healing; and
- (b) is recognised by the community as a traditional healer.

**transport and detention order** means a transport and detention order made under section 143.

*treatment*, in relation to a mental illness or mental disorder, see section 20.

### treatment order means:

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

**Youth Justice CEO** means the Chief Executive Officer of the Agency administering Part 8 of the *Youth Justice Act 2005*.

Note for section 16

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

# 17 Meaning of mental disorder

- (1) A person has a **mental disorder** if the person's behaviour is so irrational as to justify a conclusion on reasonable grounds that treatment and care of the person is necessary to prevent serious harm to the person or anyone else.
- (2) A *mental disorder* does not include a condition that is a mental illness.

### 18 Meaning of *mental illness*

- (1) **Mental illness** means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person in one or more areas of thought, mood, volition, perception, orientation or memory and is characterised:
  - (a) by the presence of at least one of the following symptoms:
    - (i) delusions;
    - (ii) hallucinations;
    - (iii) serious disorders of the person's stream of thought;
    - (iv) serious disorders of the person's thought form;
    - (v) serious disturbances of the person's mood; or
  - (b) by sustained or repeated irrational behaviour that may indicate the presence of at least one of the symptoms mentioned in paragraph (a).
- (2) A decision that a person has a mental illness must be made in accordance with internationally accepted clinical standards.

# 19 When person not to be considered to have mental illness or mental disorder

- (1) A person is not to be considered to have a mental illness or mental disorder merely because of one or more of the following:
  - (a) the person expresses or does not express a particular political opinion or belief;
  - (b) the person expresses or does not express a particular religious opinion or belief;
  - (c) the person expresses or does not express a particular philosophy;
  - (d) the person expresses or does not express a particular sexual preference, gender identity or sexual orientation;
  - (e) the person engages or does not engage in a particular political activity;
  - (f) the person engages or does not engage in a particular religious or cultural activity;

Mental Health Act 2024 14

- (g) the person engages in a particular pattern of sexual behaviour;
- (h) the person engages in conduct that is contrary to community standards of acceptable conduct;
- (i) the person engages in illegal conduct;
- (j) the person engages in antisocial behaviour;
- (k) the person has an intellectual disability;
- (I) the person uses alcohol or other drugs;
- (m) the person has a particular economic or social status or is a member of a particular cultural, racial or religious group;
- the person communicates or does not communicate, or (n) behaves or does not behave, in a manner consistent with the person's cultural beliefs or practices;
- the person is involved, or has previously been involved, in family conflict;
- the person is experiencing, or has experienced, psychological distress;
- the person has previously been diagnosed with, or treated for, a mental illness or a mental disorder.
- (2) Subsection (1)(I) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of using drugs or alcohol from being considered an indication that a person has a mental illness.

#### 20 Meaning of treatment

- (1) A person receives *treatment* for a mental illness or mental disorder if professional skill is used:
  - to remedy or alleviate the person's mental illness or mental (a) disorder; or
  - (b) to alleviate the symptoms and reduce the ill effects of the person's mental illness or mental disorder.
- (2) Treatment includes electroconvulsive therapy and neurosurgery.
- (3) Detention is not treatment.
- (4) Use of a restrictive intervention is not treatment.

(5) To avoid doubt, treatment means treatment for a mental illness or mental disorder.

# 21 Meaning of appropriate supports

**Appropriate supports** means things that can reasonably be done to assist a person to:

- (a) make decisions and participate in decision making; or
- (b) understand information and the person's rights; or
- (c) communicate the person's wishes, views, preferences, questions and decisions.

### Examples for section 21

- 1 Communicating with the person in the person's preferred language including with the assistance of interpreters.
- 2 Communicating in an accessible format, style or mode, including with the use of technology.
- 3 Communicating with the person in a way that is tailored to the person's needs including the person's literacy, developmental needs or cultural needs.
- 4 Communicating with the person in an appropriate physical or sensory environment.
- 5 Allowing and enabling the person's family member, carer, supporter or advocate to be present either in person or by the use of technology.
- 6 Providing appropriate spaces for communication between the person and the person's family members, carers, supporters or advocates.

# 22 Meaning of compulsory assessment criteria

The *compulsory assessment criteria* for an assessment order to be made for a person are:

- (a) the person appears to have a mental illness or mental disorder; and
- (b) because the person appears to have a mental illness or mental disorder, 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 anyone else; and
- (c) the making of an assessment order will enable the person to be assessed; and

Mental Health Act 2024 16

(d) there is no less restrictive way reasonably available for the person to be assessed.

### 23 Meaning of compulsory treatment criteria

The *compulsory treatment criteria* for a temporary treatment order or treatment order to be made for a person are:

- (a) the person has a mental illness or mental disorder; and
- (b) because the person has a mental illness or mental disorder, 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 anyone else; and
- (c) the person does not have capacity to consent to treatment for the mental illness or mental disorder or refuses to consent to treatment; and
- (d) if the person refuses to consent to treatment the deterioration or harm mentioned in paragraph (b) is so serious that it outweighs the person's right to refuse to consent; and
- (e) there is no less restrictive way reasonably available for the person to receive the immediate treatment.

### Examples for paragraph(e)

- 1 An advance consent decision does not cover the matters that are clinically relevant or appropriate to the person's treatment.
- 2 An advance consent decision does not authorise the administration of medications that are clinically necessary for the person's treatment.
- 3 The person's adult guardian or decision maker does not consent to the administration of medications that are clinically necessary for the person's treatment.

### 24 Meaning of parent

- (1) A *parent* of a child is the child's father, mother or any other person who has parental responsibility for the child.
- (2) A parent of an Aboriginal or Torres Strait Islander child includes a person who is regarded as a parent of the child under Aboriginal or Torres Strait Islander customary law or Aboriginal or Torres Strait Islander tradition.

- - (3) Despite subsections (1) and (2), none of the following is to be regarded under this Act as a parent of a child:
    - (a) the Families CEO;
    - a person who has responsibility for the care of the child only on a temporary basis;
    - a person, such as a teacher or childcare worker, who has responsibility in relation to the child because of a professional relationship.
  - (4) In this section:

### Aboriginal or Torres Strait Islander customary law means:

- customary law of the Aboriginal people of Australia; or (a)
- (b) customary law of the Indigenous inhabitants of the Torres Strait Islands.

### Aboriginal or Torres Strait Islander tradition means:

- tradition of the Aboriginal people of Australia; or (a)
- tradition of the Indigenous inhabitants of the Torres Strait Islands.

#### 25 Meaning of parental responsibility for a child

- (1) A person has *parental responsibility for a child* if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the child that would ordinarily be vested in a parent of the child.
- (2) Without limiting subsection (1), a person who has parental responsibility for a child:
  - has daily care and control of the child; and (a)
  - (b) is entitled to exercise all the powers and rights, and has all the responsibilities, in relation to the long-term care and development of the child.

- (3) For subsection (2)(a), a person has daily care and control of a child if the person is entitled to exercise all the powers and rights, and has all the responsibilities, for the day-to-day care and control of the child.
- (4) To avoid doubt, a reference in this Act to a person who has parental responsibility for a child includes a person who has been given parental responsibility for the child under a law of another jurisdiction.

### 26 Examination or assessment of person

If a provision of this Act or the regulations requires that a person be examined or assessed, the person must be examined or assessed:

- (a) if it is practicable in person; or
- (b) if examination or assessment in person is not practicable remotely.

# Part 2 Decision making capacity and informed consent

### 27 Presumption of decision making capacity

An adult is presumed to have capacity to make a decision about the adult's treatment and care under this Act unless there is evidence to the contrary.

### 28 Decision making capacity of child or parent for child

This Act does not affect the common law in relation to:

- (a) the capacity of a child to make a decision about the child's treatment and care under this Act; or
- (b) the capacity of a parent of a child to make a decision about the child's treatment and care under this Act.

Note for section 28

The common law provides that parental power to consent to medical treatment on behalf of a child diminishes gradually as the child's capacities and maturity grow and that this rate of development depends on the individual child. A child has capacity to give informed consent when the child gains sufficient understanding and intelligence to be capable of making up the child's own mind on the matter requiring decision. See Gillick v West Norfolk and Wisbech Area Health Authority & Anor [1986] AC 112 as followed by the majority of the High Court in Secretary, Department of Health and Community Services v JWB and SMB [1992] HCA 15 (Marion's case).

### 29 Meaning of decision making capacity

- (1) For this Act, a person has capacity to make a decision about the person's treatment and care for a mental illness or mental disorder (decision making capacity) if the person can, with appropriate supports if needed:
  - (a) understand and retain information relevant to the decision; and
  - (b) weigh information relevant to the decision in order to make the decision; and
  - (c) communicate the decision in some way; and
  - (d) understand the effect of the decision.
- (2) In considering a person's decision making capacity under this Act, the following principles must be taken into account:
  - (a) a person's decision making capacity is specific to the decision that the person is to make;
  - (b) a person's decision making capacity may change over time;
  - (c) a person must not be treated as not having decision making capacity unless everything practicable has been done to assist the person to make decisions, including by giving appropriate supports;
  - (d) a person must not be treated as not having decision making capacity merely:
    - (i) because the person makes a decision that could be considered unwise; or
    - (ii) because of the person's age, appearance, disability, condition or behaviour.

### 30 Meaning of informed consent

- (1) A person gives *informed consent* to treatment and care under this Act if the person:
  - (a) has decision making capacity; and
  - (b) has been given enough information for the person to make an informed decision; and
  - (c) has been given a reasonable opportunity to decide whether or not to consent; and

Mental Health Act 2024 20

- (d) has given consent freely and voluntarily; and
- (e) has not withdrawn the consent to treatment and care or shown an intention to withdraw that consent.
- (2) A person is given enough information to make an informed decision if the person is given:
  - (a) an explanation of the proposed treatment and care including:
    - (i) the purpose of the treatment and care; and
    - (ii) the type, method and likely duration of the treatment and care; and
  - (b) an explanation of the advantages and disadvantages of the treatment and care, including information about the associated discomfort, risks and common or expected side effects of the treatment; and
  - (c) an explanation of any beneficial alternative treatments that are reasonably available, including 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 receiving the treatment; and
  - (f) any other relevant information that is likely to influence the person's decision; and
  - (g) for a proposed treatment the statement of rights that applies to the person.
- (3) A person is given a reasonable opportunity to decide whether or not to consent to treatment and care if the person is given:
  - (a) a reasonable period in which to consider the matters involved in the decision; and
  - (b) a reasonable opportunity to discuss these matters with the health practitioner who is proposing the 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.

# Part 3 Protection of rights

# Division 1 Preliminary matters

### 31 Purposes of Part

The purposes of this Part are:

- (a) to provide for the preparation and giving of a statement of rights applying to the following persons under this Act:
  - (i) a person who is admitted to an approved mental health facility for treatment and care for a mental illness;
  - (ii) a person who is receiving treatment and care for a mental illness or mental disorder under a temporary community treatment order or a community treatment order;
  - (iii) a person to whom an assessment order applies;
  - (iv) a person who is asked to consent to the administration of electroconvulsive therapy under Part 9, Division 2 or to whom an electroconvulsive therapy order applies;
  - (v) a person who is asked to consent to the performance of neurosurgery under Part 9, Division 3; and
- (b) to provide for the right of the following persons to communicate:
  - (i) a person who is admitted to an approved mental health facility for treatment and care for a mental illness;
  - (ii) a person to whom an assessment order applies; and
- (c) to provide for how a communication about a person can be dealt with under this Act; and
- (d) to provide for a person to have power to appoint one or 2 nominated support persons to support the appointing person when the person is receiving treatment and care under a temporary treatment order or treatment order.

### **Division 2** Statement of rights

#### 32 Meaning of responsible person

In this Division:

### responsible person means:

- for a person admitted to an approved mental health facility the person in charge of the approved mental health facility; or
- for a person to whom a temporary community treatment order (b) or community treatment order applies – the person in charge of the approved mental health service giving treatment and care to the person; or
- for a person detained at an approved mental health facility under an assessment order - the person in charge of the approved mental health facility; or
- for a person detained under an assessment order at a place (d) other than an approved mental health facility - an authorised psychiatrist or authorised psychiatric practitioner at that place; or
- for a person who is asked to consent to the administration of (e) electroconvulsive therapy under Part 9, Division 2 or to whom an electroconvulsive therapy order applies - an authorised psychiatrist at the approved mental health facility where the electroconvulsive therapy is to be administered; or
- (f) for a person who is asked to consent to the performance of neurosurgery under Part 9, Division 3 - an authorised psychiatrist at the place where the neurosurgery is to be performed.

### 33 Statement of rights

- (1) The Chief Psychiatrist must prepare and publish a statement of rights for the following persons:
  - (a) a person who is admitted to an approved mental health facility for treatment and care for a mental illness;
  - a person who is receiving treatment and care for a mental (b) illness or mental disorder under a temporary community treatment order or a community treatment order;
  - a person to whom an assessment order applies; (c)

- (d) a person who is asked to consent to the administration of electroconvulsive therapy under Part 9, Division 2 or to whom an electroconvulsive therapy order applies;
- (e) a person who is asked to consent to the performance of neurosurgery for mental illness under Part 9, Division 3.
- (2) A statement of rights applying to a person mentioned in subsection (1) must set out the rights of the person under this Act.
- (3) A statement of rights applying to a person mentioned in subsection (1) must include information about:
  - (a) the rights under this Act of the person and other persons to make complaints and how complaints are made; and
  - (b) the community visitors program, including the right to be visited by and to contact a community visitor.
- (4) The statement of rights may also contain any other information the Chief Psychiatrist considers relevant or appropriate.

### 34 Requirement to give statement of rights

The responsible person for a person mentioned in section 33(1) must ensure that the person is given the statement of rights applying to the person.

### 35 Explanation of statement of rights

- (1) The responsible person for a person mentioned in section 33(1) must take all reasonable steps to ensure that the statement of rights given to the person is explained to the person.
- (2) If it is not practicable to explain the statement of rights to a person at the time it is given to the person, the responsible person must take all reasonable steps to ensure that the explanation is given as soon as practicable after that time.

### 36 Statement of rights to be given to others

The responsible person for a person mentioned in section 33(1) must take all reasonable steps to ensure that the statement of rights applying to the person is also given to the following:

- (a) if the person has one or more nominated support persons each nominated support person;
- (b) if the person has an adult guardian the adult guardian;

- (c) if the person has a decision maker the decision maker;
- (d) if the person has a carer the carer;
- (e) if the person is a child a parent of the child;
- (f) if the person is a child in the Families CEO's care the Families CEO.

### 37 Display of signs about statements of rights

- (1) The person in charge of an approved mental health facility and the person in charge of an approved mental health service must display signs in prominent positions at the facility or the premises of the service stating that a copy of any applicable statement of rights is available on request.
- (2) The signs must be easily visible to persons mentioned in section 33(1) and their nominated support persons, adult guardians, decision makers, carers and family members.

## Division 3 Right of person to communicate

### 38 Right to communicate

- (1) Subject to section 39, each of the following has a right to communicate with anyone else in reasonable privacy:
  - (a) a person who is admitted to an approved mental health facility for treatment and care for a mental illness:
  - (b) a person detained at an approved mental health facility under an assessment order.
- (2) The right to communicate includes the right to do any of the following in reasonable privacy:
  - (a) see and speak with anyone else at the facility to the extent practicable;
  - (b) have uncensored communications with people, including by receiving visits, making and receiving telephone calls, and sending and receiving mail and electronic communications (as defined in section 5 of the *Electronic Transactions (Northern Territory) Act 2000*);
  - (c) send a thing from, or receive a thing at, the approved mental health facility;

Mental Health Act 2024 25

- (d) receive visits from, and otherwise have contact with, a community visitor at any time;
- (e) receive visits from, and otherwise have contact with, anyone else at all reasonable times.

Examples for subsection (2)(e)

- 1 A legal practitioner.
- 2 A nominated support person.
- (3) A person's right to receive mail or another thing at the approved mental health facility is subject to section 272.
- (4) A person's right to communicate includes a right to refuse to communicate with a person.
- (5) The person in charge of an approved mental health facility must ensure that all reasonable steps are taken to assist a person mentioned in subsection (1) to exercise the right to communicate with any person.

### 39 Restriction on right to communicate

- (1) An authorised psychiatrist or authorised psychiatric practitioner may authorise a restriction on a person's right to communicate given under section 38.
- (2) An authorisation under subsection (1):
  - (a) must be in writing; and
  - (b) may be made only if the authorised psychiatrist or authorised psychiatric practitioner believes on reasonable grounds that there is a serious risk to the health or safety of the person whose right is to be restricted or anyone else if the restriction is not authorised.
- (3) An authorised psychiatrist or authorised psychiatric practitioner must ensure that an authorised restriction on a person's right to communicate is the least restrictive practicable to protect the health, safety or wellbeing of the person or anyone else.
- (4) An authorisation under subsection (1) cannot restrict a person's right to communicate with any of the following:
  - (a) the person's legal representative;
  - (b) the Chief Psychiatrist;
  - (c) NTCAT;

- (d) the principal community visitor or a community visitor;
- the Commissioner for Health and Community Services (e) Complaints;
- if the person is a child in the Families CEO's care the Families CEO.

#### 40 Explanation of restriction on right to communicate

If an authorised psychiatrist or authorised psychiatric practitioner authorises a restriction on a person's right to communicate, under section 39, the psychiatrist or practitioner must:

- take all reasonable steps to explain to the person the communication that is restricted and the reason for the restriction on the person's right to communicate; and
- inform the person of the person's right to apply to NTCAT for a review of the decision under section 39 to authorise the restriction on the person's right to communicate.

#### 41 Notice to other persons of restriction on right to communicate

If an authorised psychiatrist or authorised psychiatric practitioner authorises a restriction on a person's right to communicate, under section 39, the psychiatrist or practitioner must take all reasonable steps to notify the following of the restriction and the reason for the restriction:

- if the person has one or more nominated support persons -(a) each nominated support person;
- (b) if the person has an adult guardian – the adult guardian;
- if the person has a decision maker the decision maker; (c)
- (d) if the person has a carer – the carer;
- if the person is a child a parent of the child; (e)
- if the person is a child in the Families CEO's care the (f) Families CEO.

#### 42 Authorisation of restriction to be reviewed regularly

(1) An authorised psychiatrist or authorised psychiatric practitioner must review an authorisation made under section 39 at least once in every 24 hours and may confirm, vary or revoke the authorisation.

27

(2) An authorisation under section 39 lapses at the end of a 24 hour period if it is not reviewed during that period.

# 43 Application to NTCAT to review authorisation decision

A person to whom a decision under section 39 applies may apply to NTCAT for a review of the decision.

### Division 4 Communication about person

### 44 Communication about person

- (1) This section applies in relation to a provision of this Act that requires a person to notify, inform, explain something to, discuss something with or otherwise communicate with, any of the following about another person (the **specified person**):
  - (a) if the specified person has one or more nominated support persons a nominated support person;
  - (b) if the specified person has an adult guardian the adult guardian;
  - (c) if the specified person has a decision maker the decision maker:
  - (d) if the specified person has a carer the carer;
  - (e) if the specified person is a child a parent of the child.
- (2) The provision does not apply if the specified person asks, at a time when the specified person has capacity to make the request, that the communication not take place.
- (3) In this section:

*capacity* of a person to make a request, means the person can:

- (a) understand the nature and effect of the request; and
- (b) freely and voluntarily make the request; and
- (c) communicate the request.

### 45 Communication with parent of child

(1) If a provision of this Act requires a person to communicate with a child's parent about a decision relating to the child, the person may decide not to communicate with the parent about the decision if the person considers that the communication is not in the best interests

Mental Health Act 2024 28

of the child.

- (2) If the person decides not to communicate with the parent of a child about a decision, the person must record in the child's medical record the decision and the reason for not communicating with the parent of the child.
- (3) If the person decides not to communicate with the parent of a child about a decision, the person must give notice. in the approved form, to the Chief Psychiatrist if the decision is to:
  - admit the child to an approved mental health facility for (a) treatment and care; or
  - make a temporary community treatment order in relation to the child.

### Division 5 Nominated support persons

#### 46 Meaning of appointing person

In this Division:

appointing person, means the person who appoints a nominated support person under section 47.

#### 47 Appointment of nominated support person

- (1) A person may, at any time, appoint another person to be the person's nominated support person.
- (2) A person may appoint 1 or 2 nominated support persons at any time.
- (3) A child may appoint 1 or 2 nominated support persons if the child understands the effect of an appointment of a nominated person.
- (4) The appointment of a nominated support person must:
  - be in writing; and (a)
  - be signed and dated by the appointing person; and (b)
  - set out the name and contact details of the nominated support person; and

29

- be witnessed by an adult; and (d)
- (e) include a statement by the witness that:

- (i) in the witness' opinion, the appointing person understands the effect of an appointment of a nominated support person and that the appointing person may revoke it; and
- (ii) in the witness' opinion, the appointing person appears to be making the appointment freely and voluntarily; and
- (iii) the witness saw the appointing person sign the appointment; and
- (iv) the witness is an adult.
- (5) The nominated support person must not be the person who is the witness to the appointment.

# 48 Acceptance of appointment

- (1) An appointment of a nominated support person is made when the nominated support person signs an acceptance form.
- (2) The acceptance form must include a statement by the nominated support person agreeing to be appointed as a nominated support person.
- (3) An appointment of a nominated support person is in effect from the time it is made until the time it is revoked

### 49 When is appointment revoked?

An appointment of a nominated support person is revoked if:

- (a) the appointing person revokes the appointment under section 50; or
- (b) the nominated support person resigns as a nominated support person under section 51.

### 50 Revocation by appointing person

- (1) An appointing person may revoke the appointment of a nominated support person at any time.
- (2) A revocation must:
  - (a) be in writing; and
  - (b) state that the appointment is revoked; and
  - (c) be signed and dated by the appointing person; and

- (d) be witnessed by an adult; and
- (e) include a statement signed by the witness that:
  - (i) in the witness' opinion, the appointing person understands the effect 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
  - (ii) in the witness' opinion, the appointing person appears to have revoked the appointment freely and voluntarily; and
  - (iii) the witness saw the appointing person sign the revocation; and
  - (iv) the witness is an adult.
- (3) A person who revokes an appointment of a nominated support person must take reasonable steps to notify the nominated support person of the revocation.

### 51 Resignation by nominated support person

- (1) A nominated support person may resign as a nominated support person at any time.
- (2) A resignation must:
  - (a) be in writing; and
  - (b) be signed and dated by the person; and
  - (c) set out the person's full name; and
  - (d) state that the person resigns as a nominated support person.
- (3) A nominated support person who resigns must take reasonable steps to notify the following of the resignation:
  - (a) the appointing person;
  - (b) if the appointing person is a person to whom a temporary treatment order or a treatment order applies, the person in charge of the approved mental health facility or approved mental health service giving treatment and care to the person.

### Role of nominated support person

The role of a nominated support person is to support the appointing person when the appointing person is receiving treatment and care under a temporary treatment order or treatment order by:

- (a) supporting the appointing person to make and participate in decisions; and
- (b) supporting the appointing person to communicate the person's wishes, views, preferences, decisions, questions and concerns; and
- (c) supporting the appointing person to exercise the person's rights under this Act; and
- (d) advocating for the wishes, views and preferences expressed by the appointing person; and
- (e) advocating for appropriate supports to assist the appointing person to communicate and to participate in decision making;
   and
- (f) supporting the appointing person to understand information and decisions; and
- (g) receiving notifications and information and being consulted about the appointing person under this Act.

### 53 Duty to support nominated support person

- (1) A person in charge of an approved mental health facility or an approved mental health service must take all reasonable steps to support a nominated support person to carry out that role under this Act.
- (2) Without limiting subsection (1), and subject to this Act, steps taken may include the following:
  - (a) permitting the nominated support person to view documents relevant to the appointing person's treatment and care at the facility or held by the service including the appointing person's treatment plan and discharge plan;
  - (b) providing the nominated support person with information about the appointing person's treatment and care at the facility or by the service;

(c) providing the nominated support person with reasonable opportunities to attend meetings between the appointing person and the persons responsible for the appointing person's treatment.

#### Part 4 **Examination and assessment**

### Division 1 **Preliminary matters**

#### 54 **Purposes of Part**

The purposes of this Part are:

- (a) to provide for the making of assessment orders; and
- to provide for the making of orders for compulsory (b) examination; and
- to provide for the psychiatric assessment of persons to whom assessment orders apply.

#### Division 2 **Assessment orders**

# Subdivision 1 Assessment order for person not admitted to approved mental health facility

#### 55 **Application of Subdivision**

This Subdivision applies to a person who is not admitted to an approved mental health facility.

#### 56 Power to conduct examination of person

A medical practitioner or an authorised mental health practitioner may conduct an examination of a person in accordance with this Subdivision to decide whether to make:

- an assessment order under section 59 in relation to the (a) person; or
- if the person is a prisoner or detainee an assessment order under section 147 in relation to the person.

#### 57 How is examination to be conducted?

(1) An examination of a person under section 56 must be conducted in the least restrictive way and in the least restrictive environment practicable.

- (2) Before a medical practitioner or an authorised mental health practitioner examines the person, the practitioner must:
  - (a) identify themselves to the person; and
  - (b) inform the person that the practitioner will examine the person; and
  - (c) take all reasonable steps to explain to the person the purpose of the examination.
- (3) If an examination of a person is conducted remotely, a health professional must be physically present with the person being examined.

### 58 Examination of Aboriginal or Torres Strait Islander person

To the extent practicable, an examination of an Aboriginal or Torres Strait Islander person under section 56 must be conducted in collaboration with Aboriginal or Torres Strait Islander mental health workers.

Note for section 58

Section 8 sets out guiding principles for the treatment and care of Aboriginal or Torres Strait Islander persons.

# 59 Making of assessment order

- (1) A medical practitioner or an authorised mental health practitioner may make an assessment order in relation to a person (other than a prisoner or detainee) if the practitioner:
  - (a) has examined the person in accordance with this Subdivision within the previous 48 hours; and
  - (b) is satisfied that the compulsory assessment criteria apply to the person.
- (2) In determining whether to make an assessment order in relation to a person, the medical practitioner or authorised mental health practitioner:
  - (a) must consider any relevant information communicated to the practitioner by the person; and

Mental Health Act 2024 34

(b) may consider any other relevant information, including information communicated to the practitioner by anyone else.

Note for section 59

See Part 6, Division 2 for the making of assessment orders for prisoners and detainees.

#### 60 What does assessment order authorise?

- (1) An assessment order under section 59 authorises an authorised psychiatrist or authorised psychiatric practitioner at an approved mental health facility or another appropriate place specified in the order:
  - to conduct a compulsory psychiatric assessment under (a) Division 4 of a person to decide whether the compulsory treatment criteria apply to the person; and
  - (b) to detain the person at that facility or place for assessment.
- (2) An assessment order under section 59 may authorise the transport of the person to the approved mental health facility or other appropriate place specified in the order.

#### 61 **Duration of assessment order**

An assessment order under section 59 is in force for 72 hours after the time the order is made unless the duration of the order is extended under section 62.

#### 62 Extending order made outside major population centre

- (1) A medical practitioner or authorised mental health practitioner at the place where an assessment order under section 59 was made may extend the duration of the order if:
  - the order was made outside a major population centre; and (a)
  - the practitioner is satisfied that the order is likely to expire (b) before the person is received at the approved mental health facility or other appropriate place specified in the order.
- (2) The assessment order may be extended for an additional period of up to 96 hours after the time the 72 hour period mentioned in section 61 ends

#### 63 **Detention of person for transport**

- (1) An assessment order under section 59 may authorise the person to whom it applies to be detained for up to 24 hours to transport the person to the approved mental health facility or other appropriate place specified in the order.
- (2) A medical practitioner or authorised mental health practitioner may authorise a continuation of the detention of a person for an additional period or periods of up to 24 hours to a maximum of 144 hours after the initial 24 hour period ends if:
  - the practitioner considers it necessary for the purpose set out in subsection (1); and
  - (b) the person is outside a major population centre.
- (3) An extension under subsection (2) must be made before the period to be extended ends.
- (4) A period of detention under this section runs at the same time as the period of the assessment order.

#### 64 Content of assessment order

An assessment order under section 59 must be in the approved form and include the following information:

- the name of the person to be assessed; (a)
- (b) the name, qualification and signature of the medical practitioner or authorised mental health practitioner who made the order:
- the date and time the medical practitioner or authorised (c) mental health practitioner examined the person before making the order;
- the date and time the order was made; (d)
- (e) what the order authorises:
- (f) the approved mental health facility or other appropriate place at which the assessment is to be conducted:

36

- the duration of the order; (g)
- any other information prescribed by regulation. (h)

### 65 Information for person to whom order applies

As soon as practicable after making an assessment order under section 59, the medical practitioner or authorised mental health practitioner must take all reasonable steps to:

- (a) inform the person to whom the order applies of the order; and
- (b) explain to the person the purpose and effect of the order; and
- (c) give the person a copy of the order and the statement of rights applying to the person.

### 66 Specified persons to be notified of assessment order

As soon as practicable after making an assessment order under section 59, the medical practitioner or authorised mental health practitioner must:

- (a) notify the following of the order:
  - (i) if the order authorises an assessment at an approved mental health facility – the person in charge of the facility;
  - (ii) if the order authorises an assessment at another appropriate place an authorised psychiatrist or authorised psychiatric practitioner at that place; and
- (b) give a copy of the order to the person notified under paragraph (a).

### 67 Others to be notified of assessment order

As soon as practicable after making an assessment order under section 59, the medical practitioner or authorised mental health practitioner must take all reasonable steps to:

- (a) notify the following of the order:
  - (i) if the person to whom the assessment order applies has one or more nominated support persons – each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;

- if the person is a child in the Families CEO's care the Families CEO; and
- give a copy of the order and the statement of rights to each (b) person notified under paragraph (a).

#### 68 Revocation of assessment order

- (1) A medical practitioner or authorised mental health practitioner must revoke an assessment order under section 59 if the practitioner is satisfied that the compulsory assessment criteria no longer apply to the person.
- (2) A medical practitioner or authorised mental health practitioner must not revoke an assessment order made by another practitioner unless:
  - (a) the practitioner has consulted the other practitioner about whether or not to revoke the order; or
  - after reasonable efforts, the other practitioner cannot be contacted.
- (3) The person to whom an assessment order under section 59 applies must no longer be detained if the order is revoked.

#### 69 Variation of order to change place of assessment

- (1) A medical practitioner or authorised mental health practitioner may vary an assessment order made under section 59 to change the place where the psychiatric assessment is to be conducted.
- (2) A medical practitioner or authorised mental health practitioner must not vary an assessment order made by another practitioner unless:
  - the practitioner has consulted the other practitioner about (a) whether or not to vary the order; or
  - after reasonable efforts, the other practitioner cannot be (b) contacted.

### **Subdivision 2** Assessment order for person admitted to approved mental health facility

#### 70 **Application of Subdivision**

This Subdivision applies to a person who:

is admitted to an approved mental health facility; and (a)

is not a person to whom a temporary inpatient treatment order or an inpatient treatment order applies.

#### 71 Making of assessment order

A medical practitioner or a senior registered nurse at the approved mental health facility may make an assessment order in relation to the person if:

- (a) the person wishes to leave the approved mental health facility against medical advice; and
- the practitioner or nurse is satisfied the compulsory assessment criteria apply to the person.

#### **72** What does assessment order authorise?

- (1) An assessment order under section 71 authorises an authorised psychiatrist or authorised psychiatric practitioner at the approved mental health facility to conduct a compulsory psychiatric assessment under Division 4 to decide whether the compulsory treatment criteria apply to the person to whom the order applies.
- (2) A person to whom an assessment order under section 71 applies may be detained at the approved mental health facility for up to 6 hours for the assessment.

#### 73 **Duration of assessment order**

An assessment order under section 71 is in force for 6 hours after the time the order is made.

#### 74 Content of assessment order

An assessment order under section 71 must be in the approved form and include the following information:

- (a) the name of the person to be assessed;
- (b) the name, qualification and signature of the medical practitioner or senior registered nurse who made the order;
- the date and time the order was made; (c)
- (d) the approved mental health facility where the order was made;
- (e) what the order authorises;
- (f) the duration of the order;
- any other information prescribed by regulation. (g)

#### 75 Information for person to whom order applies

As soon as practicable after making an assessment order under section 71, the medical practitioner or a senior registered nurse must take all reasonable steps to:

- (a) inform the person to whom the order applies of the order; and
- (b) explain to the person the purpose and effect of the order; and
- give the person a copy of the order and the statement of rights applying to the person.

#### 76 Specified persons to be given assessment order

As soon as practicable after making an assessment order under section 71, the medical practitioner or senior registered nurse must give the order to:

- the person in charge of the approved mental health facility; and
- an authorised psychiatrist or authorised psychiatric practitioner at the facility.

#### 77 Others to be notified of assessment order

As soon as practicable after making an assessment order under section 71, the medical practitioner or senior registered nurse who made the order must take all reasonable steps to:

- notify the following of the order: (a)
  - if the person to whom the assessment order applies has (i) one or more nominated support persons - each nominated support person;
  - if the person has an adult guardian the adult guardian; (ii)
  - (iii) if the person has a decision maker – the decision maker;
  - (iv) if the person has a carer the carer;
  - if the person is a child a parent of the child; (v)
  - (vi) if the person is a child in the Families CEO's care the Families CEO: and
- give a copy of the order and the statement of rights to each (b) person notified under paragraph (a).

#### **78** Revocation of assessment order

- (1) A medical practitioner or senior registered nurse who makes an assessment order under section 71 must revoke the order if the practitioner or nurse is satisfied that the compulsory assessment criteria no longer apply to the person.
- (2) The person to whom an assessment order under section 71 applies must no longer be detained if the order is revoked.

### **Subdivision 3** Restrictions on treatment while assessment order in force

#### 79 Restrictions on treatment while assessment order is in force

- (1) Subject to subsection (2), a person to whom an assessment order applies must not be given treatment for a mental illness or mental disorder before the psychiatric assessment is conducted.
- (2) A person to whom an assessment order applies may be given treatment for a mental illness or mental disorder if:
  - the person gives informed consent to the treatment; or (a)
  - (b) a medical practitioner at the approved mental health facility or other place where the person is detained under this Act is satisfied that the person needs urgent treatment to prevent:
    - (i) serious deterioration in the person's mental or physical health: or
    - serious harm to the person or anyone else.
- (3) A power under subsection (2) to give treatment to a person continues until the first of the following occurs:
  - (a) a temporary treatment order is made in relation to the person;
  - the assessment order is revoked.

### Division 3 Order for compulsory examination

#### 80 Application for order for compulsory examination

- (1) A medical practitioner or an authorised mental health practitioner may apply to NTCAT for an order for compulsory examination of a person.
- (2) An application under subsection (1) comes within NTCAT's original jurisdiction.

41

- (3) An application under subsection (1) must:
  - be in the approved form; and
  - include a statement by the applicant about whether the (b) behaviour of the person or other factors could reasonably be considered to satisfy the requirements of section 81 for making an order for compulsory examination.

### 81 **Decision on application**

- (1) On hearing an application under section 80, NTCAT may:
  - make an order for the compulsory examination of the person; (a) or
  - (b) refuse the application.
- (2) NTCAT may make an order for the compulsory examination of a person only if NTCAT considers:
  - the person has or may have a mental illness or mental (a) disorder: and
  - (b) the person may need immediate treatment to prevent:
    - serious deterioration in the person's mental or physical (i) health: or
    - serious harm to the person or anyone else; and
  - the person: (c)
    - does not, or may not, have capacity to consent to be (i) treated for the mental illness or mental disorder; or
    - (ii) refuses to consent to be treated for the mental illness or mental disorder; and
  - there is no less restrictive way reasonably available for (d) examining the person.

#### 82 What does order for compulsory examination authorise?

An order for compulsory examination of a person authorises the medical practitioner or authorised mental health practitioner named in the order to:

enter premises or a place where the practitioner believes on reasonable grounds the person may be found; and

42

- (b) use reasonable force and assistance, including assistance from an authorised person; and
- (c) take the person into the practitioner's care and control and detain the person at the place where the examination is to be conducted; and
- (d) arrange transport of the person to the place where the examination is to be conducted and detain the person for the purpose of that transport; and
- (e) conduct an examination of the person under Division 2, Subdivision 1 without the person's consent.

# Duration of order for compulsory examination

An order for compulsory examination is in force for 7 days after it is made unless:

- (a) NTCAT revokes the order; or
- (b) the examination is conducted.

# Division 4 Psychiatric assessment

### 84 Psychiatric assessment

- (1) An authorised psychiatrist or an authorised psychiatric practitioner may conduct a psychiatric assessment of a person to whom an assessment order under section 59 or 71 applies to decide if the compulsory treatment criteria apply to the person.
- (2) An authorised psychiatrist or authorised psychiatric practitioner who conducts an assessment of a person under subsection (1) must not be the practitioner who made the assessment order.

Note for section 84

Part 5 provides for the making of temporary treatment orders and treatment orders if the compulsory treatment criteria are assessed to apply.

# 85 Time for psychiatric assessment

- (1) This section applies to a person if an assessment order was made in relation to the person under section 59.
- (2) The psychiatric assessment under the order must be conducted within 24 hours after:
  - (a) if the person is at the approved mental health facility or place of assessment the order is made; or

Mental Health Act 2024 43

- (b) otherwise the person first arrives at the approved mental health facility or place of assessment.
- (3) The person may be detained for the 24 hour period set out in subsection (2) for the assessment.
- (4) The authorised psychiatrist or authorised psychiatric practitioner may extend the period for conducting the assessment and the period of detention for an additional period or periods of 24 hours up to a maximum of 48 hours after the initial 24 hour period ends if:
  - (a) the person was not at the approved mental health facility or place of assessment at the time the assessment order was made; and
  - (b) the authorised psychiatrist or authorised psychiatric practitioner considers the extension is necessary to conduct or complete the psychiatric assessment.
- (5) An extension under subsection (4) must be made before the 24 hour period to be extended ends.

### 86 How is psychiatric assessment to be conducted?

- (1) A psychiatric assessment of a person under this Division must be conducted in the least restrictive way and in the least restrictive environment practicable.
- (2) Before an authorised psychiatrist or an authorised psychiatric practitioner conducts a psychiatric assessment of a person under this Division, the authorised psychiatrist or authorised psychiatric practitioner must:
  - (a) identify themselves to the person; and
  - (b) inform the person that the authorised psychiatrist or authorised psychiatric practitioner will assess the person; and
  - (c) take all reasonable steps to explain to the person the purpose of the assessment
- (3) If a psychiatric assessment of a person is being conducted remotely, a health professional must be physically present with the person being assessed.

### 87 Assessment of Aboriginal or Torres Strait Islander person

To the extent practicable, a psychiatric assessment of an Aboriginal or Torres Strait Islander person under this Division must be conducted in collaboration with Aboriginal or Torres Strait Islander mental health workers.

Note for section 87

Section 8 sets out guiding principles for the treatment and care of Aboriginal and Torres Strait Islander persons.

# 88 Matters to have regard to in deciding whether compulsory treatment criteria apply

In deciding whether the compulsory treatment criteria apply to a person, the authorised psychiatrist or authorised psychiatric practitioner must:

- (a) have regard to the person's wishes, views and preferences including the wishes, views and preferences expressed in any advance personal plan made by the person; and
- (b) have regard, to the extent practicable, to the views of the following:
  - (i) if the person has one or more nominated support persons each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;
  - (vi) if the person is a child in the Families CEO's care the Families CEO.

### 89 Extension of detention for additional assessment

- (1) This section applies to a person if, after conducting a psychiatric assessment of the person under this Division, the authorised psychiatrist or authorised psychiatric practitioner cannot decide whether the compulsory treatment criteria apply to the person.
- (2) If the psychiatric assessment was conducted at an approved mental health facility, the authorised psychiatrist or authorised psychiatric practitioner may extend the time the person is detained at the facility for an additional 24 hours to allow for an additional

Mental Health Act 2024 45

psychiatric assessment.

- (3) If the psychiatric assessment was conducted at a place other than an approved mental health facility, the authorised psychiatrist or authorised psychiatric practitioner at that place may:
  - authorise the transport of the person to an approved mental health facility for the additional psychiatric assessment; or
  - extend the time that the person is detained at that place for an additional 24 hours for the additional psychiatric assessment.
- (4) If, under subsection (3)(a), the authorised psychiatrist or authorised psychiatric practitioner authorises a person to be transported to an approved mental health facility, the person may be detained for an additional 24 hours for:
  - transport to the facility; and (a)
  - the additional psychiatric assessment at the facility.

#### 90 Revocation of assessment order

An authorised psychiatrist or authorised psychiatric practitioner must immediately revoke an assessment order if after a psychiatric assessment of a person under this Division, the psychiatrist or practitioner decides that the compulsory treatment criteria do not apply to the person.

#### 91 Information for person to whom order applied

As soon as practicable after revoking an assessment order under section 90 the authorised psychiatrist or authorised psychiatric practitioner must ensure that:

- the person to whom the order applied is informed of the revocation; and
- all reasonable steps are taken to explain to the person that the order no longer applies to the person.

#### 92 Others to be notified of revocation

As soon as practicable after revoking an assessment order under section 90, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to notify the following of the revocation:

if the person to whom the order applied has one or more nominated support persons – each nominated support person;

- (b) if the person has an adult guardian the adult guardian;
- (c) if the person has a decision maker the decision maker;
- (d) if the person has a carer the carer;
- (e) if the person is a child a parent of the child;
- (f) if the person is a child in the Families CEO's care the Families CEO.

# 93 Assessment order revoked on making of temporary treatment order

An assessment order is revoked if a temporary treatment order is made in relation to the person to whom the assessment order applied.

### Part 5 Treatment orders

# Division 1 Preliminary matters

### 94 Purposes of Part

The purposes of this Part are:

- (a) to provide for the making of temporary treatment orders and treatment orders; and
- (b) to provide for the review of temporary treatment orders and treatment orders; and
- (c) to provide for the variation and revocation of temporary treatment orders and treatment orders; and
- (d) to provide for leaves of absence for persons to whom a temporary inpatient treatment order, an inpatient treatment order or an assessment order applies; and
- (e) to provide for the return of persons absent without leave from approved mental health facilities; and
- (f) to provide for processes in relation to persons to whom a temporary community treatment order or a community treatment order applies who are absent from the place where they are to be given treatment and care under the order.

### Division 2 **Temporary treatment orders**

#### 95 Temporary treatment order

- (1) An authorised psychiatrist may make a temporary treatment order in relation to a person if the authorised psychiatrist:
  - has conducted a psychiatric assessment of the person under Part 4, Division 4 or Part 6, Division 3; and
  - (b) is satisfied the compulsory treatment criteria apply to the person; and
  - for a temporary community treatment order for a person other than a prisoner or detainee – is satisfied compulsory treatment and care can reasonably be given to the person in the community; and
  - (d) for a temporary community treatment order for a prisoner – is satisfied that compulsory treatment and care can reasonably be given to the prisoner at the custodial correctional facility; and
  - for a temporary community treatment order for a detainee is satisfied that the compulsory treatment and care can reasonably be given to the detainee at the detention centre; and
  - for a temporary inpatient treatment order is satisfied: (f)
    - (i) the person has a mental illness; and
    - compulsory treatment and care cannot reasonably be (ii) given to the person in the community.
- (2) An authorised psychiatrist must not make a temporary inpatient treatment order for a prisoner or detainee unless the person in charge of the approved mental health facility has advised, in the approved form, that the person in charge is satisfied facilities are available at the approved mental health facility to give the treatment and care.

#### 96 What does temporary treatment order authorise?

(1) A temporary community treatment order authorises compulsory treatment to be given to a person in the community by an approved mental health service.

48

- (2) A temporary inpatient treatment order authorises compulsory treatment to be given to a person in an approved mental health facility and the detention of the person in the facility for that purpose.
- (3) A temporary inpatient treatment order may authorise:
  - the transport of a person by an authorised person to the approved mental health facility for treatment; and
  - the detention of the person for the purpose of that transport.

Note for subsection (3)

See section 157 which provides for the transport of prisoners or detainees to whom a temporary inpatient treatment order applies.

#### 97 **Duration of temporary treatment order**

- (1) A temporary community treatment order has effect for:
  - 3 months for an adult; and (a)
  - 28 days for a child. (b)
- (2) A temporary inpatient treatment order has effect for:
  - 28 days for an adult; and
  - (b) 14 days for a child.
- (3) A temporary treatment order cannot be extended except in accordance with section 369(3).

#### 98 Content of temporary treatment order

A temporary treatment order must be in the approved form and include the following information:

- the name of the person to whom the order applies; (a)
- the name, qualification and signature of the authorised (b) psychiatrist who made the order:
- the date and time the authorised psychiatrist conducted the assessment of the person before making the order;
- (d) the date and time the order was made;
- the grounds on which the authorised psychiatrist is satisfied (e) that the compulsory treatment criteria are met;

49

- (f) the approved mental health service or approved mental health facility by or at which the treatment and care is to be given;
- (g) for a temporary community treatment order the name of the authorised psychiatrist who is to supervise the order;
- (h) what the order authorises;
- (i) the duration of the order;
- (j) any other information prescribed by regulation.

Note for section 98

See section 157 for the transport to an approved mental health facility of a prisoner or detainee to whom an temporary treatment order made under section 95 applies.

### 99 Information for person to whom order applies

As soon as practicable after making a temporary treatment order under section 95, the authorised psychiatrist must ensure that:

- (a) the person to whom the order applies is informed:
  - (i) of the order; and
  - (ii) that the person will receive treatment and care for the person's mental illness or mental disorder; and
- (b) all reasonable steps are taken to explain to the person the purpose and effect of the order; and
- (c) the person is given a copy of the order and the statement of rights applying to the person.

### 100 If person has advance consent decision

- (1) This section applies to a person if:
  - (a) the person has an advance consent decision applying to treatment and care under this Act; and
  - (b) an authorised psychiatrist makes a temporary treatment order in relation to the person.
- (2) Without limiting section 99, the authorised psychiatrist must:
  - take all reasonable steps to explain to the person the reasons why the authorised psychiatrist made the order; and

- (b) record the reasons for the order in the person's medical record; and
- (c) notify the Chief Psychiatrist of the order in the approved form.

# 101 NTCAT and specified persons to be notified of temporary treatment order

As soon as practicable after making a temporary treatment order under section 95, the authorised psychiatrist must:

- (a) notify the following of the order:
  - (i) NTCAT;
  - (ii) the Chief Psychiatrist;
  - (iii) the principal community visitor; and
- (b) give NTCAT a copy of the order.

## 102 Others to be notified of temporary treatment order

As soon as practicable after making a temporary treatment order under section 95 in relation to a person, the authorised psychiatrist who made the order must take all reasonable steps to:

- (a) notify the following of the order:
  - (i) if the person has one or more nominated support persons each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;
  - (vi) if the person is a child in the Families CEO's care the Families CEO; and
- (b) give a copy of the order and the statement of rights to each person notified under paragraph (a).

# 103 Application to NTCAT to review temporary treatment order

(1) A person to whom a temporary treatment order applies may apply to NTCAT to review the order.

- (2) Any of the following may apply to NTCAT to review a temporary treatment order applying to a person:
  - (a) if the person has one or more nominated support persons a nominated support person;
  - (b) if the person has an adult guardian the adult guardian;
  - (c) if the person has a decision maker the decision maker;
  - (d) if the person has a carer the carer;
  - (e) if the person is a child a parent of the child;
  - (f) if the person is a child in the Families CEO's care the Families CEO.
- (3) An application under this section for review of a temporary treatment order may be made at any time before the expiry of the order.

### Division 3 Treatment orders

# 104 NTCAT review of temporary treatment order or treatment order

- (1) NTCAT must conduct a hearing to review each temporary treatment order or treatment order before the order expires unless:
  - (a) NTCAT has reviewed the temporary treatment order on an application under section 103; or
  - (b) the temporary treatment order or treatment order is revoked before the review hearing.

Note for subsection (1)

See section 369 which provides that NTCAT must not adjourn a hearing for a person who is subject to a temporary treatment order or treatment order to a date that is after the order expires unless NTCAT is satisfied that exceptional circumstances exist. In that case, NTCAT may extend the duration of the temporary treatment order or treatment order for a period not exceeding 10 business days.

(2) A review under subsection (1) comes within NTCAT's original jurisdiction.

## 105 NTCAT orders following review

After conducting a hearing under this Act to review a temporary treatment order or a treatment order applying to a person, NTCAT must:

- (a) make a treatment order in respect of the person if NTCAT is satisfied the compulsory treatment criteria apply to the person; or
- (b) revoke the temporary treatment order or treatment order if NTCAT is not satisfied the compulsory treatment criteria apply to the person.

## 106 Discharge of person from facility if NTCAT revokes order

If NTCAT revokes a temporary inpatient treatment order or an inpatient treatment order under section 105, it must order:

- (a) that the person be immediately discharged from the approved mental health facility; or
- (b) if arrangements are required to be made for the treatment and care of the person and no less restrictive way is reasonably available – that the person be discharged from the approved mental health facility not later than 7 days after the order is made.

### 107 Community or inpatient treatment order

- (1) If NTCAT makes a treatment order under section 105, it must decide whether the treatment order is:
  - (a) a community treatment order; or
  - (b) an inpatient treatment order.
- (2) NTCAT must not make an inpatient treatment order for a person unless NTCAT is satisfied that the compulsory treatment and care cannot reasonably be given to the person in the community.
- (3) NTCAT must not make a community treatment order for a prisoner or detainee unless NTCAT is satisfied that:
  - (a) for a prisoner the treatment and care can be given at the custodial correctional facility; and
  - (b) for a detainee the treatment and care can be given at the detention centre.

### 108 What does treatment order authorise?

- (1) A treatment order authorises compulsory treatment and care to be given to a person.
- (2) Subject to subsection (3), a community treatment order authorises the person to be given treatment and care in the community by an approved mental health service.
- (3) A community treatment order:
  - (a) for a prisoner authorises the prisoner to be given treatment and care by an approved mental health service at the custodial correction facility where the prisoner is held; or
  - (b) for a detainee authorises the detainee to be given treatment and care by an approved mental health service at the detention centre where the detainee is held.
- (4) An inpatient treatment order authorises the person to be treated at an approved mental health facility and the detention of the person in the facility for that purpose.
- (5) An inpatient treatment order may authorise the detention of the person for the purpose of transporting the person to an approved mental health facility.

#### 109 Duration of treatment order

A treatment order must set out the duration of the order, which must not be longer than:

- (a) 3 months for an inpatient treatment order; or
- (b) 6 months for a community treatment order.

### 110 Content of treatment order

A treatment order must include the following information:

- (a) the name of the person to whom the order applies;
- (b) the date that the order was made;
- (c) whether the order is a community treatment order or an inpatient treatment order;
- (d) the approved mental health service or approved mental health facility that is to be responsible for the person's treatment and care;

- (e) for a community treatment order the name of the authorised psychiatrist who is to supervise the order;
- (f) what the order authorises;
- (g) the duration of the order;
- (h) the day that NTCAT will review the order;
- (i) any other information prescribed by regulation.

## 111 Information for person to whom order applies

As soon as practicable after a treatment order is made under this Division, an authorised psychiatrist at the approved mental health service or approved mental health facility set out in the order must ensure that:

- (a) the person to whom the order applies is informed:
  - (i) of the order; and
  - (ii) that the person will receive treatment and care for the person's mental illness or mental disorder; and
- (b) all reasonable steps are taken to explain to the person the purpose and effect of the order; and
- (c) the person is given a copy of the order and the statement of rights applying to the person.

#### 112 Others to be notified of treatment order

As soon as practicable after a treatment order is made under this Division, an authorised psychiatrist at the approved mental health service or approved mental health facility set out in the order must take all reasonable steps to:

- (a) notify the following of the order:
  - (i) if the person to whom the order applies has one or more nominated support persons – each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;

- (vi) if the person is a child in the Families CEO's care the Families CEO; and
- give a copy of the order and the statement of rights to each (b) person notified under paragraph (a).

#### **Division 4 Duties of supervising psychiatrist and psychiatric** case manager

#### 113 **Duties of supervising psychiatrist**

- (1) This section applies to a person to whom a temporary community treatment order or community treatment order applies.
- (2) A psychiatric assessment of the person must be conducted at least monthly by:
  - (a) the supervising psychiatrist for the temporary community treatment order or community treatment order; or
  - at the request of the supervising psychiatrist an authorised psychiatric practitioner.
- (3) The supervising psychiatrist for the temporary community treatment order or community treatment order must:
  - (a) regularly review the order while it is in effect; and
  - conduct a psychiatric assessment of the person before the expiry of the order.

#### 114 Duty to appoint psychiatric case manager

- (1) The supervising psychiatrist for a temporary community treatment order or community treatment order must appoint a medical practitioner or an authorised mental health practitioner as the psychiatric case manager for the person to whom the order applies.
- (2) A person must not be appointed as a psychiatric case manager under subsection (1) unless the person consents to the appointment.

#### 115 **Duties of psychiatric case manager**

The psychiatric case manager appointed for a person to whom a temporary community treatment order or community treatment order applies must:

monitor the progress of the treatment and care and recovery (a) of the person; and

(b) report on the progress of the person to the supervising psychiatrist at least monthly.

# Division 5 Variation and revocation of temporary treatment orders and treatment orders

# Subdivision 1 Variation of terms of temporary community treatment orders and community treatment orders

# 116 Variation of terms of temporary community treatment order or community treatment order

- (1) The supervising psychiatrist for a temporary community treatment order or community treatment order may vary the terms of the order.
- (2) A variation under this section does not include a variation mentioned in section 120.

#### 117 Content of varied order

An order that is varied under section 116 must be in the approved form and include the following information:

- (a) the name of the person to whom the order applies;
- (b) the variation made;
- (c) the reasons for the variation;
- (d) the date and time the order was varied;
- (e) the name, qualification and signature of the supervising psychiatrist;
- (f) any other information prescribed by regulation.

## 118 Copy of varied order to be given to person to whom it applies

As soon as practicable after varying a temporary community treatment order or community treatment order under section 116, the supervising psychiatrist must ensure that:

- (a) the person to whom the order applies is informed of the variation: and
- (b) all reasonable steps are taken to explain to the person the purpose and effect of the variation of the order; and

the person is given a copy of the varied order and the (c) statement of rights applying to the person.

#### **Subdivision 2** Variation of temporary treatment orders and treatment orders - change to type of order

#### 119 Variation of temporary treatment order or treatment order – inpatient to community

- (1) Subject to subsections (2) and (3), an authorised psychiatrist may vary:
  - a temporary inpatient treatment order to be a temporary (a) community treatment order; or
  - an inpatient treatment order to be a community treatment order.
- (2) An authorised psychiatrist may vary a temporary inpatient treatment order or inpatient treatment order under subsection (1) only if the authorised psychiatrist is satisfied that:
  - (a) the compulsory treatment criteria apply to the person; and
  - treatment can reasonably be given to the person in the (b) community.
- (3) In deciding whether to vary a temporary inpatient treatment order or inpatient treatment order applying to a person, the authorised psychiatrist must:
  - have regard to the person's wishes, views and preferences about treatment for the person's mental illness, including wishes, views and preferences expressed in any advance personal plan made by the person; and
  - have regard, to the extent practicable, to the views of the (b) following:
    - if the person has one or more nominated support (i) persons – each nominated support person;
    - (ii) if the person has an adult guardian – the adult guardian;
    - if the person has a decision maker the decision maker; (iii)

58

- (iv) if the person has a carer the carer;
- if the person is a child a parent of the child;

- (vi) if the person is a child in the Families CEO's care the Families CEO.
- (4) A variation of a temporary inpatient treatment order or inpatient treatment order under subsection (1) does not affect the duration of the order.

#### 120 Variation of temporary treatment order or treatment order community to inpatient

- (1) Subject to subsections (2) and (3), an authorised psychiatrist may vary:
  - (a) a temporary community treatment order to a temporary inpatient treatment order; or
  - (b) a community treatment order to an inpatient treatment order.
- (2) The authorised psychiatrist may vary a temporary community treatment order or community treatment order under subsection (1) only if the authorised psychiatrist is satisfied:
  - (a) the person has a mental illness; and
  - (b) the compulsory treatment criteria apply to the person; and
  - treatment and care for the mental illness cannot reasonably be (c) given to the person in the community.
- (3) An authorised psychiatrist must not vary under subsection (1) a temporary community treatment order or community treatment order applying to a prisoner or detainee unless the person in charge of the approved mental health facility where treatment and care is to be given to the prisoner or detainee has advised, in the approved form, that the person in charge is satisfied facilities are available at the facility to give the treatment and care.
- (4) In deciding under subsection (1) whether to vary a temporary community treatment order or community treatment order applying to a person, the authorised psychiatrist must:
  - have regard to the person's wishes, views and preferences (a) about treatment for the person's mental illness including wishes, views and preferences expressed in any advance personal plan made by the person; and

Variation and revocation of temporary treatment orders and treatment orders Variation of temporary treatment orders and treatment orders – change to type of order

- (b) have regard, to the extent practicable, to the views of the following:
  - (i) if the person has one or more nominated support persons each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;
  - (vi) if the person is a child in the Families CEO's care the Families CEO.
- (5) An order varied to become a temporary inpatient treatment order or inpatient treatment order under subsection (1) must not have a duration longer than:
  - (a) 28 days for an adult; or
  - (b) 14 days for a child.

#### 121 Content of varied order

- (1) An order that is varied under section 119 must be in the approved form and include the following information:
  - (a) the name of the person to whom the order applies;
  - (b) the variation made;
  - (c) the date and time the order was varied;
  - (d) the name, qualification and signature of the authorised psychiatrist who varied the order;
  - (e) the name of the approved mental health service that is to give the treatment and care;
  - (f) the name of the authorised psychiatrist who is to supervise the order:
  - (g) the duration of the order;
  - (h) any other information prescribed by regulation.

Variation and revocation of temporary treatment orders and treatment orders Variation of temporary treatment orders and treatment orders – change to type of order

- (2) An order that is varied under section 120 must be in the approved form and include the following information:
  - (a) the name of the person to whom the order applies;
  - (b) the variation made;
  - (c) the date and time the order was varied;
  - (d) the name, qualification and signature of the authorised psychiatrist who varied the order;
  - (f) the name of the approved mental health facility where the treatment and care will be given;
  - (g) the duration of the order;
  - (h) any other information prescribed by regulation.

Note for subsection(2)

See section 157 for the transport to an approved mental health facility of a prisoner or detainee to whom an order varied under section 120 applies.

# 122 Information for person to whom order applies

- (1) As soon as practicable after varying a temporary treatment order or treatment order under section 119 or 130, the authorised psychiatrist must ensure that:
  - (a) the person to whom the order applies is informed of the variation; and
  - (b) all reasonable steps are taken to explain to the person:
    - (i) the purpose and effect of the variation of the order; and
    - (ii) if the order as varied is inconsistent with the person's wishes, views and preferences expressed in the person's advance personal plan, the reasons for the inconsistency; and
  - (c) the person is given a copy of the varied order and the statement of rights applying to the person.
- (2) The authorised psychiatrist must:
  - (a) record an inconsistency mentioned in subsection (1)(b)(ii) in the person's medical record; and

Variation and revocation of temporary treatment orders and treatment orders Variation of temporary treatment orders and treatment orders – change to type of order

(b) notify the Chief Psychiatrist of the inconsistency in the approved form.

## 123 NTCAT and specified persons to be notified of variation

- (1) As soon as practicable after varying a temporary treatment order or treatment order under section 119 or 120, the authorised psychiatrist must:
  - (a) notify the following of the variation:
    - (i) NTCAT;
    - (ii) the Chief Psychiatrist;
    - (iii) the principal community visitor; and
  - (b) give NTCAT a copy of the varied order.
- (2) On being notified of the variation under subsection (1), NTCAT must fix a day for NTCAT to review the varied order under section 104.

#### 124 Others to be notified of variation

As soon as practicable after varying a temporary treatment order or treatment order under section 119 or 120, the authorised psychiatrist must take all reasonable steps to:

- (a) notify the following of the variation:
  - (i) if the person to whom the order applies has one or more nominated support persons each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;
  - (vi) if the person is a child in the Families CEO's care the Families CEO; and

62

(b) give a copy of the varied order and the statement of rights to each person to be notified under paragraph (a).

# Subdivision 3 Revocation of temporary treatment orders and treatment orders

## 125 Revocation of temporary treatment order or treatment order

An authorised psychiatrist must revoke a temporary treatment order or treatment order if the authorised psychiatrist is satisfied the compulsory treatment criteria no longer apply to the person to whom the order applies.

## 126 Information for person to whom order applied

As soon as practicable after revoking a temporary treatment order or treatment order under section 125, the authorised psychiatrist must ensure that:

- (a) the person to whom the order applied is informed of the revocation; and
- (b) all reasonable steps are taken to explain to the person that the order no longer applies to the person.

## 127 NTCAT and specified persons to be notified of revocation

As soon as practicable after revoking a temporary treatment order or treatment order under section 125, the authorised psychiatrist must notify the following of the revocation:

- (a) NTCAT;
- (b) the Chief Psychiatrist;
- (c) the principal community visitor;
- (d) the person in charge of the approved mental health service or approved mental health facility that gave treatment and care under the order.

#### 128 Others to be notified of revocation

As soon as practicable after revoking a temporary treatment order or treatment order under section 125, the authorised psychiatrist must take all reasonable steps to notify the following of the revocation:

- (a) if the person to whom the order applied has one or more nominated support persons each nominated support person;
- (b) if the person has an adult guardian the adult guardian;

- (c) if the person has a decision maker – the decision maker;
- if the person has a carer the carer; (d)
- if the person is a child a parent of the child; (e)
- (f) if the person is a child in the Families CEO's care - the Families CEO.

## Division 6 Leave of absence from approved mental health facility

#### 129 Leave of absence from approved mental health facility

- (1) An authorised psychiatrist or authorised psychiatric practitioner at an approved mental health facility may grant a leave of absence from the facility to a person (other than a correctional patient) who is detained at the facility under:
  - a temporary inpatient treatment order; or (a)
  - an inpatient treatment order; or (b)
  - (c) an assessment order.
- (2) The leave of absence may be granted for any purpose and for any period and on any conditions the authorised psychiatrist or authorised psychiatric practitioner considers appropriate.
- (3) The conditions under subsection (2) may include conditions about the person doing any of the following:
  - residing at a specified place; (a)
  - (b) receiving specified treatment;
  - attending at a specified place, and remaining there as specified in the condition, to enable the person to be given specified treatment.

#### 130 Variation of leave of absence

An authorised psychiatrist or authorised psychiatric practitioner may vary the period or conditions of a leave of absence granted under section 129.

64

#### 131 Period and conditions of leave of absence

- (1) An authorised psychiatrist or authorised psychiatric practitioner must have regard to the matters in subsection (2) in deciding:
  - the period and conditions of a leave of absence granted under section 129: or
  - whether to vary the period or conditions of a leave of absence (b) granted under section 129.
- (2) For subsection (1), regard must be had to the following matters:
  - the purpose of the leave of absence; (a)
  - the need to ensure the health and safety of, and minimise the (b) risk of serious harm to, the person or anyone else;
  - the person's wishes, views and preferences, including wishes, (c) views and preferences expressed in any advance personal plan made by the person;
  - the reasons for the person's wishes, views and preferences; (d)
  - (e) to the extent practicable, the views of the following:
    - (i) if the person has one or more nominated support persons – each nominated support person;
    - (ii) if the person has an adult guardian – the adult guardian;
    - if the person has a decision maker the decision maker; (iii)
    - (iv) if the person has a carer the carer;
    - if the person is a child a parent of the child;
    - (vi) if the person is a child in the Families CEO's care the Families CEO.

#### 132 Information for person granted leave of absence

- (1) As soon as practicable after granting a leave of absence to a person under section 129, the authorised psychiatrist or authorised psychiatric practitioner must ensure that:
  - (a) the person is informed that the leave of absence has been granted: and
  - all reasonable steps are taken to explain the purpose, duration (b) and conditions of the leave of absence to the person.

- (2) As soon as practicable after varying a leave of absence granted to a person, under section 130, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to:
  - (a) inform the person that the leave of absence has been varied; and
  - (b) explain to the person the purpose and effect of the variation.

## Others to be notified of grant or variation of leave of absence

- (1) This section applies to a person if an authorised psychiatrist or authorised psychiatric practitioner:
  - (a) grants a leave of absence to the person under section 129; or
  - (b) varies a leave of absence under section 130.
- (2) As soon as practicable after the leave of absence is granted or varied, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to notify the following of the leave of absence or variation:
  - (a) if the person has one or more nominated support persons each nominated support person;
  - (b) if the person has an adult guardian the adult guardian;
  - (c) if the person has a decision maker the decision maker;
  - (d) if the person has a carer the carer;
  - (e) if the person is a child a parent of the child;
  - (f) if the person is a child in the Families CEO's care the Families CEO

### 134 Revocation of leave of absence

An authorised psychiatrist or authorised psychiatric practitioner may, by written notice, revoke a leave of absence granted to a person under section 129 and require the person to return to the approved mental health facility if the authorised psychiatrist or authorised psychiatric practitioner is satisfied:

- (a) the 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 anyone else; or
- the person has not complied with a condition of the leave of (b) absence; or
- the purpose for the leave of absence no longer exists.

#### 135 Information for a person to whom leave of absence applied

As soon as practicable after revoking a leave of absence granted to a person, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to:

- give written notice of revocation to the person and inform the (a) person that the leave of absence has been revoked; and
- explain to the person the purpose and effect of the revocation. (b)

#### 136 Others to be notified of revocation

As soon as practicable after revoking a leave of absence granted to a person, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to notify the following of the revocation:

- (a) if the person has one or more nominated support persons each nominated support person;
- (b) if the person has an adult guardian – the adult guardian;
- (c) if the person has a decision maker – the decision maker;
- if the person has a carer the carer; (d)
- if the person is a child a parent of the child; (e)
- (f) if the person is a child in the Families CEO's care - the Families CEO.

#### Division 7 Absence without leave from approved mental health facility

#### 137 **Application of Division**

This Division applies to a person who is detained at an approved mental health facility under a temporary inpatient treatment order, inpatient treatment order or assessment order and who:

is absent from the facility without leave of absence granted (a) under section 129; or

- (b) was granted leave of absence under section 129 and is absent without leave because:
  - (i) the person failed to return to the facility by the end of the leave of absence; or
  - (ii) the leave of absence was revoked and the person failed to return to the facility after that revocation.

# 138 Arrangement to transport person absent without leave to approved mental health facility

An authorised psychiatrist or authorised psychiatric practitioner may arrange for the person who is absent without leave to be transported to the approved mental health facility.

Note for section 138

See section 183 for the transport to an approved mental health facility of a person who is absent without leave.

## 139 Person in charge to be notified if person absent without leave

- (1) This section applies to a person to whom a temporary inpatient treatment order or inpatient treatment order applies and who is absent without leave from an approved mental health facility.
- (2) An authorised psychiatrist or authorised psychiatric practitioner must notify the person in charge of the approved mental health facility as soon as practicable of the person's absence without leave from the facility.
- (3) An authorised psychiatrist or authorised psychiatric practitioner must notify the person in charge of the approved mental health facility as soon as practicable after the person returns to the facility.

## 140 Others to be notified if person absent without leave

- (1) This section applies to a person who is absent without leave from an approved mental health facility.
- (2) An authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to notify the following as soon as practicable of the person's absence without leave from the approved mental health facility:
  - (a) if the person has one or more nominated support persons each nominated support person;
  - (b) if the person has an adult guardian the adult guardian;

- (c) if the person has a decision maker the decision maker;
- (d) if the person has a carer the carer;
- (e) if the person is a child a parent of the child;
- (f) if the person is a child in the Families CEO's care the Families CEO
- (3) An authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to notify a person notified under subsection (2) as soon as practicable after the person who is absent without leave returns to the approved mental health facility.

# Division 8 Absence of person on temporary community treatment order or community treatment order

# 141 Application of Division

This Division applies to a person to whom a temporary community treatment order or community treatment order applies who:

- (a) does not attend the place the person is required to attend to receive treatment and care under the order; or
- (b) is not present at the person's residence to receive treatment and care as required by the order.

## 142 Supervising psychiatrist to seek person's cooperation

The supervising psychiatrist must take all reasonable steps to obtain the cooperation of the person to attend for treatment and care as required by the temporary community treatment order or community treatment order.

### 143 Making of transport and detention order

- (1) This section applies to a person if, after all reasonable steps are taken under section 142, the person continues to fail:
  - (a) to attend the place the person is required to attend to receive treatment and care under the order; or
  - (b) to be present at the person's residence to receive treatment and care as required by the order.

- (2) An authorised psychiatrist may make a transport and detention order in relation to the person if the authorised psychiatrist believes on reasonable grounds that the person is likely to:
  - (a) suffer serious deterioration in the person's mental or physical health; or
  - (b) cause serious harm to the person or anyone else.
- (3) A transport and detention order may authorise:
  - (a) an authorised person to transport the person to the place named in the order; and
  - (b) the detention of the person at that place until the first of the following occurs:
    - (i) the treatment is given;
    - (ii) the authorised psychiatrist varies, under section 120, or revokes, under section 125, the temporary community treatment order or community treatment order;
    - (iii) the expiry of 6 hours after the person was received at that place.

# Person in charge to be notified of transport and detention order

As soon as practicable after making a transport and detention order, the authorised psychiatrist who made the order must notify the person in charge of the approved mental health service of the order.

### 145 Others to be notified of transport and detention order

As soon as practicable after making a transport and detention order, the authorised psychiatrist who made the order must take all reasonable steps to notify the following of the order:

(a) if the person to whom the order applies has one or more nominated support persons – each nominated support person;

70

- (b) if the person has an adult guardian the adult guardian;
- (c) if the person has a decision maker the decision maker;
- (d) if the person has a carer the carer;
- (e) if the person is a child a parent of the child;

(f) if the person is a child in the Families CEO's care – the Families CEO.

# Part 6 Correctional patients

## Division 1 Preliminary matters

# 146 Purposes of Part

The purposes of this Part are:

- (a) to provide for the making of an assessment order for a prisoner or detainee; and
- (b) to provide for the psychiatric assessment of a prisoner or detainee to whom an assessment order applies; and
- (c) to provide for the transport of a prisoner or a detainee to an approved mental health facility for:
  - (i) a psychiatric assessment; or
  - (ii) admission to receive treatment and care for a mental illness; and
- (d) to provide for leaves of absence and regulate absence without leave of correctional patients; and
- (e) to provide for the return to custody or release of a prisoner or detainee on ceasing to be a correctional patient; and
- (f) to provide for the circumstances in which a prisoner or detainee ceases to be a correctional patient.

## Division 2 Assessment order for prisoner or detainee

## 147 Making of assessment order

- (1) A medical practitioner or an authorised mental health practitioner may make an assessment order if the practitioner:
  - (a) has examined the prisoner or detainee in accordance with Part 4, Division 2, Subdivision 1 within the previous 48 hours; and
  - (b) is satisfied that the compulsory assessment criteria apply to the prisoner or detainee.

- (2) In determining whether to make an assessment order in relation to a prisoner or detainee, the medical practitioner or authorised mental health practitioner:
  - (a) must consider any relevant information communicated to the practitioner by the prisoner or detainee; and
  - (b) may consider any other relevant information, including information communicated to the practitioner by anyone else.

#### 148 What does assessment order authorise?

An assessment order under section 147 authorises an authorised psychiatrist or authorised psychiatric practitioner to conduct a compulsory psychiatric assessment of the prisoner or detainee to whom the order applies to decide whether the compulsory treatment criteria apply to the prisoner or detainee.

## 149 Assessment order to specify place of psychiatric assessment

- (1) An assessment order under section 147 may specify that the psychiatric assessment is to be conducted at:
  - (a) in the case of a prisoner the custodial correctional facility; or
  - (b) in the case of a detainee the detention centre; or
  - (c) an approved mental health facility.
- (2) An assessment order under section 147 may only provide for the psychiatric assessment to be conducted at an approved mental health facility if the person in charge of the facility has advised, in the approved form, that the person in charge is satisfied facilities are available at the approved mental health facility to conduct the psychiatric assessment.
- (3) If a psychiatric assessment of a prisoner or detainee is to be conducted at an approved mental health facility, the medical practitioner or authorised mental health practitioner who made the assessment order may arrange for the transport of the prisoner or detainee to the facility for the assessment.
- (4) If a psychiatric assessment of a prisoner is to be conducted at an approved mental health facility, the Commissioner of Correctional Services must permit the transport of the prisoner to the facility for the assessment.
- (5) If a psychiatric assessment of a detainee is to be conducted at an approved mental health facility, the Youth Justice CEO must permit the transport of the detainee to the facility for the assessment.

#### 150 Content of assessment order

An assessment order under section 147 must be in the approved form and include the following information:

- (a) the name of the prisoner or detainee to be assessed;
- the name, qualification and signature of the medical (b) practitioner or authorised mental health practitioner who made the order:
- the date and time that the medical practitioner or authorised mental health practitioner examined the person before making the order:
- the date and time that the order was made; (d)
- (e) what the order authorises:
- (f) if the prisoner or detainee is to be assessed at an approved mental health facility – the name of that facility;
- any other information prescribed by regulation. (g)

#### 151 Information for prisoner or detainee to whom order applies

As soon as practicable after making an assessment order under section 147, the medical practitioner or authorised mental health practitioner must take all reasonable steps to:

- (a) inform the prisoner or detainee to whom the order applies of the order: and
- (b) explain to the prisoner or detainee the purpose and effect of the order: and
- give the prisoner or detainee a copy of the order and the statement of rights applying to the prisoner or detainee.

#### 152 Revocation of assessment order

(1) A medical practitioner or authorised mental health practitioner must revoke an assessment order made under section 147 if the practitioner is satisfied that the compulsory assessment criteria no longer apply to the prisoner or detainee to whom the order applies.

73

- (2) A medical practitioner or authorised mental health practitioner must not revoke an assessment order made by another practitioner unless:
  - (a) the practitioner has consulted the other practitioner about whether or not to revoke the order; or
  - (b) after reasonable efforts, the other practitioner cannot be contacted.

# Division 3 Psychiatric assessment

## 153 Psychiatric assessment

- (1) An authorised psychiatrist or an authorised psychiatric practitioner may conduct a psychiatric assessment of a prisoner or detainee to whom an assessment order under section 147 applies to decide if the compulsory treatment criteria apply to the prisoner or detainee.
- (2) An authorised psychiatrist or authorised psychiatric practitioner who conducts a psychiatric assessment of a prisoner or detainee under subsection (1) must not be the practitioner who made the assessment order.

Note for section 153

Part 5 provides for the making of temporary treatment orders and treatment orders if the compulsory treatment criteria are assessed to apply.

## 154 How is psychiatric assessment to be conducted?

- (1) A psychiatric assessment of a prisoner or detainee under this Division must be conducted in the least restrictive way and in the least restrictive environment practicable.
- (2) Before an authorised psychiatrist or an authorised psychiatric practitioner conducts a psychiatric assessment of a prisoner or detainee under this Division, the authorised psychiatrist or authorised psychiatric practitioner must:
  - (a) identify themselves to the prisoner or detainee; and
  - (b) inform the prisoner or detainee that the authorised psychiatrist or authorised psychiatric practitioner will assess the person; and
  - (c) take all reasonable steps to explain to the prisoner or detainee the purpose of the assessment.

(3) If a psychiatric assessment of a prisoner or detainee is being conducted remotely, a health professional must be physically present with the prisoner or detainee being assessed.

### 155 Assessment of Aboriginal or Torres Strait Islander person

To the extent practicable, a psychiatric assessment of an Aboriginal or Torres Strait Islander person under this Division must be conducted in collaboration with Aboriginal or Torres Strait Islander mental health workers.

Note for section 155

Section 8 sets out guiding principles for the treatment and care of Aboriginal and Torres Strait Islander persons.

# 156 What if compulsory treatment criteria do not apply?

If, after a psychiatric assessment of a prisoner or detainee at an approved mental health facility under this Division, the authorised psychiatrist or authorised psychiatric practitioner decides that the compulsory treatment criteria do not apply, the psychiatrist or practitioner may:

- (a) arrange for the transport of the prisoner or detainee to return to the custodial correctional facility or detention centre from which the prisoner or detainee was transported to the facility; or
- (b) admit the prisoner or detainee to the approved mental health facility as a correctional patient if:
  - (i) the prisoner or detainee has a mental illness; and
  - (ii) the authorised psychiatrist or authorised psychiatric practitioner is satisfied it is clinically appropriate for the prisoner or detainee to be admitted to receive treatment and care at the facility rather than in the custodial correctional facility or detention centre; and
  - (iii) the prisoner or detainee has given informed consent to that admission; and
  - (iv) the person in charge of the approved mental health facility has advised, in the approved form, that the person in charge is satisfied facilities are available at the approved mental health facility to give the treatment and care.

Transport of prisoner or detainee to approved mental health facility

# Division 4 Transport of prisoner or detainee to approved mental health facility

# 157 Transport for admission of prisoner or detainee under temporary inpatient treatment order

- (1) This section applies to a prisoner or detainee if an authorised psychiatrist conducts a psychiatric assessment of the prisoner or detainee at a custodial correctional facility or detention centre and the authorised psychiatrist:
  - (a) makes a temporary inpatient treatment order for the prisoner or detainee under section 95; or
  - (b) varies a temporary community treatment order or community treatment order applying to the prisoner or detainee to a temporary inpatient treatment order or inpatient treatment order under section 120.
- (2) The temporary inpatient treatment order or inpatient treatment order may authorise the transport of the prisoner or detainee by an authorised person from the custodial correctional facility or detention centre where the prisoner or detainee is held to an approved mental health facility for treatment.
- (3) The Commissioner of Correctional Services must permit the transport of a prisoner to an approved mental health facility in accordance with a temporary inpatient treatment order or inpatient treatment order.
- (4) The Youth Justice CEO must permit the transport of a detainee to an approved mental health facility in accordance with a temporary inpatient treatment order or inpatient treatment order.

## 158 Transport for voluntary admission of prisoner or detainee

- (1) This section applies to a prisoner or detainee if an authorised psychiatrist or authorised psychiatric practitioner is satisfied that:
  - (a) the prisoner or detainee has a mental illness; and
  - (b) it is clinically appropriate for the prisoner or detainee to be admitted to receive treatment or care at an approved mental health facility rather than in the custodial correctional facility or detention centre; and
  - (c) the prisoner or detainee has given informed consent to receiving treatment and care at the approved mental health facility; and

- (d) the person in charge of the approved mental health facility has advised, in the approved form, that the person in charge is satisfied facilities are available at the approved mental health facility to give the treatment and care.
- (2) The authorised psychiatrist or authorised psychiatric practitioner may arrange for the prisoner or detainee to be transported to the approved mental health facility and admitted to the facility as a correctional patient.
- (3) The Commissioner of Correctional Services must permit the transport of a prisoner to the approved mental health facility for the admission of the prisoner as a correctional patient under this section.
- (4) The Youth Justice CEO must permit the transport of a detainee to the approved mental health facility for the admission of the detainee as a correctional patient under this section.

# Division 5 Leave of absence of correctional patient

### 159 Leave of absence

- (1) An authorised psychiatrist or authorised psychiatric practitioner at an approved mental health facility may grant a leave of absence from the facility to a correctional patient to receive medical or psychological assessment or treatment.
- (2) The leave of absence:
  - (a) must not be granted except in accordance with arrangements made under section 169; and
  - (b) must be recorded in the approved form; and
  - (c) is subject to the conditions determined by the authorised psychiatrist or authorised psychiatric practitioner.

### 160 Revocation of leave of absence

An authorised psychiatrist or authorised psychiatric practitioner may, by written notice, revoke a leave of absence granted to a correctional patient under section 159 and require the correctional patient to return to the approved mental health facility if the authorised psychiatrist or authorised psychiatric practitioner is satisfied:

- the revocation of the leave of absence is necessary to (a) prevent:
  - (i) a serious deterioration in the correctional patient's mental or physical health; or
  - (ii) serious harm to the correctional patient or anyone else;
- the correctional patient has not complied with a condition of (b) the leave of absence; or
- (c) the purpose for the leave of absence no longer exists.

#### 161 Information for correctional patient about revocation

As soon as practicable after revoking a leave of absence granted to a correctional patient, the authorised psychiatrist or authorised psychiatric practitioner must take all reasonable steps to:

- give written notice of the revocation to the correctional patient (a) and inform the correctional patient that the leave of absence has been revoked; and
- (b) explain to the correctional patient the purpose and effect of the revocation.

#### **Division 6** Absence without leave from approved mental health facility

#### 162 **Application of Division**

This Division applies to a correctional patient who:

- is absent from an approved mental health facility without leave (a) of absence granted under section 159; or
- was granted leave of absence under section 159 and is (b) absent without leave from the approved mental health facility because:
  - (i) the correctional patient failed to return to the facility by the end of the leave; or
  - (ii) the leave was revoked and the correctional patient failed to return to the facility after that revocation.

# Arrangement to transport correctional patient absent without leave to approved mental health facility

An authorised psychiatrist or authorised psychiatric practitioner may arrange for a correctional patient who is absent without leave from an approved mental health facility to be transported to the approved mental health facility.

# Person to be notified if correctional patient absent without leave

- (1) This section applies to a correctional patient if the correctional patient is absent without leave from an approved mental health facility.
- (2) An authorised psychiatrist or authorised psychiatric practitioner must notify the following as soon as practicable of the correctional patient's absence without leave from the approved mental health facility:
  - (a) if the correctional patient is a prisoner the Commissioner for Correctional Services;
  - (b) if the correctional patient is a detainee the Youth Justice CEO.
- (3) An authorised psychiatrist or authorised psychiatric practitioner must notify a person notified under subsection (2) as soon as practicable after the correctional patient who is absent without leave returns to the approved mental health facility.

### **Division 7 General matters**

# Notice to Commissioner of Correctional Services or Youth Justice CEO about certain matters

- (1) The person in charge of the approved mental health facility to which a correctional patient has been admitted for treatment and care for a mental illness must notify the relevant person as soon as practicable after:
  - (a) a decision is made to discharge the correctional patient from the approved mental health facility; or
  - (b) the correctional patient is transported to another approved mental health facility under section 180.

(2) In this section:

#### relevant person means:

- (a) for a correctional patient who is a prisoner the Commissioner of Correctional Services; or
- (b) for a correctional patient who is a detainee the Youth Justice CEO.

## 166 Correctional patient to remain in lawful custody

- (1) A correctional patient admitted to an approved mental health facility under this Act is taken to be in lawful custody while the correctional patient is at the facility.
- (2) The period spent at the facility is taken:
  - (a) for a correctional patient who is a prisoner serving a sentence of imprisonment – to be a period of imprisonment under that sentence; or
  - (b) for a correctional patient who is a detainee serving a term of detention under an order of detention – to be a period of detention under that order.

## 167 Release of correctional patient

- (1) This section applies to a correctional patient at an approved mental health facility if any of the following events occurs in relation to the person:
  - (a) the person's sentence of imprisonment or term of detention expires;
  - (b) the person is granted bail;
  - (c) the person is released on parole;
  - (d) the person is released on the order of a court;
  - (e) the person otherwise ceases to be a prisoner or detainee.
- (2) The person ceases to be a correctional patient:
  - (a) at the time the event occurs if the person in charge of the approved mental health facility was notified under this section or was otherwise made aware of the event at the time, or before, it occurs; or

(b) otherwise – when the person in charge of the approved mental health facility is notified under this section or is otherwise made aware that the event has occurred.

Example for subsection (2)(b)

The correctional patient's lawyer provides the person in charge with a copy of the court order granting the correctional patient bail.

- (3) The Commissioner of Correctional Services must notify the person in charge of the approved mental health facility of the occurrence or expected occurrence of an event to which this section applies.
- (4) The Youth Justice CEO must notify the person in charge of the approved mental health facility of the occurrence or expected occurrence of an event to which this section applies.
- (5) A notice under subsection (3) or (4) must:
  - (a) be in writing; and
  - (b) be given as soon as practicable and no later than 24 hours after the event occurs.
- (6) On a person ceasing to be a correctional patient:
  - (a) treatment and care for the mental illness may continue to be given to the person at the approved mental health facility with the informed consent of:
    - (i) the person; or
    - (ii) if the person does not have decision making capacity a relevant person; or
  - (b) treatment and care for the mental illness may continue to be given to the person at the approved mental health facility:
    - (i) under an existing temporary inpatient treatment order or inpatient treatment order applying to the person; or
    - (ii) if a temporary inpatient treatment order is made in relation to the person; or
  - (c) otherwise the person in charge must discharge the person from the approved mental health facility.
- (7) A correctional patient must not be discharged from an approved mental health facility except in accordance with:
  - (a) subsection (6); or

- (b) a direction under section 168(1).
- (8) In subsection (6)(a)(ii):

## relevant person means any of the following:

- (a) if the person has an adult guardian the adult guardian;
- (b) if the person has a decision maker the decision maker;
- (c) if the person is a child the child's parent;
- (d) if the person is a child in the Families CEO's care the Families CEO.

# 168 Return of correctional patient to custodial correctional facility or detention centre

- (1) The person in charge of the approved mental health facility may direct that a correctional patient be returned to a custodial correctional facility or detention centre if:
  - (a) the person in charge is satisfied it is no longer clinically appropriate to give treatment and care to the correctional patient at the facility; or
  - (b) for a correctional patient who is not under a temporary inpatient treatment order or inpatient treatment order – the correctional patient withdraws consent to treatment at the facility.

### Examples for subsection (1)(a)

- 1 The correctional patient no longer needs treatment and care for a mental illness.
- 2 The correctional patient can be given treatment and care for the mental illness at the custodial correctional centre or detention centre.
- (2) The person in charge must, as soon as practicable, notify the Commissioner of Correctional Services or the Youth Justice CEO (as the case requires) of a direction under subsection (1).
- (3) The Commissioner of Correctional Services must arrange for the transport of a correctional patient who is a prisoner to the custodial correctional facility within 24 hours after being notified under subsection (2).
- (4) The Youth Justice CEO must arrange for the transport of a correctional patient who is a detainee to the detention centre within 24 hours after being notified under subsection (2).

#### 169 **Arrangements for correctional patients**

- (1) The Commissioner of Correctional Services and the Chief Psychiatrist may make arrangements to ensure the security and good order of prisoners who are correctional patients receiving treatment and care at an approved mental health facility under this Act.
- (2) The Youth Justice CEO and the Chief Psychiatrist may make arrangements to ensure the security and good order of detainees who are correctional patients receiving treatment and care at an approved mental health facility under this Act.

#### Part 7 Care and control and transport

## **Division 1 Preliminary matters**

#### 170 **Purposes of Part**

The purposes of this Part are:

- to provide for a health led response to mental health crises; (a)
- to provide for the transport of persons to and from approved (b) mental health facilities and within approved mental health facilities: and
- to provide for the transport of a person who is absent without leave from an approved mental health facility or to whom a transport and detention order applies; and
- to provide powers to deal with the matters mentioned in (d) paragraphs (a), (b) and (c).

#### 171 Least restrictive approach

An authorised person must exercise a power under this Part in the least restrictive way practicable.

#### 172 **Health led response**

A power under this Part must, to the extent practicable, be exercised by an authorised person:

who is a medical practitioner, a registered nurse, a paramedic (a) or an authorised mental health practitioner; or

83

(b) if paragraph (a) is not reasonably practicable – on the advice of a medical practitioner, a registered nurse, a paramedic or an authorised mental health practitioner.

# Division 2 Taking person into care and control in mental health crisis

## 173 Taking person into care and control

- (1) An authorised person who is a police officer or a paramedic or is in a class of persons prescribed by regulation may take a person into care and control under this section if the authorised person is satisfied that:
  - (a) the person appears to have a mental illness or mental disorder; and
  - (b) because of that mental illness or mental disorder, it is necessary to take the person into care and control to prevent immediate serious harm to the person or anyone else.
- (2) A person is in an authorised person's care and control under this section until the person is received into the care of a medical practitioner or authorised mental health practitioner under section 175 or is released under section 176.

## 174 Exercise of clinical judgment

To avoid doubt, an authorised person exercising a power in relation to a person under section 173(1) does not have to exercise clinical judgment when considering whether the person appears to have a mental illness or mental disorder.

### 175 Examination of person taken into care and control

- (1) An authorised person who takes a person into care and control under section 173(1) must arrange for the person to be examined under Part 4, Division 2 as soon as practicable by:
  - (a) a medical practitioner; or
  - (b) an authorised mental health practitioner.
- (2) An authorised person who takes a person into care and control under section 173(1) must transport the person, or arrange for the person to be transported, to the practitioner for the examination.
- (3) A person who has been taken into care and control under section 173(1) is taken to be in the care and control of the practitioner once received by the practitioner for examination.

Care and control and transport

Transport of persons within and to and from approved mental health facilities and other places

(4) A practitioner may detain a person in the practitioner's care and control under subsection (3) until the examination has been conducted.

#### 176 Release of 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 care and control is no longer necessary to prevent immediate serious harm to the person or anyone else.
- (2) If an authorised person releases a person under subsection (1), the authorised person must inform the person that the person is no longer in the authorised person's care and control.

#### **Division 3** Transport of persons within and to and from approved mental health facilities and other places

#### 177 Transport of persons within approved mental health facility

An authorised person may transport any of the following from one place at an approved mental health facility to another place at the approved mental health facility:

- a person to whom a temporary inpatient treatment order or inpatient treatment order applies;
- a person detained at the facility under an assessment order.

#### 178 Transport of person to or from approved mental health facility

Subject to section 180, an authorised person may transport any of the following to or from an approved mental health facility for the purposes of this Act:

- (a) a person to whom a temporary inpatient treatment order or inpatient treatment order applies;
- (b) a person to whom an assessment order applies;
- (c) a correctional patient;
- (d) a prisoner or detainee to whom Part 6, Division 3 or 4 applies.

# 179 Transport of person to or from place (other than approved mental health facility) for psychiatric assessment

An authorised person may transport a person to or from a place (other than an approved mental health facility) if an assessment order applying to the person authorises a psychiatric assessment to be conducted at that place.

# 180 Transport of person from approved mental health facility to another approved mental health facility

- (1) This section applies to a person to whom a temporary inpatient treatment order or inpatient treatment order applies.
- (2) An authorised person may transport the person from one approved mental health facility to another approved mental health facility if the transport is authorised under this section.
- (3) The person in charge of an approved mental health facility, on the recommendation of an authorised psychiatrist or authorised psychiatric practitioner, may authorise the transport of the person from the approved mental health facility to another approved mental health facility if:
  - (a) the person in charge is satisfied that the admission of the person to the other facility will benefit the person or is necessary for the person's treatment and care; and
  - (b) the person in charge of the other facility approves the admission of the person to that facility for treatment and care.
- (4) If a person is authorised under this section to be transported to another approved mental health facility, the person in charge of the facility from which the person is transported must ensure that:
  - (a) all documents relating to the admission and future treatment of the person are given to the person in charge of the other facility at the time of the transport; and
  - (b) the person is informed of the person's right to apply to NTCAT for a review of the decision under subsection (3) to authorise the transport of the person to the other facility.

#### 181 Application to NTCAT to review decision to authorise transport of person to another facility

A person to whom a temporary inpatient treatment order or an inpatient treatment order applies may apply to NTCAT for a review of a decision under section 180(3) to authorise the transport of the person to another approved mental health facility.

#### 182 Transport of person to place in the community

- (1) This section applies to a person who has been transported under this Act from a place in the community to an approved mental health facility under an assessment order.
- (2) If the person is not admitted to the approved mental health facility following the assessment, the person in charge of the facility must take all reasonable steps to ensure that the person is transported to a place in the community the person reasonably requests.

#### **Division 4** Transport of person absent without leave or under transport and detention order

#### 183 Transport of person absent without leave from approved mental health facility

An authorised person may transport a person who is absent without leave from an approved mental health facility to the facility in accordance with an arrangement under section 138.

#### 184 Transport of person under transport and detention order

An authorised person may transport a person to a place named in a transport and detention order in accordance with that order.

#### 185 Transport of correctional patient absent without leave from approved mental health facility

An authorised person may transport a correctional patient who is absent without leave from an approved mental health facility to the facility in accordance with an arrangement under section 163.

#### Division 5 Powers of authorised persons

#### Subdivision 1 **Preliminary matters**

#### 186 Authorised person may exercise powers

(1) An authorised person may exercise the powers in this Division for the purposes set out in section 187.

(2) This Division does not affect the powers of a police officer under any other provision of this Act or another law.

### 187 Purposes for exercise of powers

A power under this Division may be exercised for the following purposes:

- (a) to take a person into care and control under Division 2;
- (b) to transport a person under Division 3 or 4.

#### 188 Assistance

An authorised person who is exercising a power under this Division may be assisted by another person.

#### Subdivision 2 Detention and restraint

## 189 Detention of person for transport

An authorised person may detain a person to transport the person.

## 190 Use of bodily restraint to transport person

An authorised person may use bodily restraint on a person to transport the person if:

- (a) all reasonable and less restrictive ways have been tried or considered and have been found to be unsuitable; and
- (b) the use of bodily restraint is necessary to prevent immediate serious harm to the person or to anyone else.

## 191 Use of chemical restraint to transport person

- (1) A medical practitioner may use chemical restraint on a person to transport the person if the use of chemical restraint is necessary to prevent immediate serious harm to the person or anyone else.
- (2) A medical practitioner may direct a registered nurse or a paramedic to use chemical restraint on a person to transport the person if the use of chemical restraint is necessary to prevent immediate serious harm to the person or anyone else.
- (3) Subsection (2) does not limit the power of a registered nurse or a paramedic to administer sedation within the ordinary scope of that person's practice.

## **Subdivision 3** Entry of premises

## 192 Authorised person may enter premises

- (1) An authorised person who is a paramedic or a police officer or in a class of persons prescribed by regulation may enter any premises where the authorised person believes on reasonable grounds one of the following may be found:
  - (a) a person to be taken into care and control under Division 2;
  - (b) a person to be transported under section 178 or 179 or Division 4, except a person mentioned in subsection (2).
- (2) An authorised person who is a police officer may enter any premises at which the police officer believes on reasonable grounds a correctional patient who is absent without leave from an approved mental health facility and who is to be transported may be found.
- (3) Before entering premises under subsection (1) or (2), an authorised person must:
  - (a) announce to any person at the premises that the authorised person is authorised to enter the premises; and
  - (b) state the reason for the entry; and
  - (c) give any person at the premises an opportunity to permit the authorised person to enter the premises.
- (4) An authorised person may use reasonable force to enter the premises if the authorised person is not permitted entry under subsection (3)(c).

#### Subdivision 4 Search and seizure

### 193 Authorised person may search a person

- (1) An authorised person may conduct a search of a person under this section if the person is:
  - (a) in the care and control of the authorised person; or
  - (b) being or to be transported by the authorised person.
- (2) The authorised person or a person assisting the authorised person may search the person if the authorised person suspects on reasonable grounds that the person may be in possession of a thing that may be a serious risk to the health or safety of the person or anyone else.

- (3) The search may be a frisk search, an ordinary search or a scanning search.
- (4) The authorised person must conduct the least invasive type of search practicable.

## 194 Conduct of search of person

- (1) An authorised person must conduct the search of a person under section 193:
  - (a) in a way that respects the person's privacy and dignity to the greatest extent practicable; and
  - (b) as quickly as practicable; and
  - (c) if the person searched is a child in the presence of:
    - (i) a parent of the child; or
    - (ii) a carer of the child; or
    - (iii) if the child is in the Families CEO's care a person nominated by the Families CEO; or
    - (iv) if it is not reasonably practicable for a parent, carer or nominated person to be present another adult.
- (2) To the extent practicable, a frisk search of a person under section 193 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 to be searched; 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.
- (3) For subsection (2), a person's gender is determined by how the person identifies.

#### 195 Authorised person may seize things found during search

- (1) An authorised person may seize a thing found in a search of a person under section 193 if the authorised person suspects on reasonable grounds that the thing may be a serious risk to the health or safety of the person searched or anyone else.
- (2) An authorised person who seizes a thing under subsection (1) must:
  - (a) keep and safely store the seized thing; or
  - (b) deal with it otherwise according to law.

#### 196 Record of search and seizure

After conducting a search under this Subdivision, an authorised person must:

- (a) make a record in the approved form of the search and anything seized setting out:
  - (i) the name of the person from whom the thing was seized; and
  - (ii) the thing that was seized; and
  - (iii) the date and place the thing was seized; and
  - (iv) the name of the authorised person who seized the thing; and
- (b) give a copy of the record to the person searched.

## 197 Return of seized thing

A thing kept under section 195(2)(a) must be returned to the person from whom it was seized if the reason for the seizure no longer applies.

## Division 6 Authorised person to give information

#### 198 Information to be given by authorised person

- (1) On taking a person into care and control or before transporting a person, an authorised person must take all reasonable steps to:
  - (a) identify themselves to the person; and

- (b) explain to the person why the authorised person is taking the person into care and control or transporting the person; and
- inform the person of the approved mental health facility or (c) other place to which the person will be transported; and
- (d) explain to the person the reason the person is being transported to the approved mental health facility or place mentioned in paragraph (c); and
- if the person is to be examined by a medical practitioner or an authorised mental health practitioner at a different place from the place where the person is taken into care and control inform the person of the place where the person will be examined.
- (2) If the person mentioned in subsection (1) is a child, the authorised person must also give the identification, information and explanation specified in subsection (1)(a) to (e) to:
  - a parent of the child; or
  - a carer of the child; or (b)
  - if the child is in the Families CEO's care the Families CEO.

#### Part 8 Treatment and care

#### Division 1 **Preliminary matters**

#### 199 **Purposes of Part**

The purposes of this Part are to:

- set out the procedures for making treatment decisions and (a) planning treatment; and
- provide for reporting of the provision of health care to certain (b) persons in urgent circumstances; and
- (c) set out circumstances in which research, clinical trials and experimental treatments can be conducted in relation to persons receiving treatment and care for a mental illness or mental disorder

#### Division 2 **Treatment decisions**

#### Subdivision 1 Making treatment decisions

#### 200 Wishes, views and preferences of person to whom temporary treatment order or treatment order applies

An authorised psychiatrist or authorised psychiatric practitioner must have regard to the following in making a treatment decision for a person to whom a temporary treatment order or a treatment order applies:

- the person's wishes, views and preferences about the (a) proposed treatment, including the wishes, preferences expressed in any advance personal plan made by the person;
- the reasons for the person's wishes, views and preferences; (b)
- (c) the recovery outcome the person wishes from the proposed treatment.

#### 201 Views of nominated support person and others

An authorised psychiatrist or authorised psychiatric practitioner must have regard, to the extent practicable, to the views of the following in making a treatment decision for a person to whom a temporary treatment order or treatment order applies:

- (a) if the person has one or more nominated support persons each nominated support person;
- (b) if the person has an adult guardian – the adult guardian;
- if the person has a decision maker the decision maker; (c)
- (d) if the person has a carer – the carer;
- (e) if the person is a child – a parent of the child;
- if the person is a child in the Families CEO's care the (f) Families CEO.

#### 202 Other matters to be considered

An authorised psychiatrist or authorised psychiatric practitioner must also consider the following in making a treatment decision for a person to whom a temporary treatment order or treatment order applies:

- (a) any alternative beneficial treatments that are available;
- the likely consequences for the person if the treatment is not given;
- any second psychiatric opinion given to the practitioner.

#### 203 When advance personal plan not followed

- (1) This section applies to a person who has made an advance personal plan that applies to the person's treatment and care under this Act if:
  - a temporary treatment order or treatment order applies to the (a) person; and
  - a treatment decision is made by an authorised psychiatrist or authorised psychiatric practitioner in relation to the person that is inconsistent with the person's wishes, views and preferences expressed in the advance personal plan.
- (2) The authorised psychiatrist or authorised psychiatric practitioner must:
  - (a) take all reasonable steps to explain to the person the reasons why the authorised psychiatrist or authorised psychiatric practitioner made the decision; and
  - (b) record the reasons for the decision in the person's medical record; and
  - notify the Chief Psychiatrist of the decision in the approved form.

94

## Subdivision 2 Treatment and discharge planning

## 204 Preparation, review and revision of treatment plan

- (1) The authorised psychiatrist treating a person to whom a temporary treatment order or treatment order applies must ensure that a treatment plan:
  - (a) is prepared for the person as soon as practicable after the person:
    - (i) starts to receive treatment and care from the approved mental health service; or
    - (ii) is admitted to the approved mental health facility; and
  - (b) is reviewed regularly; and
  - (c) is revised, if necessary.
- (2) The treatment plan must set out the treatment and care to be given to the person by the approved mental health service or at the approved mental health facility.
- (3) In preparing the treatment plan, the authorised psychiatrist must:
  - (a) discuss the treatment and care with the person; and
  - (b) consider the person's wishes, views, and preferences, including the wishes, views and preferences expressed in any advance personal plan made by the person.

### 205 Persons to be given copy of treatment plan

The authorised psychiatrist treating a person to whom a temporary treatment order or treatment order applies must ensure that a copy of the person's treatment plan and any revised treatment plan is given to the following:

- (a) the person;
- (b) if the person has one or more nominated support persons each nominated support person;
- (c) if the person has an adult guardian the adult guardian;
- (d) if the person has a decision maker the decision maker;
- (e) if the person has a carer the carer;

- (f) if the person is a child a parent of the child;
- (g) if the person is a child in the Families CEO's care the Families CEO.

#### 206 Preparation of discharge plan

- (1) The authorised psychiatrist treating a person to whom a temporary treatment order or treatment order applies must ensure that a discharge plan is prepared for the person before the person is discharged.
- (2) The discharge plan must set out the treatment and care that will be offered to the person after the person is discharged.
- (3) In preparing the discharge plan, the authorised psychiatrist must:
  - (a) discuss the treatment and care with the person; and
  - (b) consider the person's wishes, views, and preferences, including the wishes, views and preferences expressed in any advance personal plan made by the person.

## 207 Persons to be given copy of discharge plan

The authorised psychiatrist treating a person to whom a temporary treatment order or treatment order applies must ensure that a copy of the person's discharge plan is given to the following:

- (a) the person;
- (b) if the person has one or more nominated support persons each nominated support person;
- (c) if the person has an adult guardian the adult guardian;
- (d) if the person has a decision maker the decision maker;
- (e) if the person has a carer the carer;
- (f) if the person is a child a parent of the child;
- (g) if the person is a child in the Families CEO's care the Families CEO.

#### Division 3 Treatment and care for Aboriginal or Torres Strait Islander persons

#### 208 Treatment and care

- (1) To the extent practicable, treatment and care given to an Aboriginal or Torres Strait Islander person to whom a temporary treatment order or treatment order applies must be given in collaboration with Aboriginal or Torres Strait Islander mental health workers.
- (2) To the extent practicable and appropriate, treatment and care given to an Aboriginal or Torres Strait Islander person to whom a temporary treatment order or treatment order applies must also be given in collaboration with elders and traditional healers in the person's community.

#### Division 4 **Urgent health care**

#### 209 Report of urgent health care given to person

- (1) This section applies in relation to health care (other than treatment and care for a mental illness or mental disorder) given to any of the following in the circumstances mentioned in section 39(1) of the Health Care Decision Making Act 2023:
  - a person admitted to an approved mental health facility for treatment and care for a mental illness;
  - a person who is receiving treatment and care for a mental illness or mental disorder under a temporary community treatment order or a community treatment order;
  - a person who is detained at an approved mental health facility under an assessment order.

Note for subsection (1)

Section 39(1) of the Health Care Decision Making Act 2023 provides for circumstances in which urgent health care may be administered to a person without consent.

- (2) The person in charge of the approved mental health facility or approved mental health service must report the giving of the health care to the Chief Psychiatrist as soon as practicable after the health care is given.
- (3) A report under subsection (2) must be in the approved form and must contain the following information:
  - the name of the person to whom the health care is given; (a)

97

- (b) the name and qualifications of the health care provider who gave the health care;
- (c) the date, time and place the health care was given;
- (d) details of the health care given;
- (e) the reason for giving the health care.
- (4) In this section:

health care, see section 6 of the Health Care Decision Making Act 2023.

health care provider, see section 4 of the Health Care Decision Making Act 2023.

#### **Division 5** Approved research, clinical trials and experimental treatments

#### 210 Research, clinical trials and experimental treatments

- (1) A person may conduct approved research, a clinical trial or experimental treatment on a person receiving treatment for a mental illness or mental disorder if:
  - the research, clinical trial or experimental treatment complies (a) with any human research guidelines issued under the National Health and Medical Research Council Act 1992 (Cth); and
  - for an adult either: (b)
    - (i) the person receiving treatment gives informed consent to the research, clinical trial or experimental treatment; or
    - if the person receiving treatment is unable to give informed consent - the person's adult guardian or decision maker gives informed consent to the research. clinical trial or experimental treatment; and
  - for a child either: (c)
    - the child receiving treatment gives informed consent to (i) the research, clinical trial or experimental treatment; or
    - if the child receiving treatment is unable to give informed consent - the child's parent or, if the child is in the Families CEO's care, the Families CEO, gives informed consent to the research, clinical trial or experimental treatment.

- (2) Section 30(3) of the Health Care Decision Making Act 2023 does not apply to a person who is receiving treatment for a mental illness or mental disorder.
- (3) In this section:

approved research, clinical trial or experimental treatment means research, a clinical trial or experimental treatment that is approved by a Human Research Ethics Committee registered with the National Health and Medical Research Council.

research includes psychological research.

#### Part 9 Regulated treatment

#### Division 1 **Preliminary matters**

#### 211 **Purposes**

The purposes of this Part are:

- to regulate the administration to a person of electroconvulsive therapy; and
- to regulate the performance on a person of neurosurgery for mental illness.

#### Division 2 **Electroconvulsive therapy**

### Subdivision 1 Administration of electroconvulsive therapy

#### 212 When may electroconvulsive therapy be administered?

- (1) Electroconvulsive therapy may be administered to an adult only as provided in sections 213, 214, 217 and 218.
- (2) Electroconvulsive therapy may be administered to a child only as provided in sections 215, 216, 217 and 218.

#### 213 Adult with decision making capacity

- (1) This section applies to a person who:
  - (a) is an adult; and
  - has decision making capacity to consent to the administration of electroconvulsive therapy.

- (2) Electroconvulsive therapy may be administered to the person if the person:
  - has given informed consent to the administration of the (a) electroconvulsive therapy; and
  - has not withdrawn the consent. (b)

#### 214 Adult without decision making capacity

- (1) This section applies to a person who:
  - (a) is an adult; and
  - (b) does not have decision making capacity to consent to the administration of electroconvulsive therapy.
- (2) Electroconvulsive therapy may be administered to the person if:
  - the person has made an advance consent decision consenting to electroconvulsive therapy; and
  - the electroconvulsive therapy is administered in accordance with the advance consent decision: and
  - the person does not refuse or resist the administration of the electroconvulsive therapy.
- (3) Also electroconvulsive therapy may be administered to the person
  - NTCAT has made an electroconvulsive therapy order in (a) relation to the person; and
  - the electroconvulsive therapy is administered in accordance (b) with the order.

#### 215 Child with decision making capacity

- (1) This section applies to a person who
  - is a child; and (a)
  - has decision making capacity to consent to the administration of electroconvulsive therapy.
- (2) Electroconvulsive therapy may be administered to the person if:
  - NTCAT has made an electroconvulsive therapy order in (a) relation to the person; and

- the electroconvulsive therapy is administered in accordance (b) with that order; and
- the person has given informed consent to the administration of (c) the electroconvulsive therapy; and
- (d) the person has not withdrawn the consent.

#### 216 Child without decision making capacity

- (1) This section applies to a person who:
  - (a) is a child: and
  - (b) does not have decision making capacity to consent to the administration of electroconvulsive therapy.
- (2) Electroconvulsive therapy may be administered to the person if:
  - NTCAT has made an electroconvulsive therapy order in relation to the person; and
  - the electroconvulsive therapy is administered in accordance with that order.

#### 217 Where may electroconvulsive therapy be administered?

Electroconvulsive therapy may be administered only at an approved mental health facility that has been declared by the Chief Psychiatrist under section 317 as a facility where electroconvulsive therapy may be administered.

#### 218 Two medical practitioners to be present if electroconvulsive therapy administered

Electroconvulsive therapy may be administered only if at least 2 medical practitioners are present, of whom:

- is experienced trained in administering (a) one and electroconvulsive therapy; and
- one is experienced in administering anaesthesia.

#### 219 Offence to administer electroconvulsive therapy

- (1) A person commits an offence if:
  - the person administers electroconvulsive therapy to another (a) person; and

(b) the electroconvulsive therapy is not administered in accordance with this Subdivision.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) An offence against subsection (1) is an offence of strict liability.

## Subdivision 2 Electroconvulsive therapy orders

## 220 Application to NTCAT for electroconvulsive therapy order

- (1) An application to NTCAT for an electroconvulsive therapy order may be made by:
  - (a) the Chief Psychiatrist; or
  - (b) 2 authorised psychiatrists or authorised psychiatric practitioners.
- (2) If an application relates to a child, one of the authorised psychiatrists or authorised psychiatric practitioners mentioned in subsection (1)(b) must have qualifications, training or experience relevant to children with mental illnesses or mental disorders.
- (3) An application under subsection (1) comes within NTCAT's original jurisdiction.
- (4) An application under subsection (1) must set out a treatment plan for the person to whom the order will apply which must include:
  - (a) the number of sessions of electroconvulsive therapy to be administered; and
  - (b) the approved mental health facility where the electroconvulsive therapy is to be administered.

## 221 Matters NTCAT must be satisfied of for electroconvulsive therapy order

NTCAT may make an electroconvulsive therapy order approving the administration of electroconvulsive therapy to a person if satisfied that:

- (a) the person has a mental illness; and
- (b) for an adult the person does not have decision making capacity to consent to the administration of the electroconvulsive therapy; and

- (c) for a child:
  - the person has decision making capacity to consent to electroconvulsive therapy and has given informed consent to the electroconvulsive therapy and has not withdrawn that consent; or
  - (ii) the person does not have decision making capacity to consent to electroconvulsive therapy; and
- (d) the administration of the electroconvulsive therapy is likely to result in substantial benefit to the person; and
- (e) either:
  - (i) all other reasonable forms of treatment available have been tried and have not been successful; or
  - (ii) the electroconvulsive therapy is the most appropriate treatment reasonably available.

## 222 Matters NTCAT must have regard to for electroconvulsive therapy order

In making its decision on an application under section 220 in relation to a person, NTCAT must have regard to:

- (a) the person's wishes, views and preferences, including any wishes, views and preferences expressed in any advance personal plan made by the person; and
- (b) the views of the following, to the extent practicable:
  - (i) if the person has one or more nominated support persons – each nominated support person;
  - (ii) if the person has an adult guardian the adult guardian;
  - (iii) if the person has a decision maker the decision maker;
  - (iv) if the person has a carer the carer;
  - (v) if the person is a child a parent of the child;
  - (vi) if the person is a child in the Families CEO's care the Families CEO; and
- (c) any policy or guideline made by the Chief Psychiatrist under section 303(1)(e); and

(d) any other matter NTCAT considers relevant to making the decision.

## 223 Decision of NTCAT on application for electroconvulsive therapy order

- (1) After hearing an application under section 220, NTCAT may:
  - (a) make an electroconvulsive therapy order approving the administration of the electroconvulsive therapy to a person; or
  - (b) refuse to make the electroconvulsive therapy order.
- (2) An electroconvulsive therapy order applying to a person authorises the administration of electroconvulsive therapy to the person in accordance with the order.

#### 224 Persons to be given copy of order

NTCAT must give a copy of an electroconvulsive therapy order to the following:

- (a) any person who applied for the order;
- (b) the person to whom the order applies;
- (c) if the person to whom the order applies has one or more nominated support persons each nominated support person;
- (d) if the person to whom the order applies has an adult guardian the adult guardian;
- (e) if the person to whom the order applies has a decision maker the decision maker;
- (f) if the person to whom the order applies has a carer the carer;
- (g) if the person to whom the order applies is a child a parent of the child:
- (h) if the person to whom the order applies is a child in the Families CEO's care the Families CEO.

**Subdivision 3** 

## 225 Administration of electroconvulsive therapy in emergency

(1) This section applies to an adult who does not have decision making capacity to consent to the administration of electroconvulsive therapy.

**Emergency electroconvulsive therapy** 

- (2) Electroconvulsive therapy may be administered to the person without an electroconvulsive therapy order if:
  - (a) the administration of the electroconvulsive therapy is necessary to:
    - (i) save the person's life; or
    - (ii) prevent immediate serious harm to the person or anyone else; and
  - (b) electroconvulsive therapy is the only appropriate treatment reasonably available; and
  - (c) the Chief Psychiatrist has authorised the administration of the electroconvulsive therapy.
- (3) If electroconvulsive therapy is administered under subsection (2), the medical practitioner who administered the electroconvulsive therapy must give a report to NTCAT as soon as practicable after each session of electroconvulsive therapy administered.
- (4) The report must be in the approved form and include:
  - (a) the reasons why an electroconvulsive therapy order was not obtained; and
  - (b) the person's response to the electroconvulsive therapy; and
  - (c) details of any significant side effects of the electroconvulsive therapy on the person.

# Subdivision 4 Report of administration of electroconvulsive therapy

## 226 Person in charge of approved mental health facility to report

The person in charge of an approved mental health facility declared under section 317 must as soon as practicable after the end of each month give to the Chief Psychiatrist a written report on the following matters:

- (a) the number of people for whom a course of electroconvulsive therapy at the approved mental health facility was completed or discontinued during that month;
- (b) the number of people mentioned in paragraph (a) who were children:
- (c) the number of people mentioned in paragraph (a) who were persons to whom a temporary treatment order or treatment order applied;
- (d) the number of people mentioned in paragraph (c) who were children:
- (e) the number of people mentioned in paragraph (a) who were not persons to whom a temporary treatment order or treatment order applied:
- (f) the number of people mentioned in paragraph (e) who were children:
- (g) the number of sessions in each course of electroconvulsive therapy administered;
- (h) the number of sessions of emergency electroconvulsive therapy administered under section 225;
- details of any serious adverse event that occurred, or is suspected of having occurred, during or after any of those courses or sessions of electroconvulsive therapy.

## Division 3 Neurosurgery for mental illness

## Neurosurgery for mental illness not to be performed without neurosurgery order

Neurosurgery for mental illness must not be performed on a person unless:

- (a) NTCAT has made a neurosurgery order approving the neurosurgery; and
- (b) the neurosurgery is performed in accordance with the neurosurgery order.

## 228 Application to NTCAT for neurosurgery order

- (1) An authorised psychiatrist may apply to NTCAT for a neurosurgery order approving neurosurgery for mental illness to be performed on a person if:
  - (a) the person is an adult; and
  - (b) the person has given informed consent in writing to the neurosurgery.
- (2) An application under subsection (1) comes within NTCAT's original jurisdiction.
- (3) An application under subsection (1) must be in writing and set out:
  - (a) the type of neurosurgery proposed; and
  - (b) the reasons for the neurosurgery; and
  - (c) the name, qualifications and experience of the neurosurgeon who is to perform the neurosurgery; and
  - (d) the place where it is proposed the neurosurgery will be performed and include information about the suitability of that place for neurosurgery.

### 229 Matters NTCAT must be satisfied of for neurosurgery order

- (1) NTCAT must not make a neurosurgery order in relation to a person unless it is satisfied that:
  - (a) the person has given informed consent in writing to the neurosurgery; and
  - (b) the neurosurgery will benefit the person; and

- (c) the neurosurgeon who is to perform the neurosurgery has the appropriate qualifications and experience; and
- (d) the place at which the neurosurgery is to be performed is suitable for that purpose.
- (2) In deciding whether the neurosurgery will benefit the person, NTCAT must have regard to the following:
  - (a) whether the neurosurgery 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 is not performed;
  - (c) any alternative beneficial treatments that are reasonably available and the person's wishes, views and preferences about them:
  - (d) the nature and degree of any discomfort, risks and common or expected side effects associated with the proposed neurosurgery, including the person's wishes, views and preferences about them;
  - (e) any other matters NTCAT considers relevant to making the decision.

### 230 Decision of NTCAT on application for neurosurgery order

- (1) After hearing an application made under section 228, NTCAT may:
  - (a) make a neurosurgery order approving the neurosurgery; or
  - (b) refuse to make the neurosurgery order.
- (2) A neurosurgery order applying to a person authorises the neurosurgeon named in the order to perform neurosurgery for mental illness on the person in accordance with the order.

### 231 Notice of neurosurgery order

- (1) NTCAT must give written notice of a neurosurgery order to:
  - (a) the authorised psychiatrist who applied for the order; and
  - (b) the person to whom the order applies; and
  - (c) the Chief Psychiatrist.

(2) NTCAT must give a copy of the order to the person to whom the order applies.

## 232 Reports to Chief Psychiatrist

- (1) If neurosurgery for mental illness is performed on a person, the authorised psychiatrist who applied for the neurosurgery order must give the Chief Psychiatrist the following:
  - (a) within 3 months after the neurosurgery is performed, a written report about the neurosurgery; and
  - (b) not less than 9 months and not more than 12 months after the neurosurgery is performed, an additional written report about the results of the neurosurgery.
- (2) After receiving a report under subsection (1), the Chief Psychiatrist may require the authorised psychiatrist to give further information relating to the neurosurgery and the results of the neurosurgery.

## 233 Offence to perform neurosurgery for mental illness

- (1) A person commits an offence if:
  - (a) the person performs neurosurgery for mental illness on another person; and
  - (b) NTCAT has not made a neurosurgery order authorising the person to perform the neurosurgery on the other person.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) A person commits an offence if:
  - (a) the person performs neurosurgery for mental illness on another person; and
  - (b) NTCAT has made a neurosurgery order authorising the person to perform the neurosurgery on the other person; and
  - (c) the neurosurgery for mental illness is not administered in accordance with the neurosurgery order.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(4) An offence against subsection (3) is an offence of strict liability.

#### Part 10 Restrictive interventions

## 234 Purpose of Part

The purpose of this Part is to provide for restrictions on the use of seclusion, bodily restraint and chemical restraint.

#### 235 Limitations on use of restrictive interventions

- (1) A person must not use a restrictive intervention in relation to the following persons except in accordance with this Part:
  - (a) a person receiving treatment and care at an approved mental health facility;
  - (b) a person detained at an approved mental health facility under an assessment order;
  - a person receiving treatment and care from an approved mental health service under a temporary community treatment order or a community treatment order;
  - (d) a person in the care and control of a medical practitioner or an authorised mental health practitioner under section 175(4);
  - (e) a person detained at an approved mental health facility under section 391(2).
- (2) A person may only use a restrictive intervention in relation to a person mentioned in subsection (1)(c) when the person is at the premises of the approved mental health service.
- (3) The only restrictive interventions that may be used on a person mentioned in subsection (1)(c) are physical restraint and chemical restraint.
- (4) This Part (except section 240(2), (3), (4) and (6)) does not apply to the use of bodily restraint authorised under a law other than this Act.

Examples for subsection (4)

- 1 The use of bodily restraint by a police officer exercising a power or performing a function under another law.
- The use of a bodily restraint by a correctional officer in exercising a power or performing a function under the Correctional Services Act 2014.

3 The use of a bodily restraint by a member of staff of a detention centre in exercising a power or performing a function under the Youth Justice Act 2005.

## (5) This Part does not apply to:

- (a) the use of a restrictive intervention authorised under Part 7; or
- (b) the use of reasonable force authorised under this Act.

## 236 Restrictive intervention used only if no less restrictive way practicable

A restrictive intervention may be used in relation to a person mentioned in section 235(1) only if no less restrictive way is practicable:

- (a) to prevent immediate serious harm to the person or anyone else; or
- (b) to prevent the person from persistently destroying property; or
- (c) in the case of bodily restraint to administer treatment or medical treatment to the person.

## 237 Matters to be considered in authorising restrictive intervention

In considering whether no less restrictive way is practicable, a person authorising a restrictive intervention must, to the greatest extent practicable, have regard to:

- (a) the likely effect of the restrictive intervention on the person, including any past experience of trauma; and
- (b) the person's culture, beliefs, values and personal characteristics.

#### 238 Use of restrictive intervention must be authorised

- (1) The use of a restrictive intervention (other than chemical restraint) at an approved mental health facility or the premises of an approved mental health service must be authorised by:
  - (a) an authorised psychiatrist; or
  - (b) if an authorised psychiatrist is not reasonably available an authorised psychiatric practitioner; or
  - (c) if no authorised psychiatrist or authorised psychiatric practitioner is reasonably available – a medical practitioner at the facility or the premises of the service; or

- (d) if no authorised psychiatrist, authorised psychiatric practitioner or medical practitioner is reasonably available the senior registered nurse at the facility or the premises of the service.
- (2) The use of chemical restraint at an approved mental health facility or the premises of an approved mental health service must be authorised by:
  - (a) an authorised psychiatrist; or
  - (b) if an authorised psychiatrist is not reasonably available an authorised psychiatric practitioner; or
  - (c) if no authorised psychiatrist or authorised psychiatric practitioner is reasonably available a medical practitioner at the facility or the premises of the service; or
  - (d) if no authorised psychiatrist, authorised psychiatric practitioner or medical practitioner is reasonably available – a nurse practitioner acting within the nurse practitioner's ordinary scope of practice at the facility or the premises of the service.
- (3) A person authorising the use of a restrictive intervention in relation to a person under subsection (1) or (2) must comply with:
  - (a) the restrictive intervention policy; and
  - (b) if the restrictive intervention is for a child any relevant plan approved under section 247.

### 239 Ending restrictive intervention

- (1) The authority to use a restrictive intervention under this Part ends if a person who may authorise the use of the restrictive intervention under this Part is satisfied it is no longer necessary to use the restrictive intervention for the purpose for which it was authorised.
- (2) A person mentioned in subsection (1) who is satisfied it is no longer necessary to use a restrictive intervention for the purpose for which it was authorised must immediately take steps to release the person from the restrictive intervention.

#### 240 Record of use of restrictive intervention

- (1) A person who authorises the use of a restrictive intervention under this Part must record the following in the approved form as soon as practicable after authorising the restrictive intervention:
  - (a) the reason the restrictive intervention is necessary;

- (b) all the other less restrictive ways tried or considered for the person;
- (c) the reasons why those less restrictive ways were found not to be practicable;
- (d) the type of restrictive intervention used;
- (e) the date and period of use;
- (f) any other information required on the approved form.
- (2) The person in charge of an approved mental health facility or approved mental health service must record in the approved form the use of bodily restraint in relation to a person at the facility or the premises of the service that is authorised under another law.

#### Examples for subsection (2)

- 1 The use of bodily restraint by a police officer exercising a power or performing a function under another law.
- 2 The use of a bodily restraint by a correctional officer in exercising a power or performing a function under the Correctional Services Act 2014.
- 3 The use of a bodily restraint by a member of staff of a detention centre in exercising a power or performing a function under the Youth Justice Act 2005.
- (3) The record under subsection (2) must set out the following in relation to the use of the bodily restraint:
  - (a) the type of bodily restraint used;
  - (b) the date and period of use;
  - (c) any other information required on the approved form.
- (4) The person in charge of an approved mental health facility or approved mental health service must keep a register containing the records mentioned in subsections (1) and (3).
- (5) The person in charge of an approved mental health facility or approved mental health service must ensure that the use of a restrictive intervention on a person is recorded in the person's medical record.
- (6) The principal community visitor must ensure that a register kept under subsection (4) is inspected by a community visitor or community visitors panel at least once in every 6 months.

#### 241 Report to Chief Psychiatrist

- (1) The person in charge of an approved mental health facility or approved mental health service must report to the Chief Psychiatrist on the use of restrictive interventions at the facility or service.
- (2) A report under subsection (1) must be made at the times and contain the information specified in the restrictive intervention policy.

## 242 Examination by authorised psychiatrist

- (1) As soon as practicable after authorising the use of a restrictive intervention under this Part, an authorised psychiatrist must examine the person and decide if the continued use of the restrictive intervention is necessary for the purpose for which it was authorised.
- (2) If the person who authorises the use of a restrictive intervention is not an authorised psychiatrist, the person must notify an authorised psychiatrist of the authorisation as soon as practicable after it is given.
- (3) As soon as practicable after an authorised psychiatrist is notified under subsection (2) of an authorisation, the authorised psychiatrist must examine the person and decide if the continued use of the restrictive intervention is necessary for the purpose for which it was authorised.
- (4) If an authorised psychiatrist is not reasonably available to examine the person, an authorised psychiatrist must ensure:
  - (a) the person is examined by a medical practitioner as soon as practicable; and
  - (b) the medical practitioner decides if the continued use of the restrictive intervention is necessary for the purpose for which it was authorised.

#### 243 Monitoring of persons if mechanical restraint used

- (1) This section applies to a person if a mechanical restraint is used on the person under this Part.
- (2) A registered nurse or medical practitioner must keep the person under continuous observation.
- (3) A registered nurse must clinically review the person as often as appropriate having regard to the person's condition, but at least every 15 minutes.

(4) A medical practitioner must examine the person at least every 4 hours.

## 244 Monitoring of persons kept in seclusion

- (1) This section applies to a person who is kept in seclusion under this Part.
- (2) A registered nurse must visit the person at least every 15 minutes.
- (3) A medical practitioner must examine the person at the intervals set out in the restrictive intervention policy.
- (4) An authorised psychiatrist must review the person's condition in accordance with the restrictive intervention policy.

## 245 Facilities and supplies to be given to person if restrictive intervention used

- (1) A person who authorises the use of a restrictive intervention in relation to a person under this Part must ensure that the person is given facilities and supplies that:
  - (a) meet the person's needs; and
  - (b) maintain the person's dignity.
- (2) Without limiting subsection (1), the person
  - (a) must be given bedding and clothing that is appropriate in the circumstances; and
  - (b) must be given food and drink at appropriate times; and
  - (c) must have access to adequate toilet facilities; and
  - (d) must be given any other psychological and physical care appropriate to the person's needs.
- (3) In complying with subsections (1) and (2), the person who authorised the use of a restrictive intervention in relation to a person must, to the greatest extent practicable, have regard to;
  - (a) the person's past experience of trauma; and
  - (b) the person's culture, beliefs, values and personal characteristics.

#### 246 Persons to be notified of use of restrictive intervention

- (1) This section applies to an authorised psychiatrist if, under section 238 or 242, the authorised psychiatrist:
  - (a) authorises the use of the restrictive intervention in relation to a person; or
  - (b) is notified of the use of a restrictive intervention in relation to a person.
- (2) The authorised psychiatrist must take all reasonable steps to ensure that, as soon as practicable after the use of the restrictive intervention commences, the persons mentioned in subsection (3) are notified of:
  - (a) the use of the restrictive intervention; and
  - (b) the type of restrictive intervention used; and
  - (c) the reasons for using the restrictive intervention.
- (3) The following persons are to be notified:
  - (a) if the person has one or more nominated support persons each nominated support person;
  - (b) if the person has an adult guardian the adult guardian;
  - (c) if the person has a decision maker the decision maker;
  - (d) if the person has a carer the carer;
  - (e) if the person is a child a parent of the child;
  - (f) if the person is a child in the Families CEO's care the Families CEO.

## 247 Plan for reduction of use of restrictive interventions on children

- (1) The person in charge of an approved mental health facility or approved mental health service must give the Chief Psychiatrist for approval a plan setting out the things proposed to be done at the facility or service to reduce the use of restrictive interventions on children.
- (2) The Chief Psychiatrist may approve a plan given under subsection (1) if the Chief Psychiatrist is satisfied with the things proposed to be done at the approved mental health facility or approved mental health service to reduce the use of restrictive

interventions on children.

## 248 Restrictive intervention policy

The Chief Psychiatrist must make and publish a policy about the following:

- (a) the use of restrictive interventions under this Act, including the appropriate use of chemical restraint;
- (b) the information to be recorded relating to the use of restrictive interventions under this Act;
- (c) the information to be given to the Chief Psychiatrist relating to the use of restrictive interventions under this Act and the times and way that information is to be given.

#### 249 Offence to use restrictive intervention if Part not complied with

- (1) A person commits an offence if:
  - (a) the person uses a restrictive intervention in relation to a person mentioned in section 235(1); and
  - (b) the use of the restrictive intervention does not comply with this Part.

Maximum penalty: 100 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

## Part 11 Security at approved mental health facilities

## Division 1 Preliminary matters

#### 250 Purpose of Part

The purpose of this Part is to provide powers and procedures for:

- (a) searching persons in approved mental health facilities; and
- (b) searching the possessions of visitors to approved mental health facilities; and
- (c) excluding visitors from approved mental health facilities; and
- (d) searching things sent to approved mental health facilities.

#### 251 **Definitions**

In this Part:

authorised staff member, in relation to an approved mental health facility, means the following:

- a staff member of the facility authorised under section 252; (a)
- an authorised psychiatrist at the facility; (b)
- an authorised psychiatric practitioner at the facility. (c)

**personal search** means a search of a person involving the removal of a person's clothing but does not include an ordinary search or a frisk search.

staff member, in relation to an approved mental health facility includes:

- a person employed at the facility; and (a)
- a person engaged at the facility under a contract for services.

#### 252 **Authorised staff members**

The person in charge of an approved mental health facility may, in writing, authorise a staff member of the facility to be an authorised staff member for this Part.

#### **Division 2** Search of persons detained at or admitted to approved mental health facility

#### 253 Search by authorised staff member

An authorised staff member at an approved mental health facility may conduct a search of a person in accordance this Division.

#### 254 Who may be searched?

- (1) The person searched must be a person:
  - admitted to the facility for treatment and care for a mental (a) illness; or

118

detained at the facility under an assessment order. (b)

- (2) The search may be conducted:
  - when the person is received at, or admitted to, the approved mental health facility; or
  - while the person is receiving treatment and care at the approved mental health facility.

#### 255 Circumstances for search generally

An authorised staff member at an approved mental health facility may conduct a search of a person under section 253 if the authorised staff member suspects on reasonable grounds that the person is carrying or in possession of a thing that may be a serious risk to the health or safety of the person or anyone else at the facility.

#### 256 Circumstances for search at high dependency unit

An authorised staff member at an approved mental health facility may conduct a search under section 253 of a person admitted to a high dependency unit at the facility to detect if the person is carrying or in possession of a thing that may be a serious risk to the health or safety of the person or anyone else at the facility.

#### 257 Conduct of search of person

- (1) This section applies in relation to any search of a person under this Division.
- (2) Two authorised staff members must be present at the search.
- (3) Before the search of a person is conducted, an authorised staff member who will conduct the search must, if practicable:
  - identify each staff member conducting the search to the (a) person; and
  - (b) inform the person of the reason for the search; and
  - (c) ask the person to consent to the search.
- (4) A search of a person may be conducted without the person's consent.
- (5) An authorised staff member must conduct the least invasive type of search practicable.

- (6) A search of a person must be conducted:
  - in a way that respects the person's privacy and dignity to the greatest extent practicable; and
  - (b) as quickly as practicable; and
  - with consideration for the person's culture and personal characteristics.

#### 258 Frisk search, ordinary search or scanning search

- (1) A search of a person under section 253 may be a frisk search, an ordinary search or a scanning search.
- (2) An authorised staff member conducting a frisk search, an ordinary search or a scanning search of a person may do all or any of the following for the search:
  - search and remove for examination anything carried by or under the immediate control of the person;
  - direct the person to remove anything from any item of clothing (b) the person is wearing;
  - direct the person to do any other thing reasonably required to assist the search.
- (3) A frisk search of a person must be conducted in a private room or private area.
- (4) To the extent practicable, a frisk search of a person must be conducted by:
  - a staff member of the gender nominated by the person to be searched; or
  - a staff member nominated by the person to be searched; or (b)
  - a person of the gender nominated by the person to be searched under the direction of a staff member: or
  - a person nominated by the person to be searched under the (d) direction of a staff member.
- (5) For subsection (4), a person's gender is determined by how the person identifies.

#### 259 Personal search of person at high dependency unit

- (1) A personal search under section 253 may be conducted only in relation to a person admitted to or receiving treatment and care at a high dependency unit of an approved mental health facility.
- (2) A personal search of a person may only be conducted if the person in charge of the approved mental health facility has approved the search.
- (3) A person in charge of an approved mental health facility may only approve a personal search if the person in charge believes on reasonable grounds that the personal search is necessary.

## 260 Conduct of personal search at high dependency unit

- (1) This section applies in relation to a personal search of a person if the search is approved under section 259(2).
- (2) The personal search must be conducted by an authorised psychiatrist or an authorised psychiatric practitioner in the presence of another authorised staff member.
- (3) To the extent practicable, a personal search must be conducted by:
  - (a) an authorised psychiatrist or an authorised psychiatric practitioner of the gender nominated by the person to be searched; or
  - (b) an authorised psychiatrist or an authorised psychiatric practitioner nominated by the person to be searched; or
  - (c) a person of the gender nominated by the person to be searched under the direction of an authorised psychiatrist or an authorised psychiatric practitioner; or
  - (d) a person nominated by the person to be searched under the direction of an authorised psychiatric practitioner.
- (4) For subsection (3), a person's gender is determined by how the person identifies.
- (5) A personal search:
  - (a) must be conducted in a private room or private area; and
  - (b) must involve the removal of no more clothing than is necessary; and

- (c) must not involve the touching of the person being searched.
- (6) The person being searched in a personal search must:
  - (a) (as a minimum) be provided with a robe to wear during the search; and
  - (b) be permitted to dress in private as soon as the search is finished.
- (7) If a person's clothing removed in a personal search is seized under this Division, the person in charge of the approved mental health facility must ensure the person is left with, or given, appropriate clothing to wear.

### 261 Seizure of thing

- (1) After conducting a search under this Division, an authorised staff member may seize a thing found in the search if the authorised staff member suspects on reasonable grounds that the thing may be a serious risk to the health or safety of:
  - (a) the person searched; or
  - (b) anyone else at the approved mental health facility.
- (2) An authorised staff member who seizes a thing under subsection (1) must:
  - (a) keep and safely store the seized thing; or
  - (b) deal with it otherwise according to law.

#### 262 Record of search and seizure

- (1) After conducting a search under this Division, an authorised staff member must:
  - (a) make a record in the approved form of the search and anything seized setting out:
    - (i) the name of the person from whom the thing was seized; and
    - (ii) the thing that was seized; and
    - (iii) the date the thing was seized; and
    - (iv) the name of the authorised staff member who seized the thing; and

- (b) give a copy of the record to the person searched.
- (2) The person in charge of the approved mental health facility must keep a register containing the record mentioned in subsection (1).
- (3) The principal community visitor must ensure that a register kept under subsection (2) is inspected by a community visitor or community visitors panel at least every 6 months.

## 263 Return of seized thing

A thing kept under section 261(2)(a) must be returned to the person from whom it was seized when the person is discharged from the approved mental health facility.

#### 264 Assistance and reasonable force

- (1) This section applies in relation to a search under section 253 if:
  - (a) a person does not consent to the search; and
  - (b) an authorised staff member conducting the search suspects on reasonable grounds that the person to be searched:
    - (i) is committing an offence; or
    - (ii) has a dangerous drug within the meaning in section 3 of the *Misuse of Drugs Act 1990* in the person's possession; or
    - (iii) is carrying a weapon; or
    - (vi) is carrying something that is evidence of the commission of an offence.
- (2) The authorised staff member may use the assistance of another person to conduct the search.
- (3) The authorised staff member or other person assisting the authorised staff member may use reasonable force to conduct the search.

### Division 3 Search of visitors' possessions

### 265 Request to search visitors' possessions

An authorised staff member at an approved mental health facility may ask to search the possessions of a visitor to the facility.

#### 266 Purpose of search

The purpose of a search under section 265 is to promote the health and safety of persons admitted to the approved mental health facility and anyone else at the facility.

### 267 Direction to leave on refusal of request for search

If a visitor does not agree to a request under section 265, the authorised staff member may:

- (a) refuse to permit the visitor to enter the approved mental health facility; or
- (b) direct the person to immediately leave the facility.

## 268 Visitor may leave thing with authorised staff member

If a visitor to an approved mental health facility does not want an authorised staff member to search anything in the visitor's possession, the visitor may leave the thing with the authorised staff member until the visitor leaves the facility.

## 269 Authorised staff member may ask visitor to leave thing

- (1) An authorised staff member at an approved mental health facility may ask a visitor to the facility to leave a thing with the authorised staff member until the visitor leaves the facility if the officer suspects on reasonable grounds the thing may be a risk to the health or safety of anyone at the approved mental health facility.
- (2) If a visitor does not agree to a request under subsection (1), the authorised staff member may:
  - (a) refuse to permit the visitor to enter the approved mental health facility; or
  - (b) direct the person to immediately leave the facility.

### 270 Return of thing to visitor

If a visitor to an approved mental health facility leaves a thing with an authorised staff member, the authorised staff member must ensure the thing is returned to the visitor when the visitor leaves the facility.

### 271 Assistance and reasonable force

- (1) This section applies to a person if the person:
  - (a) is directed under section 267 or 269(2) to leave an approved mental health facility; and
  - (b) refuses to comply with the direction.
- (2) The authorised staff member may use the assistance of another person to remove the person from the approved mental health facility.
- (3) The authorised staff member or other person assisting the authorised staff member may use reasonable force to remove the person from the approved mental health facility.

# Division 4 Search of things sent to person at approved mental health facility

### 272 Person in charge may search mail or thing sent to person

- (1) This section applies in relation to mail or another thing received at an approved mental health facility for:
  - (a) a person admitted to the facility for treatment and care; or
  - (b) a person detained at the facility under an assessment order.
- (2) The person in charge of the approved mental health facility, or an authorised staff member, may open or search the mail or other thing if the person in charge or authorised staff member suspects on reasonable grounds the mail or thing may be a serious risk to the health or safety of:
  - (a) the person receiving the mail or thing; or
  - (b) anyone else at the facility.
- (3) A power to open or search mail or another thing under subsection (2) may be exercised only if the person receiving the mail or thing is present or has been given the opportunity to be present.

(4) A power to open or search mail or another thing under subsection (2) does not apply to a communication to or received from a person or body set out in section 39(4).

Note for section 272

See section 38(2)(b) and (c) for the right of a person to send mail or another thing from or receive mail or another thing at the approved mental health facility.

## 273 Seizure of mail or thing

- (1) After opening or searching mail or a thing under section 272, the person in charge of the approved mental health facility, or an authorised staff member, may seize the mail or thing if the person in charge or authorised staff member suspects on reasonable grounds that the mail or thing may be a serious risk to the health or safety of:
  - (a) the person receiving the mail or thing; or
  - (b) anyone else at the facility.
- (2) The person in charge or an authorised staff member who seizes mail or a thing under subsection (1) must:
  - (a) keep and safely store the seized mail or thing; or
  - (b) deal with it otherwise according to law.

### 274 Record of search and seizure

After opening mail or a thing or conducting a search under section 272, the person in charge of the approved mental health facility, or an authorised staff member, must:

- (a) make a record in the approved form of the opening of the mail or thing or of the search and any mail or thing seized setting out:
  - (i) the name of the person from whom the mail or thing was seized; and
  - (ii) the mail or thing that was seized; and
  - (iii) the date the mail or thing was seized; and
  - (iv) the name of the person in charge or authorised staff member who seized the mail or thing; and
- (b) give a copy of the record to the person from whom the mail or thing was seized.

### 275 Return of seized mail or thing

Mail or a thing kept under section 273(2)(a) must be returned to the person from whom it was seized when:

- the person is discharged from the approved mental health facility; or
- if the person is detained under an assessment order the order is revoked and the person leaves the approved mental health facility.

### Part 12 Disclosure of health information

### Division 1 **Preliminary matters**

### 276 **Purpose of Part**

The purpose of this Part is to authorise and regulate the disclosure of a person's health information.

### 277 Meaning of health information

Health information means any document held by an approved mental health facility or an approved mental health service that:

- (a) identifies a person to whom an assessment order applies or has applied; or
- identifies a person who has received or is receiving treatment (b) and care at the facility or from the service; or
- relates to any treatment and care received by a person at the (c) facility or from the service; or
- relates to the mental health, safety or wellbeing of a person (d) who has received or is receiving treatment and care at the facility or from the service.

### 278 When does facility or service hold health information

For the purpose of this Part, an approved mental health facility or an approved mental health service holds health information if the information is contained in a document that is in the possession or under the control of the person in charge of the facility or service, whether alone or jointly with other persons or bodies, irrespective of where the document is situated, whether in or outside the Territory.

### Division 2 Prohibited disclosure of health information

### 279 Offence to disclose health information

- (1) A person commits an offence if:
  - (a) the person obtains health information while performing a function or exercising a power under this Act; and
  - (b) the person intentionally engages in conduct; and
  - (c) the conduct results in the disclosure of the health information and the disclosure is not:
    - (i) for a purpose connected with the administration of this Act or the performance of a function or the exercise of a power under this Act, including a legal proceeding arising out of the operation of this Act; or
    - (ii) permitted under this Act; or
    - (iii) to a person who is otherwise entitled to the information; and
  - (d) the person is reckless in relation to the result and circumstances mentioned in paragraph (c).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies to subsection (1)(a).

### Division 3 Permitted disclosure of health information

### 280 Disclosure of health information with consent

- (1) A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to the person to whom the information relates or another person if:
  - (a) the person to whom the information relates is an adult and has given informed consent to the disclosure: or
  - (b) the person to whom the information relates is a child who is 14 years of age or older and:
    - (i) the child has given informed consent to the disclosure; and

- (ii) the person making the disclosure believes on reasonable grounds that the child is of sufficient age and mental and emotional maturity to understand the effect of consenting to the disclosure; or
- (c) the person to whom the information relates is a child (other than a child in the Families CEO's care) and the child's parent has given informed consent to the disclosure and:
  - (i) the child is under 14 years of age; or
  - (ii) in the opinion of an authorised psychiatrist, the child is of insufficient age and mental and emotional maturity to understand the effect of consenting to the disclosure; or
- (d) the person to whom the information relates is a child in the Families CEO's care and the Families CEO has given informed consent to the disclosure and:
  - (i) the child is under 14 years of age; or
  - (ii) in the opinion of an authorised psychiatrist, the child is of insufficient age and mental and emotional maturity to understand the effect of consenting to the disclosure; or
- (e) the person to whom the information relates has died and the person's nominated next of kin or senior next of kin or the executor or administrator of the person's estate has consented to the disclosure.
- (2) A person must not disclose a person's health information to another person under subsection (1) if the person who consented to the disclosure withdraws that consent.
- (3) Subsection (2) does not apply if the disclosure of the health information is otherwise authorised under this Act or another law.
- (4) In this section:

**nominated next of kin**, for a person, means someone nominated in the person's medical records as the person's next of kin.

**senior next of kin**, see section 3 of the Coroners Act 1993.

### 281 Disclosure required or permitted by another law

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information if the disclosure is required or permitted by another law of the Territory or of the Commonwealth.

Note for section 281

Information relating to the safety and wellbeing of a child is permitted, and sometimes required, to be disclosed to a wide range of persons under the Care and Protection of Children Act 2007, Part 5.1A.

Examples of other laws for section 281

- 1 Information Act 2002.
- 2 Domestic and Family Violence Act 2007.

### 282 Disclosure for treatment and care

(1) A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to a health practitioner if the disclosure is relevant to giving treatment and care to the person to whom the information relates.

Example for subsection (1)

Disclosure to a medical practitioner giving treatment and care to the person.

(2) A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to a person if the disclosure is reasonably required for the treatment and care of the person to whom the information relates.

Examples for subsection (2)

- 1 Disclosure to a person who reasonably requires the information to provide for the safety and wellbeing of the person to whom the information relates.
- 2 Disclosure to a person for the purpose of supporting the person to whom the information relates to exercise decision making capacity.

### 283 Disclosure to person's adult guardian or decision maker

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to the adult guardian or decision maker of the person to whom the information relates if the information is reasonably required for the performance of a duty or the exercise of a power by the adult guardian or decision maker.

### 284 Disclosure to person's health care decision maker

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to the health care decision maker of the person to whom the information relates if the information is reasonably required for the performance of a duty or the exercise of a power by the health care decision maker under the Health Care Decision Making Act 2023.

### 285 Disclosure to parent of child

A person who obtains a child's health information while performing a function or exercising a power under this Act may disclose the information to a parent of the child if:

- (a) the child is under 14 years of age; or
- the child is 14 years of age or older and gives informed (b) consent to the disclosure; or
- the child is 14 years of age or older and: (c)
  - in the opinion of an authorised psychiatrist, the child is of (i) insufficient age and mental and emotional maturity to understand the effect of consenting to the disclosure; and
  - the disclosure may assist the child's parent to provide for the child's safety and wellbeing or support the child to exercise the child's rights under this Act.

### 286 **Disclosure to Families CEO**

A person who obtains a child's health information while performing a function or exercising a power under this Act may disclose the information to the Families CEO if the child is in the Families CEO's

### 287 Disclosure required for criminal investigations

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information if it is required for a criminal investigation.

### 288 Disclosure for function under Coroners Act 1993

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information if it is required for the performance of a function under the *Coroners Act 2007*.

### 289 Disclosure to court or tribunal

- (1) A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to any court or tribunal if it is required for any of the following proceedings before the court or tribunal:
  - (a) criminal proceedings;
  - (b) any proceeding:
    - (i) relating to the guardianship of the person to whom the information relates; or
    - (ii) relating to the administration of property of the person to whom the information relates; or
    - (iii) under the *Advance Personal Planning Act 2013* in relation to the person to whom the information relates;
  - (c) any proceeding relating to the eligibility for professional registration or to hold a statutory office of the person to whom the information relates if the information is relevant to an assessment of that person's eligibility for registration or to hold the office;
  - (d) any other proceeding relating to the treatment and care of the person to whom the information relates or that person's decision making capacity.
- (2) Without limiting subsection (1), a person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to NTCAT if it is required for the performance of NTCAT's functions under this Act.

### 290 Disclosure to health profession body

- (1) A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to a health profession body to:
  - make a complaint or notification, or give information about a (a) complaint or notification, about a person who is or was registered under the Health Practitioner Regulation National Law; or
  - answer questions or otherwise give information as part of an investigation or a proceeding about a person who is or was registered under the Health Practitioner Regulation National Law.

### (2) In this section:

### **health profession body** means:

- (a) a National Health Practitioner Board established under the Health Practitioner Regulation National Law; or
- a State or Territory Board established under that Law by a Board mentioned in paragraph (a); or
- the Australian Health Practitioner Regulation Agency (c) established under that Law.

### 291 Disclosure to prevent risk of immediate serious harm

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information if the disclosure is reasonably necessary to prevent a risk of immediate serious harm to the person whose health information is disclosed or anyone else.

#### 292 Disclosure for research or statistics

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information:

- (a) for research that complies with section 210; or
- if it is statistical information that does not identify the person to whom it relates.

133

## 293 Disclosure to Minister, CEO or Chief Psychiatrist

A person who obtains a person's health information while performing a function or exercising a power under this Act may disclose the information to any of the following persons if the information is relevant to the performance of a function or the exercise of a power under this Act by the person to whom it is disclosed:

- (a) the Minister;
- (b) the Chief Executive Officer;
- (c) the Chief Psychiatrist;
- (d) an authorised officer.

## Part 13 Administration

## Division 1 Preliminary matters

## 294 Purposes of Part

The purposes of this Part are:

- (a) to provide for the appointment, functions and powers of the Chief Psychiatrist; and
- (b) to provide for the declaration of:
  - (i) approved mental health facilities; and
  - (ii) approved mental health services; and
  - (iii) high dependency units; and
  - (iv) facilities where electroconvulsive therapy may be administered; and
- (c) to provide for the appointment of persons in charge of approved mental health facilities and approved mental health services; and
- (d) to provide for the appointment of authorised psychiatrists, authorised psychiatric practitioners and authorised mental health practitioners; and
- (e) to provide for the appointment of authorised officers; and

- (f) to provide for the investigation of clinical events; and
- (g) to provide for powers of entry and inspection of premises for investigations of clinical events and to monitor compliance with this Act.

## Division 2 Chief Psychiatrist

## **Subdivision 1** Appointment

## 295 Appointment of Chief Psychiatrist

- (1) The Minister must, by *Gazette* notice, appoint a person to be the Chief Psychiatrist.
- (2) The Minister must not appoint a person to be the Chief Psychiatrist unless the person is:
  - (a) the Chief Executive Officer of an Agency or a public sector employee; and
  - (b) a psychiatrist.

## 296 Resignation of Chief Psychiatrist

The Chief Psychiatrist may resign from office by written notice given to the Minister.

### 297 Termination of appointment of Chief Psychiatrist

- (1) The Minister may, by *Gazette* notice, terminate the appointment of the Chief Psychiatrist on any of the following grounds:
  - (a) physical or mental incapacity;
  - (b) incompetence;
  - (c) inefficiency;
  - (d) misbehaviour.
- (2) The Minister must, by *Gazette* notice, terminate the appointment of the Chief Psychiatrist if the Chief Psychiatrist:
  - (a) is no longer eligible for appointment; or
  - (b) is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or

(c) is found guilty by a court outside the Territory of an offence that, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

### Subdivision 2 **Functions and powers**

### 298 Functions and powers of Chief Psychiatrist

- (1) The Chief Psychiatrist has the following functions:
  - (a) to administer this Act;
  - to ensure the treatment and care of persons under this Act is (b) given in accordance with this Act;
  - (c) to monitor compliance with this Act, including by conducting independent audits and monitoring data;
  - to develop, publish and promote statements of rights of (d) persons under this Act:
  - to publish guidelines, standards and policies to support the operation of this Act and to monitor their implementation;
  - (f) any other functions given to the Chief Psychiatrist under this Act or another Act.
- (2) The Chief Psychiatrist has the powers necessary to perform the Chief Psychiatrist's functions.
- (3) In performing functions and exercising powers under this Act, the Chief Psychiatrist is subject to the directions of the Minister.

### 299 Delegation

The Chief Psychiatrist may delegate any of the Chief Psychiatrist's functions and powers under this Act or another Act to an authorised psychiatrist.

### 300 **Assistance**

The Chief Psychiatrist may enter into agreements or arrangements with a person or body 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.

### 301 Minister may ask for report

(1) The Minister may ask the Chief Psychiatrist to report to the Minister about any matter relating to the Chief Psychiatrist's functions.

Subdivision 3 Guidelines, policies and standards

(2) The Chief Psychiatrist must comply with a request made under subsection (1) unless the Chief Psychiatrist considers there are reasonable grounds not to do so.

### 302 Chief Executive Officer may ask for report

- (1) The Chief Executive Officer may ask the Chief Psychiatrist to report to the Chief Executive Officer about any matter relating to the Chief Psychiatrist's functions if the matter also relates to the Chief Executive Officer's functions.
- (2) The Chief Psychiatrist must comply with a request made under subsection (1) unless the Chief Psychiatrist considers there are reasonable grounds not to do so.

## Subdivision 3 Guidelines, policies and standards

### 303 Guidelines and policies

- (1) The Chief Psychiatrist must make and publish guidelines or policies about the following:
  - (a) making decisions about whether or not a temporary treatment order should be made in relation to a person;
  - (b) the circumstances when it may not be appropriate to give treatment and care to a person in accordance with an advance personal plan;
  - (c) the preparation, review and revision of treatment plans and discharge plans;
  - (d) whether or not a place that is not an approved mental health facility is an appropriate place for a psychiatric assessment to be conducted;
  - (e) the administration of electroconvulsive therapy;
  - (f) the searching of rooms at approved mental health facilities to prevent risks to health and safety;
  - (g) the management of complaints by or on behalf of persons receiving treatment and care under this Act in relation to that treatment and care.
- (2) The Chief Psychiatrist may make and publish guidelines or policies for other purposes relating to the treatment and care of persons under this Act as the Chief Psychiatrist considers appropriate.

(3) A person performing a function or exercising a power under this Act must comply with any guideline or policy published by the Chief Psychiatrist.

### 304 Standards

- (1) The Chief Psychiatrist must make and publish standards for treatment and care of persons at approved mental health facilities and by approved mental health services under this Act.
- (2) The person in charge of an approved mental health facility or approved mental health service must ensure that the standards published by the Chief Psychiatrist are complied with at the facility or service.

## 305 Guidelines, policies or standards may incorporate documents

A guideline, policy or standard made by the Chief Psychiatrist may apply, adopt or incorporate (with or without changes) the whole or any part of a document that is in force or existing at a particular time or from time to time.

### 306 Publication of guidelines, policies or standards

A guideline, policy or standard is published for section 248, 303 or 304 if a copy of the guideline, policy or standard is published on a website kept by the Agency and accessible to the public.

## Subdivision 4 Approved forms

## 307 Chief Psychiatrist may approve forms

- (1) The Chief Psychiatrist may approve forms for this Act.
- (2) The Chief Psychiatrist may approve the form of an advance personal plan that relates to treatment and care under this Act.
- (3) An approved form may be or include a statutory declaration.

### 308 Publication of approved forms

- (1) The Chief Psychiatrist:
  - (a) must publish all approved forms; and
  - (b) may publish guidelines about how to use the approved forms.
- (2) An approved form or guideline is published under subsection (1) if a copy of the approved form or guideline is published on a website kept by the Agency and accessible to the public.

## Subdivision 5 Advisory committees

## 309 Establishment of advisory committees

- (1) The Chief Psychiatrist may establish advisory committees.
- (2) The Chief Psychiatrist:
  - (a) may decide who is to be appointed to an advisory committee; and
  - (b) must appoint a member of an advisory committee as chair of the committee.
- (3) The function of an advisory committee is to advise the Chief Psychiatrist at the Chief Psychiatrist's request.
- (4) An advisory committee has the powers necessary to perform its function.

## 310 Membership of advisory committees

A member of an advisory committee:

- (a) is appointed for the period and on the terms and conditions the Chief Psychiatrist decides; and
- (b) may be removed from office by the Chief Psychiatrist by written notice given to the member; and
- (c) may resign from the committee by written notice given to the Chief Psychiatrist.

## 311 Meetings of advisory committees

- (1) A meeting of an advisory committee may be convened by the Chief Psychiatrist or by the chair of the advisory committee.
- (2) Subject to subsection (1), an advisory committee may decide the procedure for meetings of the committee.

## Subdivision 6 Annual report

## 312 Annual report

(1) The Chief Psychiatrist must give an annual report to the Minister for each financial year by 30 September following the end of the financial year.

- (2) The annual report for a financial year must include the following:
  - (a) a report on the performance of the functions of the Chief Psychiatrist under this Act or any other Act;
  - (b) statistical information about the following:
    - (i) the number of temporary treatment orders made;
    - (ii) the use of electroconvulsive therapy;
    - (iii) approvals for emergency use of electroconvulsive therapy;
    - (iv) the performance of neurosurgery for mental illness;
    - (v) the use of restrictive interventions;
  - (c) information about the extent of compliance with the restrictive intervention policy;
  - (d) information about investigations by the Chief Psychiatrist of clinical events.
- (3) The annual report may include:
  - (a) any other information the Chief Psychiatrist considers appropriate; and
  - (b) recommendations for changes to any of the following:
    - (i) legislation;
    - (ii) the Chief Psychiatrist's functions;
    - (iii) administrative matters relating to the Chief Psychiatrist's functions.
- (4) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

# Division 3 Approved mental health facilities and approved mental health services

## 313 Approved mental health facility

(1) The Minister may, by *Gazette* notice, on the recommendation of the Chief Psychiatrist, declare a premises, or a part of premises, to be an approved mental health facility.

- (2) The Chief Psychiatrist may recommend the declaration of a premises, or part of a premises, if the Chief Psychiatrist considers the conditions and staffing of the premises or part of premises are sufficient to give an appropriate standard of treatment and care to persons to whom a temporary inpatient treatment order or inpatient treatment order applies.
- (3) A declaration under subsection (1) is in force for 3 years.

## 314 Approved mental health service

- (1) The Minister may, by *Gazette* notice, on the recommendation of the Chief Psychiatrist, declare a body or organisation to be an approved mental health service.
- (2) The Chief Psychiatrist may recommend the declaration of a body or organisation if the Chief Psychiatrist considers the conditions and staffing for the service are sufficient to give an appropriate standard of treatment and care to persons to whom a temporary community treatment order or community treatment order applies.
- (3) A declaration under subsection (1) is in force for 3 years.

## 315 High dependency unit

- (1) The Minister may, by *Gazette* notice, on the recommendation of the Chief Psychiatrist, declare a part of an approved mental health facility to be a high dependency unit.
- (2) The Chief Psychiatrist may recommend the declaration of a high dependency unit if the Chief Psychiatrist considers the conditions and staffing of the part of the approved mental health facility to be declared are sufficient to give an appropriate standard of treatment and care to persons:
  - (a) who have complex and severe mental health needs; and
  - (b) to whom a temporary inpatient treatment order or inpatient treatment order applies.
- (3) A declaration under subsection (1) is in force for 3 years.

## Persons in charge of approved mental health facilities and approved mental health services

(1) The Chief Psychiatrist must, in writing, for each approved mental health facility and approved mental health service, appoint a person to be the person in charge of the facility or service.

- (2) The person in charge of an approved mental health facility is responsible for the treatment and care and wellbeing of persons receiving treatment and care at the facility.
- (3) The person in charge of an approved mental health service is responsible for the treatment and care and wellbeing of persons receiving treatment and care from the service.

# 317 Declaration of approved mental health facilities for electroconvulsive therapy

- (1) The Chief Psychiatrist may, by *Gazette* notice, declare an approved mental health facility as a facility where electroconvulsive therapy may be administered.
- (2) The notice may set out conditions on which electroconvulsive therapy may be administered at the approved mental health facility declared under subsection (1).

# Division 4 Authorised psychiatrists, authorised psychiatric practitioners and authorised mental health practitioners

## 318 Authorised psychiatrists

- (1) The Chief Executive Officer may, in writing, appoint a person to be an authorised psychiatrist.
- (2) A person is eligible to be appointed as an authorised psychiatrist if the person is a medical practitioner who:
  - (a) is registered under the *Health Practitioner Regulation National Law* in the specialty of psychiatry; or
  - (b) holds a limited registration under the *Health Practitioner Regulation National Law* that enables the medical practitioner to practise in the speciality of psychiatry.

## 319 Authorised psychiatric practitioners

(1) The Chief Psychiatrist may, in writing, appoint a person to be an authorised psychiatric practitioner.

Authorised psychiatrists, authorised psychiatric practitioners and authorised mental health practitioners

- (2) A person must not be appointed as an authorised psychiatric practitioner unless the person is:
  - a psychiatric registrar employed or engaged by the Agency; or
  - a medical practitioner employed or engaged by the Agency at an approved mental health facility or an approved mental health service.

### 320 **Authorised mental health practitioners**

- (1) The person in charge of an approved mental health facility or approved mental health service may apply to the Chief Psychiatrist to appoint a person employed or engaged at the facility or by the service as an authorised mental health practitioner.
- (2) On an application under subsection (1), the Chief Psychiatrist may appoint or refuse to appoint the person.
- (3) The Chief Psychiatrist may appoint an employee of the Agency to be an authorised mental health practitioner.
- (4) A person cannot be appointed as an authorised mental health practitioner unless the person:
  - is one of the following: (a)
    - a psychologist; (i)
    - (ii) a registered nurse;
    - (iii) a person registered under the Health Practitioner Regulation National Law to practise in the occupational therapy profession (other than as a student);
    - (iv) a person registered under the Health Practitioner Regulation National Law to practise in the Aboriginal and Torres Strait Islander health practice profession (other than as a student);
    - (v) a social worker;
    - (vi) a paramedic; and
  - has at least 2 years clinical experience approved by the Chief Psychiatrist; and
  - has successfully completed a training and orientation course (c) approved by the Chief Psychiatrist.

- (5) An appointment of a person under subsection (2) is in force only while the person continues to be employed at the facility or by the service.
- (6) An appointment of a person under subsection (3) is in force only while the person is an employee of the Agency.
- (7) The Chief Psychiatrist may, by *Gazette* notice, approve clinical experience and training and orientation courses for subsection (4)(b) and (c).

### Division 5 Authorised officers

### 321 Authorised officers

- (1) The Chief Psychiatrist may, in writing, appoint an eligible person to be an authorised officer.
- (2) A person is eligible to be appointed as an authorised officer if:
  - (a) the person is:
    - (i) a public sector employee employed in the Agency; or
    - (ii) a person with whom the Chief Psychiatrist has entered into an agreement or arrangement under section 300; and
  - (b) the Chief Psychiatrist is satisfied that the person has the skills, qualifications, training or experience to properly perform the functions and exercise the powers of an authorised officer.
- (3) An authorised officer has the functions and powers given under this Act to assist the Chief Psychiatrist to:
  - (a) monitor compliance with this Act; and
  - (b) investigate clinical events.
- (4) The Chief Psychiatrist has the functions and powers given to an authorised officer under this Act.

### 322 Identity cards for authorised officers

(1) The Chief Psychiatrist must give an authorised officer an identity card stating the person's name and that the person is an authorised officer.

- (2) The identity card must:
  - display a recent photograph of the authorised officer; and
  - state the card's date of issue; and (b)
  - (c) be signed by the authorised officer.
- (3) This section does not prevent the giving of a single identity card to a person for this Act and another Act.
- (4) An authorised officer who is exercising a power or performing a function under this Act must produce the officer's identity card for inspection if requested by a person affected by the exercise of the power or the performance of the function.

### 323 Return of identity card

- (1) A person commits an offence if the person:
  - ceases to be an authorised officer; and (a)
  - fails to return the person's identity card to the Chief Psychiatrist as soon as practicable after ceasing to be an authorised officer.

Maximum penalty: 20 penalty units.

(2) An offence against subsection (1) is an offence of strict liability.

### **Division 6 Investigation of clinical events**

### 324 Meaning of clinical event

- (1) **Clinical event** means:
  - a matter relating to the treatment and care of:
    - (i) a person admitted to an approved mental health facility for treatment and care for a mental illness: or
    - (ii) a person receiving treatment and care for a mental illness or mental disorder under a temporary community treatment order or community treatment order; or
    - (iii) a person detained at an approved mental health facility or other place under an assessment order; or

145

(b) a matter in a class of matters declared under subsection (2).

Examples for subsection (1)(a)

- 1 An error in medication prescribed for, or administered or supplied to, a person that has had or is likely to have an adverse effect on the person.
- 2 Any other incident in connection with the treatment or care of a person that has had or is likely to have an adverse effect on the person.
- (2) The Chief Psychiatrist may, by *Gazette* notice, declare a class of matters to be clinical events.

### 325 Chief Psychiatrist may investigate clinical event

- (1) The Chief Psychiatrist may:
  - (a) investigate a clinical event; or
  - (b) direct an authorised officer to investigate a clinical event.
- (2) The Chief Psychiatrist or authorised officer may exercise the powers in Division 7 for the investigation.

## 326 Investigation report

- (1) After completing an investigation, the Chief Psychiatrist or the authorised officer investigating the clinical event, must prepare an investigation report.
- (2) The investigation report may include recommendations relating to the improvement of the operation of an approved mental health facility or an approved mental health service.
- (3) A copy of the investigation report must be given to the person in charge of the approved mental health facility or approved mental health service.

## 327 Response of person in charge to recommendations

- If an investigation report under section 326 includes recommendations, the person in charge of the approved mental health facility or approved mental health service to which the report relates must:
- (a) prepare a written response to the recommendations setting out the actions the person in charge has taken, is taking or will take to implement them; and
- (b) give the Chief Psychiatrist the written response within 30 business days after receiving a copy of the investigation report.

## Division 7 Powers of entry and inspection

## When may powers under this Division be exercised?

The Chief Psychiatrist or an authorised officer, at the direction of the Chief Psychiatrist, may exercise the powers under this Division to:

- (a) monitor compliance with this Act; or
- (b) investigate a clinical event.

## 329 Powers of entry

- (1) The Chief Psychiatrist or an authorised officer may enter an approved mental health facility or the premises of an approved mental health service.
- (2) Before entering an approved mental health facility or the premises of an approved mental health service under subsection (1), the Chief Psychiatrist or authorised officer must ask for the consent of the person in charge of the approved mental health facility or approved mental health service.
- (3) The Chief Psychiatrist or authorised officer may enter an approved mental health facility or the premises of an approved mental health service under subsection (1) even if the consent requested under subsection (2) is not given.
- (4) On entering an approved mental health facility or the premises of an approved mental health service under subsection (1), the Chief Psychiatrist or the authorised officer may exercise the following powers:
  - (a) inspect, examine or make inquiries at the facility or premises;
  - (b) examine or inspect any document, part of a document or thing at the facility or premises;
  - (c) bring any equipment or materials to the facility or premises that may be required and use them;
  - (d) take any photograph or make any audio or visual recording of the facility or premises or anything at the facility or premises;
  - (e) with the consent of the person, take any photograph or make any audio or visual recording of a person at the facility or premises;
  - (f) use any equipment at the facility or premises;

- (g) make copies of, or take extracts from, any document kept at the facility or premises;
- (h) speak to any person receiving treatment and care at the facility or premises, if the person consents;
- (i) do any other thing that is reasonably necessary for a purpose set out in section 328.

# Power to give written direction to produce documents or answer questions

The Chief Psychiatrist or an authorised officer may give the person in charge, or a staff member, of an approved mental health facility or approved mental health service a written direction at any time:

- (a) to produce a document or part of a document that is in the possession or control of the person in charge or staff member; or
- (b) to answer any questions asked by the Chief Psychiatrist or authorised officer.

## Part 14 Community visitors

## Division 1 Preliminary matters

### 331 Purpose of Part

The purpose of this Part is to support persons receiving treatment and care at an approved mental health facility or from an approved mental health service by providing for:

- (a) the appointment, powers and functions of the principal community visitor; and
- (b) the appointment, powers and functions of community visitors; and
- (c) the establishment, functions and powers of community visitors panels and special community visitors panels.

## Division 2 Principal community visitor

### 332 Principal community visitor

(1) The Minister must, in writing, appoint a person to be the principal community visitor.

- (2) The principal community visitor must have the qualifications decided by the Minister.
- (3) A person must not be appointed as principal community visitor if the person is employed by, or has a direct interest in any contract with, the Agency.
- (4) The principal community visitor holds office for 3 years and is eligible for reappointment.

## 333 Resignation of principal community visitor

A person appointed as principal community visitor may resign by written notice given to the Minister.

## Termination of appointment of principal community visitor

- (1) The Minister may, by written notice given to the principal community visitor, terminate the appointment of the principal community visitor on the ground of:
  - (a) physical or mental incapacity to satisfactorily perform the functions of principal community visitor; or
  - (b) misbehaviour.
- (2) The Minister must terminate the appointment of the principal community visitor if:
  - (a) the principal community visitor ceases to be eligible for appointment; or
  - (b) the principal community visitor:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (c) the principal community visitor is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (d) the principal community visitor is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

### 335 Functions of principal community visitor

The functions of the principal community visitor are:

- to establish principles and standards to apply to community visitors and community visitors panels in performing their functions: and
- to establish protocols to give effect to this Part; and (b)
- to ensure the preparation and circulation of publications to approved mental health facilities and approved mental health services, and to the public generally, explaining the role of community visitors and community visitors panels and how they may be contacted; and
- to ensure that community visitors and community visitors panels comply with the principles, standards and protocols established under paragraphs (a) and (b) in performing their functions and exercising their powers under this Act; and
- (e) to appoint community visitors; and
- to establish special community visitors panels; and (f)
- to ensure that each approved mental health facility and the (g) premises of each approved mental health service is inspected by a community visitor or community visitors panel at least once every 6 months.

### Division 3 **Community visitors**

### Subdivision 1 **Appointment of community visitors**

### 336 **Appointment of community visitors**

- (1) The principal community visitor may, in writing, appoint a person to be a community visitor.
- (2) A community visitor must have the qualifications decided by the principal community visitor.
- (3) In appointing a person as a community visitor, the principal community visitor must seek to ensure that the group of persons appointed as community visitors reflects, as far as possible the diversity of the community of the Territory, including:
  - gender diversity; and (a)

- (b) diversity of backgrounds, including Aboriginal and Torres Strait Islander backgrounds.
- (4) A person must not be appointed as a community visitor if the person is employed by, or has a direct interest in any contract with, the Agency.
- (5) A community visitor holds office for the term, not longer than 3 years, set out in the instrument of appointment and is eligible for reappointment.

### 337 Resignation of community visitor

A person appointed as a community visitor may resign by written notice given to the principal community visitor.

### 338 Termination of appointment of community visitor

- (1) The principal community visitor may, by written notice given to the community visitor, terminate the appointment of the community visitor on the ground of:
  - (a) physical or mental incapacity to satisfactorily perform the functions of community visitor; or
  - (b) misbehaviour.
- (2) The principal community visitor must terminate the appointment of a community visitor if:
  - the community visitor ceases to be eligible for appointment; or (a)
  - the community visitor: (b)
    - (i) becomes bankrupt; or
    - applies to take the benefit of a law for the relief of (ii) bankrupt or insolvent debtors; or
    - compounds with creditors or makes an assignment of remuneration for their benefit: or
  - the community visitor is found guilty by a court in the Territory (c) of an offence punishable by imprisonment for 12 months or more; or
  - the community visitor is found guilty by a court outside the (d) Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

## Subdivision 2 Functions and powers of community visitors

## 339 Inquiry functions

- (1) A community visitor may inquire into and make recommendations in relation to the following:
  - (a) the adequacy of services for assessing, treating and caring for persons at approved mental health facilities or by approved mental health services:
  - (b) the standard and appropriateness of facilities for the accommodation and wellbeing of persons receiving treatment and care at approved mental health facilities or from approved mental health services;
  - (c) the adequacy of information given in relation to:
    - (i) the rights of persons receiving treatment and care at approved mental health facilities or from approved mental health services; and
    - (ii) the complaint procedures of approved mental health facilities or approved mental health services;
  - (d) the accessibility and effectiveness of complaint procedures at approved mental health facilities or of approved mental health services;
  - (e) the use of restrictive interventions at approved mental health facilities or by approved mental health services;
  - (f) the use of search and seizure powers under Part 11 at approved mental health facilities;
  - (g) any other matter that a community visitor considers appropriate having regard to the main objects and the guiding principles of this Act.
- (2) A community visitor must refer to the principal community visitor any matter that the community visitor considers should be investigated by a community visitors panel.

### 340 **Complaint functions**

A community visitor must:

- be accessible to any person receiving treatment and care at an approved mental health facility or from an approved mental health service to hear, and facilitate the resolution of, any complaints the person may have; and
- assist any person receiving treatment and care at an approved mental health facility or from an approved mental health service to:
  - make a complaint under this Act; or (i)
  - (ii) make a complaint to another body about the person's treatment and care; or
  - (iii) apply to NTCAT for a review under this Act; or
  - (iv) exercise a right of appeal under this Act; or
  - exercise any other right of the person under this Act in relation to the person's treatment and care.

Example for paragraph (b)(ii)

Commissioner for Health and Community Services Complaints.

### 341 Power to visit approved mental health facilities and premises of approved mental health services

A community visitor may, at any time without notice, enter an approved mental health facility or the premises of an approved mental health service.

### 342 **Powers of inspection**

A community visitor may, when at an approved mental health facility or the premises of an approved mental health service:

- (a) inspect any part of the facility or the premises; and
- visit any person being treated or cared for at the facility or by (b) the service; and
- inspect any document (other than a medical record) located (c) at, or accessible from, the facility or the premises that:
  - (i) is required to be kept under this Act or the regulations; or

- (ii) relates to a person receiving treatment and care at the facility or from the service; and
- (d) with the consent of a person receiving treatment and care, inspect the person's medical record.

## 343 Requests to see community visitors

- (1) A person who is receiving treatment and care at an approved mental health facility or from an approved mental health service may ask to be visited by a community visitor.
- (2) The person in charge of an approved mental health facility or approved mental health service must send a request under subsection (1) to the principal community visitor as soon as possible and within 24 hours after it is made.
- (3) The principal community visitor must ensure that a community visitor contacts (including by telephone or email), or tries to contact, the person before the end of the next business day after the principal community visitor receives the request under subsection (1).

## 344 Reports by community visitors

- (1) A community visitor who visits an approved mental health facility or the premises of an approved mental health service must give the principal community visitor a report of the visit, including any findings and recommendations.
- (2) The principal community visitor must give the person in charge of the approved mental health facility or approved mental health service a copy of a report given under subsection (1).
- (3) The principal community visitor may give the report to the Chief Psychiatrist if the principal community visitor believes on reasonable grounds that the person in charge of the approved mental health facility or approved mental health service has not taken action to address, or provided reasonable responses to, matters raised in the report.
- (4) If the principal community visitor considers that a matter mentioned in a report under subsection (1) falls within the functions of another person, tribunal or body under a law of the Territory, the Commonwealth, a State or another Territory, the principal community visitor may refer the matter to that person, tribunal or body.

### Division 4 Community visitors panels

### Subdivision 1 **Establishment of community visitors panels**

### 345 **Community visitors panels**

- (1) The Minister must establish a community visitors panel for each approved mental health facility.
- (2) The Minister must appoint as members of a community visitors panel:
  - a legal practitioner; and (a)
  - (b) a medical practitioner; and
  - (c) one other person.
- (3) A person appointed under subsection (2)(c) is to be a person who, in the opinion of the Minister:
  - represents the interest of consumers of mental health (a) services; and
  - has a special interest or expertise in mental illness or mental (b) disorder.
- (4) The membership of a community visitors panel is intended to reflect, as far as possible, the diversity of the community of the Territory, including:
  - (a) gender diversity; and
  - diversity of backgrounds, including Aboriginal and Torres Strait Islander backgrounds.
- (5) A person must not be appointed as a member of a community visitors panel if the person is employed by, or has a direct interest in any contract with, the Agency.
- (6) The Minister must appoint one member of the community visitors panel to be the chair of the panel.
- (7) A member of a community visitors panel holds office for 3 years and is eligible for reappointment.

### 346 Resignation of member of community visitors panel

A person appointed to be a member of a community visitors panel may resign by written notice given to the Minister.

### 347 Termination of appointment of member of community visitors panel

- (1) The Minister may, by written notice given to a member of a community visitors panel, terminate the appointment of the member on the ground of:
  - physical or mental incapacity to satisfactorily perform the functions of member; or
  - misbehaviour. (b)
- (2) The Minister must terminate the appointment of a member of a community visitors panel if:
  - the member ceases to be eligible for appointment; or
  - (b) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - compounds with creditors or makes an assignment of remuneration for their benefit; or
  - the member is found guilty by a court in the Territory of an (c) offence punishable by imprisonment for 12 months or more; or
  - (d) the member is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

### 348 Interim appointment of member of community visitors panel

- (1) The principal community visitor may make an interim appointment of a person as a member of a community visitors panel for a period of 60 days.
- (2) The appointment ceases when the first of the following occurs:
  - the period of 60 days ends; (a)
  - (b) the appointment ends under subsection (3);
  - (c) the person is appointed as a member of a community visitors panel under section 345(2).

Subdivision 2 Functions and powers of community visitors panels

(3) The principal community visitor may terminate the appointment before the period of 60 days ends.

### Functions and powers of community visitors Subdivision 2 panels

### 349 **Functions of community visitors panels**

- (1) The members of a community visitors panel must, as a group, visit and inspect the approved mental health facility for which the panel is established at least every 6 months.
- (2) When visiting an approved mental health facility, the function of the members of the community visitors panel is to identify systemic matters relating to the management and operation of the facility including:
  - the adequacy of opportunities and facilities for the recreation, (a) occupation, education, training and recovery of persons receiving treatment and care at the facility; and
  - the adequacy of opportunities and facilities for persons (b) receiving treatment and care at the facility to communicate with others: and
  - the extent to which persons receive treatment and care at the facility in the least restrictive way and in the least restrictive environment that enables the treatment and care to be effectively given; and
  - the adequacy of services for assessing, treating and caring for (d) persons at the facility; and
  - the standard and appropriateness of facilities for the (e) accommodation and wellbeing of persons receiving treatment and care at the facility; and
  - the adequacy of information given by the person in charge or (f) another person employed at the facility about:
    - the rights under this Act of persons receiving treatment (i) and care at the facility; and
    - the complaint procedures at the facility; and
  - the accessibility and effectiveness of the complaints (g) procedures of the facility; and
  - (h) the use of restrictive interventions at the facility; and

- (i) the use of search and seizure powers under Part 11 at the facility; and
- (j) any other matter that the panel considers appropriate having regard to the main objects and the guiding principles of this Act; and
- any other matter that is referred to the panel by the Minister or (k) the principal community visitor.

### 350 Powers of community visitors panels

The members of a community visitors panel may, when visiting an approved mental health facility:

- inspect any part of the facility; and (a)
- (b) visit any person being treated and cared for at the facility; and
- (c) inquire into the admission, detention, treatment and care of persons being treated and cared for at the facility; and
- inspect any document (other than a medical record) located (d) at, or accessible from, the facility that:
  - (i) is required to be kept under this Act or the regulations; or
  - relates to a person receiving treatment and care at the facility; and
- with the consent of a person receiving treatment and care at the facility, inspect the person's medical record.

### 351 Reports by community visitors panels

- (1) The chair of a community visitors panel must give the principal community visitor a written report of the panel's visit to an approved mental health facility as soon as practicable after the visit.
- (2) The report must set out:
  - any systemic matters identified by the panel; and (a)
  - details of the panel's actions and inquiries; and (b)
  - the results of attempts by the panel to resolve particular matters: and
  - (d) the matters not resolved by the panel; and
  - the matters that require additional attention by the panel; and (e)

- (f) the actions taken since the last report to implement recommendations made in previous reports on the approved mental health facility made by the panel; and
- (g) the recommendations of the panel.
- (3) The principal community visitor must:
  - (a) give a copy of the report to the person in charge of the approved mental health facility; and
  - (b) invite the person in charge of the approved mental health facility to make comments in response to the report within 28 days after receiving the report.
- (4) The principal community visitor may give the report to the Chief Psychiatrist if the principal community visitor believes on reasonable grounds the person in charge of the approved mental health facility has not taken action to address, or provided reasonable responses to, matters raised in the report.
- (5) The Minister may require the principal community visitor to arrange for a community visitors panel to report to the Minister, through the principal community visitor, on a matter and at the times and in the manner directed by the Minister.

### **Subdivision 3** Special community visitors panels

### 352 Special community visitors panels

- (1) The principal community visitor may establish a special community visitors panel to investigate and report on the overall operation of an approved mental health service.
- (2) Section 345(2) to (6) and Division 5 apply to a special community visitors panel as if:
  - (a) it were a community visitors panel; and
  - (b) a reference in those provisions to the Minister were a reference to the principal community visitor.

### 353 Powers of special community visitors panel

The members of a special community visitors panel may visit any places and make any inquiries they believe are necessary to conduct the investigation.

## 354 Report of special community visitors panel

- (1) The chair of a special community visitors panel must give the principal community visitor a written report of the panel's investigation within the time required by the principal community visitor.
- (2) The report must set out:
  - (a) details of the panel's actions and inquiries; and
  - (b) the panel's findings; and
  - (c) the recommendations of the panel.
- (3) The principal community visitor must:
  - (a) give a copy of the report to the person in charge of the approved mental health service that the report concerns; and
  - (b) invite the person in charge of the approved mental health service to make comments in response to the report within 28 days after receiving the report.
- (4) The principal community visitor may give the report to the Chief Psychiatrist if the principal community visitor believes on reasonable grounds the person in charge of the approved mental health service has not taken action to address, or provided reasonable responses to, matters raised in the report.

## 355 Ending of appointment of members

The appointment of the members of a special community visitors panel ceases when the report of its investigation is given to the principal community visitor under section 354.

## 356 Re-establishment of special community visitors panel

The principal community visitor may re-establish a special community visitors panel if the principal community visitor believes on reasonable grounds additional investigation of the approved mental health service is required.

## **Division 5 General provisions**

## 357 Assistance to be given

- (1) The person in charge and each employee of an approved mental health facility must give reasonable assistance and cooperation to:
  - (a) a community visitor; and
  - (b) a member of the community visitors panel established for the facility.
- (2) The person in charge and each employee of an approved mental health service must give reasonable assistance and cooperation to:
  - (a) a community visitor; and
  - (b) a member of a special community visitors panel established to investigate the service.
- (3) In this section a reference to reasonable assistance and cooperation to be given to a person is a reference to assistance and cooperation required for the person to perform the person's functions under this Act and includes answering questions and responding to inquiries.

#### 358 Annual report

- (1) The principal community visitor must give an annual report to the Minister for each financial year by 30 September following the end of the financial year on the activities of community visitors and community visitors panels in the financial year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.

### 359 Suspected offences

- (1) This section applies to a community visitor or member of a community visitors panel, if in the course of an investigation or inspection, the visitor or member believes on reasonable grounds a person may have committed an offence against this Act or another Act.
- (2) The community visitor or member must:
  - (a) report the circumstances of the alleged offence to the principal community visitor; and

- (b) take all reasonable steps to preserve the evidence relating to the alleged offence; and
- (c) cease to investigate the circumstances of the alleged offence.
- (3) If, after receiving the report, the principal community visitor considers the person may have committed an offence against this Act or another Act, the principal community visitor must:
  - (a) inform the Chief Psychiatrist of the circumstances of the alleged offence; and
  - (b) inform the Chief Executive Officer of another Agency as the principal community visitor considers appropriate.

# Part 15 NTCAT proceedings

## Division 1 Preliminary matters

### 360 Purpose of Part

The purpose of this Part is to provide for the jurisdiction, constitution and procedure of NTCAT for proceedings under this Act.

#### Division 2 Jurisdiction of NTCAT

#### 361 Jurisdiction of NTCAT

NTCAT has the following jurisdiction under this Act:

- (a) to hear and decide the following:
  - (i) an application for an order for a compulsory examination;
  - (ii) an application for an electroconvulsive therapy order;
  - (iii) an application for a neurosurgery order;
- (b) to review a decision under section 39 to authorise a restriction on a person's right to communicate;
- (c) to review a temporary treatment order or treatment order;
- (d) to review a decision under section 180(3) to authorise the transport of a person from one approved mental health facility to another:

(e) any other jurisdiction given to NTCAT under this Act.

## 362 Review of original decision

Part 5, Division 1 of the NTCAT Act does not apply to a decision of NTCAT under this Act.

#### Division 3 Constitution of NTCAT

### 363 Requirements for constitution of NTCAT for proceeding

- (1) For a proceeding under this Act, NTCAT must, to the extent practicable, be constituted by members:
  - (a) of diverse gender; and
  - (b) from diverse backgrounds including Aboriginal and Torres Strait Islander backgrounds.
- (2) A member cannot be nominated to constitute NTCAT for a proceeding under this Act if the member is any of the following:
  - (a) a medical practitioner in charge of, or having principal responsibility for providing medical services at, a hospital;
  - (b) the principal community visitor;
  - (c) a community visitor;
  - (d) a member of a community visitors panel;
  - (e) a member of a special community visitors panel;
  - (f) an authorised mental health practitioner;
  - (g) an authorised psychiatrist;
  - (h) an authorised psychiatric practitioner;
  - (i) the Chief Psychiatrist;
  - (i) the Chief Executive Officer;
  - (k) an authorised officer;
  - (I) the person in charge of an approved mental health facility or approved mental health service;
  - (m) the Commissioner for Health and Community Services Complaints;

- (n) an employee of the Health and Community Services Complaints Commission.
- (3) When nominating members to constitute NTCAT for proceedings under this Act, the President may take into account any suitable qualifications or suitable knowledge or experience of a member for the constitution of NTCAT.

## 364 Constitution of NTCAT for proceedings under this Act

- (1) The President of NTCAT must nominate 3 members of NTCAT to constitute NTCAT for a proceeding under this Act.
- (2) Of the members nominated under subsection (1):
  - (a) one must be:
    - (i) the President; or
    - (ii) a Deputy President; or
    - (iii) a member appointed with reference to section 16(2)(a) of the NTCAT Act: and
  - (b) one must be a medical practitioner appointed as a member with reference to section 16(2)(b) of the NTCAT Act; and
  - (c) one must be a member appointed with reference to section 16(2)(b) of the NTCAT Act who has:
    - (i) a special interest or experience in mental illness or mental disorder; or
    - (ii) knowledge and experience relevant to performing the role of a community member of NTCAT.
- (3) Despite subsection (1), if the President is satisfied exceptional circumstances exist, the President may nominate 2 members of NTCAT to constitute NTCAT for a proceeding.
- (4) One of the members nominated under subsection (3) must be a member mentioned in subsection (2)(a).

#### 365 Constitution of NTCAT for application under section 181

Despite section 364, NTCAT may be constituted by one of the following to hear an application under section 181:

- (a) the President; or
- (b) a Deputy President; or

(c) a member appointed with reference to section 16(2)(a) of the NTCAT Act.

## 366 Constitution of NTCAT for order for compulsory examination

Despite section 364, NTCAT may be constituted by one of the following to hear an application for an order for compulsory examination:

- (a) the President; or
- (b) a Deputy President; or
- (c) a member appointed with reference to section 16(2)(a) of the NTCAT Act.

# 367 Constitution of NTCAT for electroconvulsive therapy and neurosurgery orders

To constitute NTCAT to hear an application for an electroconvulsive therapy order or a neurosurgery order, the medical practitioner nominated under section 364(2)(b) must be a psychiatrist.

## Division 4 Proceedings before NTCAT

#### 368 Dignity of person to be respected

- (1) This section applies to a person to whom a temporary inpatient treatment order or an inpatient treatment order applies.
- (2) The person in charge of the approved mental health facility where the person is receiving treatment and care must ensure, to the greatest extent practicable, that the person is dressed in a manner that respects the person's dignity when the person appears at a hearing of NTCAT.

# 369 Certain hearings only to be adjourned in exceptional circumstances

- (1) This section applies in relation to a proceeding before NTCAT under this Act that relates to a person to whom a temporary treatment order or a treatment order applies.
- (2) NTCAT must not adjourn a hearing in the proceeding to a day that is after the temporary treatment order or treatment order ends unless NTCAT is satisfied that exceptional circumstances exist.

- (3) If a hearing is adjourned in the circumstances mentioned in subsection (2), NTCAT may extend the duration of the temporary treatment order or treatment order for a period not longer than 10 business days.
- (4) NTCAT must not extend the duration of a temporary treatment order or treatment order more than once under this section.

### 370 Appearance and representation

- (1) This section applies to a person who is the subject of a proceeding before NTCAT under this Act.
- (2) The person has the right to appear before NTCAT at the hearing as a party to the proceeding.
- (3) The person may authorise another person to represent the person before NTCAT.
- (4) NTCAT may appoint a person to represent the person in the proceeding if the person is not represented.
- (5) If NTCAT appoints a legal practitioner under subsection (4), NTCAT may order the Territory to pay all or part of the reasonable costs and outgoings of the legal practitioner in representing the person in the proceeding.

### 371 Hearing in absence of person

- (1) Despite section 370(2), NTCAT may conduct a hearing in the absence of a person who is the subject of the proceeding if NTCAT considers exceptional circumstances exist that make the attendance of the person inappropriate.
- (2) If NTCAT conducts the hearing in the absence of a person under subsection (1), NTCAT:
  - (a) must give reasonable notice of the hearing to the person's representative; and
  - (b) must give the person's representative a reasonable opportunity to attend the hearing; and
  - (c) may conduct the hearing in the absence of the person's representative if the person's representative does not attend the hearing.

(3) NTCAT must notify a person who is the subject of the proceeding of its decision as soon as practicable after the decision is made if the hearing was conducted in the absence of the person under subsection (1).

## 372 Hearing in absence of person or person's representative

- (1) Despite section 370(2), NTCAT may conduct a hearing in the absence of the person who is the subject of the proceeding or the person's representative if:
  - (a) reasonable notice of the hearing was given to the person or the person's representative; and
  - (b) the person or the person's representative had a reasonable opportunity to attend the hearing; and
  - (c) the person or the person's representative does not attend the hearing.
- (2) NTCAT must notify a person who is the subject of the proceeding of its decision as soon as practicable after the decision is made if the hearing was conducted under this section in the absence of the person or the person's representative under subsection (1).

### 373 Sections 86 and 87 of NTCAT Act not to apply

Sections 86 and 87 of the NTCAT Act do not apply to a proceeding before NTCAT under this Act.

#### 374 Access to medical records and reports

- (1) Subject to subsection (3), NTCAT must give a person who is the subject of a proceeding under this Act access to any of the person's medical records and medical reports that are held by NTCAT in relation to the proceeding.
- (2) NTCAT must give a representative of a person who is the subject of a proceeding access to any of the person's medical records and medical reports that are held by NTCAT in relation to the proceeding.
- (3) NTCAT may refuse to give a person who is the subject of a proceeding access to any of the person's medical records or medical reports or any part of a medical record or medical report under this section if NTCAT is satisfied that there is a serious risk to the health or safety of the person or anyone else if the person is given access to the record or report or part.

#### 375 Interpreter

- (1) This section applies in relation to an interpreter who, under section 61 of the NTCAT Act, assists a person who is the subject of a proceeding under this Act or the person's representative.
- (2) The interpreter is to be provided at no cost to the person.

### 376 Hearing not open to public

- (1) Despite section 60 of the NTCAT Act, but subject to subsection (2):
  - (a) a proceeding before NTCAT under this Act is not open to the public and must be heard in private; and
  - (b) information that identifies, or is likely to lead to the identification of a person who is the subject of the proceeding must not be published.
- (2) NTCAT may make an order that a hearing under this Act is open to the public or that information mentioned in subsection (1)(b) is published if NTCAT is satisfied that:
  - (a) the person who is the subject of the proceeding consents; and
  - (b) the privacy of the parties to the proceeding will not be adversely affected; and
  - (c) the public hearing will not result in serious risk to the health or safety of the person who is the subject of the proceeding or anyone else.
- (3) An order mentioned in subsection (2) may be made on NTCAT's own initiative or on the application of the person who is the subject of the proceeding.

### 377 Access to record of proceedings

- (1) NTCAT must:
  - (a) make an audio or audiovisual record of its proceedings under this Act; and
  - (b) keep the record for 12 months.
- (2) Despite section 85 of the NTCAT Act and subject to subsection (4), if a person who is the subject of a proceeding before NTCAT under this Act asks for a copy of the record of the proceeding, NTCAT must give the person a copy of the record at no cost.

- (3) Despite section 85 of the NTCAT Act, if the representative of a person who is the subject of a proceeding before NTCAT under this Act asks for a copy of the record of the proceeding, NTCAT must give the representative a copy of the record at no cost.
- (4) NTCAT may refuse to give a person who is the subject of a proceeding a copy of the record of the proceeding if NTCAT is satisfied that there is a serious risk to the health or safety of the person or anyone else if the person is given a copy of the record.

#### **Division 5 General matters**

#### 378 Evidence not to be used in other proceedings

- (1) Evidence before NTCAT in proceedings under this Act cannot be used in any other civil or criminal proceedings other than an appeal to the Supreme Court under section 382.
- (2) This section applies in addition to section 71 of the NTCAT Act.

#### 379 Oral reasons and findings of fact

- (1) Despite section 105(2) of the NTCAT Act, NTCAT may give the reasons for a decision and any relevant findings of fact in any proceeding orally to the parties to the proceeding.
- (2) If requested by a party, NTCAT must give the reasons in writing to the parties within 28 days after the day the request is made.
- (3) A request referred to in subsection (2) must be made within 28 days after the day the reasons are given orally.
- (4) The President of NTCAT may extend the time limits in subsections (2) and (3).

### 380 Publication of decision

- (1) For section 106 of the NTCAT Act, before deciding to publish its final decision in a proceeding, NTCAT must take into account whether or not:
  - (a) the privacy of a person appearing in the proceeding will be adversely affected by the publication; and
  - (b) the publication of the decision will result in a serious risk to the health or safety of the person who is the subject of the proceeding or anyone else; and
  - (c) the publication of the decision is in the public interest.

(2) If NTCAT publishes its final decision under section 106 of the NTCAT Act, NTCAT must not include in the publication any information that identifies or is likely to lead to the identification of the person who is the subject of the proceeding.

## Part 16 Appeal to Supreme Court

#### 381 Purpose of Part

The purpose of this Part is to provide for appeals to the Supreme Court from decisions of NTCAT under this Act.

## 382 Appeal to Supreme Court

- (1) Despite section 141 of the NTCAT Act, the following persons may appeal to the Supreme Court against a decision of NTCAT under this Act:
  - (a) the person who was the subject of the NTCAT proceeding;
  - (b) a party to the NTCAT proceeding;
  - (c) anyone else with the leave of the Court.
- (2) An appeal is to be a rehearing.
- (3) The Supreme Court may suspend the operation or effect of a decision being appealed against pending the determination of the appeal.
- (4) The Supreme Court may refuse to hear an appeal if it is satisfied that the appeal is frivolous, vexatious or has not been made in good faith.

#### 383 Determination of appeal

On hearing an appeal under section 382, the Supreme Court must do one of the following:

- (a) confirm the NTCAT decision;
- (b) vary the NTCAT decision;
- (c) set aside the NTCAT decision and:
  - (i) substitute its own decision; or
  - send the matter back to NTCAT for reconsideration in accordance with any recommendations the Supreme Court considers appropriate;

(d) dismiss the appeal.

## 384 Appearance and representation

- (1) This section applies to a person who is the subject of an appeal to the Supreme Court under this Act.
- (2) The person has the right to appear as a party to the appeal.
- (3) The person may authorise another person to represent the person at the appeal.
- (4) The Supreme Court may appoint a legal practitioner to represent the person at the appeal if the person is not represented.
- (5) If the Supreme Court appoints a legal practitioner under subsection (4), the Court may order the Territory to pay all or part of the reasonable costs and outgoings of the legal practitioner in representing the person at the appeal.

## 385 Hearing in absence of person

- (1) Despite section 384(2), the Supreme Court may hear an appeal in the absence of the person who is the subject of the appeal if the Court considers exceptional circumstances exist that make the attendance of the person inappropriate.
- (2) If the Supreme Court hears an appeal in the absence of the person under subsection (1), the Court:
  - (a) must give reasonable notice of the hearing to the person's representative; and
  - (b) must give the person's representative a reasonable opportunity to attend the hearing; and
  - (c) may conduct the hearing in the absence of the person's representative if the person's representative does not attend the hearing.
- (3) The Supreme Court must notify a person who is the subject of the appeal of its decision as soon as practicable after the appeal is decided if the hearing was conducted in the absence of the person under subsection (1).

#### 386 Hearing in absence of person or person's representative

- (1) Despite section 384(2), the Supreme Court may hear an appeal under section 382 in the absence of the person who is the subject of the appeal or the person's representative if:
  - (a) reasonable notice of the hearing was given to the person or the person's representative; and
  - (b) the person or the person's representative had a reasonable opportunity to attend the hearing; and
  - (c) the person or the person's representative does not attend the hearing.
- (2) The Supreme Court must notify a person who is the subject of the appeal of its decision as soon as practicable after the appeal is decided if the hearing was conducted in the absence of the person or the person's representative under subsection (1).

#### Part 17 Interstate transfers

#### 387 Purpose of Part

The purpose of this Part is to provide procedures for:

- (a) the transfer of responsibility for a person to whom a treatment order applies from the person in charge of an approved mental health facility or approved mental health service to an interstate mental health service; and
- (b) the transfer of responsibility for a person to whom an interstate order applies from an interstate mental health service to the person in charge of an approved mental health facility.

#### 388 Definitions

In this Part:

**corresponding law** means a law of another State or Territory that is prescribed by regulation to be a corresponding law.

interstate mental health service means a health service in another State or Territory that performs corresponding or substantially corresponding functions to an approved mental health facility or an approved mental health service. **interstate order** means an order, however described, made under a corresponding law that provides for similar matters to a treatment order.

**responsible officer**, of an interstate mental health service, means an entity responsible for:

- (a) authorising the admission of persons who have a mental illness or mental disorder to the interstate mental health service from another State or Territory; or
- (b) authorising the transfer of persons who have a mental illness or mental disorder from the interstate mental health service to another State or Territory.

# Transfer of person to whom treatment order applies to another State or Territory

- (1) This section applies to a person:
  - (a) to whom a treatment order applies; and
  - (b) who is not a prisoner or detainee.
- (2) The Chief Psychiatrist may agree with the responsible officer of an interstate mental health service to transfer responsibility for the person from the person in charge of an approved mental health facility or approved mental health service to the interstate mental health service if the Chief Psychiatrist is satisfied that:
  - (a) appropriate treatment and care are available for the person at the interstate mental health service; and
  - (b) the transfer is otherwise appropriate in the circumstances.

Example for subsection (2)(b)

To enable a person to be in closer proximity to family, carers or other support persons.

- (3) In deciding under subsection (2)(b) whether the transfer of a person is appropriate in the circumstances, the Chief Psychiatrist must have regard to the person's wishes, views and preferences, including wishes, views and preferences expressed in any advance personal plan made by the person.
- (4) A person's treatment order ends when the person leaves the Territory.

# Transfer of person to whom interstate order applies from another State or Territory

- (1) This section applies to a person:
  - (a) to whom an interstate order applies; and
  - (b) who is a patient of an interstate mental health service.
- (2) The Chief Psychiatrist may agree with a responsible officer of an interstate mental health service to transfer responsibility for the person from the interstate mental health service to the person in charge of an approved mental health facility if the Chief Psychiatrist is satisfied that:
  - (a) appropriate treatment and care are available for the person at the approved mental health facility or from an approved mental health service; and
  - (b) an authorised psychiatrist is likely, on conducting a psychiatric assessment of the person at the approved mental health facility, to be satisfied that:
    - (i) the compulsory treatment criteria apply to the person; and
    - (ii) there is no less restrictive way to give treatment and care for the person's mental illness; and
  - (c) the transfer is otherwise appropriate in the circumstances.

Example for subsection (2)(c)

To enable a person to be in closer proximity to family, carers or other support persons.

(3) In deciding under subsection (2)(c) whether the transfer of a person is appropriate in the circumstances, the Chief Psychiatrist must have regard to the person's wishes, views and preferences.

# 391 Psychiatric assessment of person transferred from another State or Territory

- (1) On the transfer of responsibility for a person to an approved mental health facility under section 390, an authorised psychiatrist may conduct a compulsory psychiatric assessment of the person to decide if the compulsory treatment criteria apply to the person.
- (2) The person may be detained for the psychiatric assessment at the approved mental health facility for 6 hours after the person arrives at the facility.

(3) Sections 86, 87, 88 and 89 apply to a psychiatric assessment of the person under subsection (1) as if it were a psychiatric assessment under Part 4, Division 4.

# Temporary treatment order for person transferred from another State or Territory

- (1) After conducting a psychiatric assessment under section 391, the authorised psychiatrist may make a temporary community treatment order in relation to the person if the authorised psychiatrist is satisfied:
  - (a) the compulsory treatment criteria apply to the person; and
  - (b) compulsory treatment and care can reasonably be given to the person in the community.
- (2) After conducting a psychiatric assessment under section 391, the authorised psychiatrist may make a temporary inpatient treatment order in relation to the person if the authorised psychiatrist is satisfied:
  - (a) the compulsory treatment criteria apply to the person; and
  - (b) the person has a mental illness; and
  - (c) compulsory treatment and care cannot reasonably be given to the person in the community.
- (3) Part 5, Division 2 applies in relation to a temporary community treatment order made under this section as if it were a temporary community treatment order made under section 95.
- (4) Part 5, Division 2 applies in relation to a temporary inpatient treatment order made under this section as if it were a temporary inpatient treatment order made under section 95.

### 393 Power to transport

- (1) This section applies to a person if responsibility for the person is transferred under this Part:
  - (a) from the person in charge of an approved mental health facility or approved mental health service to an interstate mental health service; or
  - (b) from an interstate mental health service to the person in charge of an approved mental health facility.

- (2) An authorised person may transport the person:
  - (a) to the interstate mental health service from the approved mental health facility or approved mental health service; or
  - (b) to the approved mental health facility from the interstate mental health service.
- (3) A person who is authorised under a corresponding law to transport a person to or from the interstate mental health service may transport the person:
  - (a) to the interstate mental health service from the approved mental health facility or approved mental health service; or
  - (b) to the approved mental health facility from the interstate mental health service.

#### Part 18 General matters

# 394 Liability of Chief Psychiatrist and specified health care providers

- (1) The Chief Psychiatrist or a specified health care provider who, in good faith and without negligence, gives or does not give treatment and care to a person under this Act and believes on reasonable grounds the requirements of this Act have been complied with is not:
  - (a) guilty of an offence; or
  - (b) liable for unprofessional conduct or professional misconduct;
     or
  - (c) liable in any civil proceeding; or
  - (d) liable for contravention of any code of conduct.
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) In this section:

#### specified health care provider means a person who is:

- (a) registered under the *Health Practitioner Regulation National* Law:
  - (i) to practise in a health profession; or

- (ii) as a student in a health profession; or
- (b) a social worker; or
- (c) an Aboriginal or Torres Strait Islander mental health worker.

#### 395 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in performing a function or exercising a power under this Act as any of the following:
  - (a) the Chief Executive Officer;
  - (b) a member of an advisory committee established under section 309;
  - (c) an authorised person;
  - (d) an authorised officer;
  - (e) the principal community visitor;
  - (f) a community visitor;
  - (g) a member of a community visitors panel or a special community visitors panel;
  - (h) the person in charge of an approved mental health facility or approved mental health service;
  - (i) a staff member of an approved mental health facility authorised under Part 11:
  - (j) a person assisting or acting under the direction of a person mentioned in paragraphs (a) to (i).
- (2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (3) This section is subject to Part VIIA of the *Police Administration Act 1978* to the extent that it relates to the civil liability of an authorised person who is or has been a police officer.
- (4) In this section:

exercise of a power includes the purported exercise of the power.

**performance of a function** includes the purported performance of the function.

#### 396 Offence to disclose certain information

- (1) A person commits an offence if:
  - (a) the person obtains information while performing a function or exercising a power under this Act; and
  - (b) the information is confidential and the person is reckless in relation to that circumstance; and
  - (c) the person intentionally engages in conduct; and
  - (d) the conduct results in the disclosure of the information and the disclosure is not:
    - (i) authorised by this Act; or
    - for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act; or
    - (iii) to a person who is otherwise entitled to the information; and
  - (e) the person is reckless in relation to the result and circumstance mentioned in paragraph (d).

Maximum penalty: 200 penalty units or imprisonment for 2 years.

Note for subsection (1)(d)(i)

Part 12 authorises the disclosure of health information to a range of persons.

- (2) Strict liability applies to subsection (1)(a).
- (3) If the information mentioned in subsection (1) relates to a person, it is a defence to a prosecution for an offence against that subsection if:
  - (a) the person has consented to the disclosure of the information; or
  - (b) the information is in a statistical form that does not identify the person to whom the information relates.

Note for subsection (3)

In addition to the circumstances mentioned in this subsection, a person who discloses information mentioned in this section will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

## 397 Misleading information

- (1) A person commits an offence if:
  - (a) the person intentionally gives information to another person, prepares a document or makes a statement; and
  - (b) the information, document or statement is required to be given, prepared or made under this Act and the person is reckless in relation to that circumstance; and
  - (c) the information is misleading or the document or statement contains misleading information and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) A person commits an offence if:
  - (a) the person intentionally gives a document to another person; and
  - (b) the document is required to be given under this Act and the person is reckless in relation to that circumstance; and
  - (c) the document contains misleading information and the person has knowledge of that circumstance.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant, when giving the information or preparing or giving the document or making the statement:
  - (a) draws the misleading aspect of the information, document or statement to the attention of the person to whom the information or document is given or for whom the document is prepared or to whom the statement is made; and
  - (b) to the extent to which the defendant can reasonably do so, gives the person mentioned in paragraph (a) the information necessary to remedy the misleading aspect of the information, document or statement.

Note for subsection (3)

The defendant has an evidential burden in relation to the matters mentioned (see section 43BU of the Criminal Code).

(4) This section does not apply in relation to any information or document given to a member constituting, or who is one of the persons constituting, NTCAT.

Note for subsection (4)

Section 150 of the NTCAT ACT makes it an offence to give misleading information or a document containing misleading information to a member constituting, or who is one of the persons constituting, NTCAT.

(5) In this section:

*misleading information* means information that is misleading in a material respect or because of the omission of a material matter.

## 398 Who may commence proceedings under Act

Proceedings for an offence against this Act may only be commenced by:

- (a) the Chief Executive Officer; or
- (b) a police officer.

## 399 When proceedings under Act commence

Proceedings for an offence against this Act must be commenced within 12 months after the day on which the offence is alleged to have been committed.

### 400 Delegations

- (1) The Chief Executive Officer may delegate any of the Chief Executive Officer's functions and powers under this Act to another person.
- (2) The Commissioner for Correctional Services may delegate any of the Commissioner's functions and powers under this Act to another person.
- (3) The Youth Justice CEO may delegate any of the Youth Justice CEO's functions and powers under this Act to another person.
- (4) The principal community visitor may delegate any of the principal community visitor's functions and powers under this Act to another person.

#### 401 Regulations

(1) The Administrator may make regulations under this Act.

Note for subsection (1)

See section 65 of the Interpretation Act 1978.

- (2) The regulations may deal with the following:
  - (a) prescribe fees payable under this Act;
  - apply, adopt or incorporate (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time.

#### 402 **Review of Act**

- (1) The Minister must review the operation of this Act to be commenced as soon as practicable after 5 years after the commencement of this Act.
- (2) A report on the outcome of the review must be tabled in the Assembly within 7 years after the commencement of this Act.

#### **Part 19** Repeals and transitional provisions

#### **Division 1** Repeals

#### 403 Acts repealed

The following Acts are repealed:

- Mental Health and Related Services Act 1998 (Act No. 63 (a) of 1998);
- Mental Health and Related Services Amendment Act 2007 (b) (Act No. 8 of 2007);
- Mental Health and Related Services Amendment Act 2012 (Act No. 3 of 2012).

#### Division 2 **Transitional matters for Mental Health Act 2024**

#### 404 **Definitions**

In this Part:

commencement means the commencement of section 403.

181

Mental Health Act 2024

repealed Act means the Mental Health and Related Services Act 1998 as in force immediately before the commencement.

#### 405 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act: or
  - to otherwise allow or facilitate the transition from the operation (b) of the repealed Act to this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement.
- (3) Despite subsection (2), to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
  - (a) decreasing the person's rights; or
  - imposing liabilities on the person. (b)
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, is repealed 1 year after the commencement.

#### Part 20 Consequential amendments

#### Division 1 **Health Care Decision Making Act 2023**

#### 406 Act amended

This Division amends the *Health Care Decision Making Act* 2023.

#### **Section 9A inserted** 407

After section 9

insert

#### 9A Relationship with Mental Health Act 2024

If there is an inconsistency between this Act and the Mental Health Act 2024, the Mental Health Act 2024 prevails to the extent of the inconsistency.

Mental Health Act 2024

#### 408 Section 11 amended (Authority of health care decision maker)

Section 11(2) and (3)

omit, insert

- (2) A health care decision maker has no authority under this Act regarding any treatment or care ordered by the Local Court under the *Disability Services Act 1993*.
- (3) A health care decision maker (other than a person mentioned in section 13(a) or (b)) has no authority under this Act regarding treatment and care for a mental illness or mental disorder under the *Mental Health Act 2024*.

Note for subsection (3)

See section 20 of the Mental Health Act 2024 for the definition of treatment.

# Section 29 amended (Role of health care decision makers regarding "restrictive practices")

After section 29(4)

insert

- (5) Despite subsection (2), a health care decision maker does not have authority to consent to the use of a restrictive intervention, as defined in section 16 of the *Mental Health Act 2024* on:
  - (a) a person under Part 7 of that Act; or
  - (b) a person mentioned in section 235(1) of that Act.

# Section 36 amended (Other laws allowing health care without consent not affected)

Section 36, example

omit

# 411 Section 54 amended (Senior Practitioner directives and approvals)

After section 54(2)

insert

- (3) This section does not apply to the use of a restrictive intervention, as defined in section 16 of the *Mental Health Act 2024* on:
  - (a) a person under Part 7 of that Act; or

(b) a person mentioned in section 235(1) of that Act.

## Division 2 Disability Services Act 1993

#### 412 Act amended

This Division amends the Disability Services Act 1993.

## 413 Section 2 amended (Interpretation)

- (1) Section 2(1), definition *complex cognitive impairment*omit
- (2) Section 2(1)

insert

behavioural disturbance, see section 5A.

cognitive impairment, see section 5A.

complex cognitive impairment, see section 5A.

(3) Section 2(1), at the end

insert

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

## 414 Section 5A inserted

After section 5

insert

## 5A Meaning of complex cognitive impairment and related terms

- (1) A person has a *complex cognitive impairment* if the person has a cognitive impairment with a behavioural disturbance.
- (2) A person has a *cognitive impairment* if the person has an intellectual impairment, neurological impairment or acquired brain injury (or any combination of these) that:
  - (a) is, or is likely to be, permanent; and

- (b) results in substantially reduced capacity in at least one of the following:
  - (i) self-care or management;
  - (ii) decision making or problem solving;
  - (iii) communication or social functioning.
- (3) A person has a **behavioural disturbance** if the person's mental condition has deteriorated to the extent the person is behaving in an aggressive manner or is engaging in seriously irresponsible conduct.

### 415 Section 6 amended (Meaning of treatment plan)

Section 6, note

omit

### 416 Section 8 amended (Application for order)

Section 8(3)

omit, insert

(3) An application must be accompanied by the proposed treatment plan for the person.

### 417 Section 9 amended (Notice of application)

(1) Section 9(1)(d)

omit

person;

insert

person.

(2) Section 9(1)(e)

omit

Division 4 Repeal of Part

#### 418 Section 14 amended (Effect of order)

Section 14(2) and (3)

omit, insert

(2) Despite subsection (1), if the person is later admitted to an approved mental health facility under a temporary inpatient treatment order or inpatient treatment order made under the *Mental Health Act 2024*, the treatment order under this Act is suspended while the person is detained at that facility under that Act.

### 419 Section 34 amended (Meaning of *chemical restraint*)

Section 34(3), definition mental illness

omit, insert

mental illness, see section 18 of the Mental Health Act 2024.

### 420 Section 50 amended (Appointment)

Section 50(5)

omit

Mental Health and Related Services Act 1998

insert

Mental Health Act 2024

#### Division 3 Other laws amended

#### 421 Other laws amended

The Schedule amends the laws mentioned in it.

### Division 4 Repeal of Part

### 422 Repeal of Part

This Part is repealed on the day after it commences.

# Schedule Other laws amended

section 421

Provision	Amendment		
	omit	insert	