

Transitional Provisions

Mental Health Act 2016

Overview

This table summarises the key transitional provisions in the *Mental Health Act 2016*.

The first column ('Mental Health Act 2000') states the thing that is in place immediately before the commencement of the *Mental Health Act 2016*, which is midnight of the day before the commencement day.

The second column ('Mental Health Act 2016') states what happens to the thing on the commencement of the *Mental Health Act 2016*.

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
Assessments and examinations		
Request for assessment.	Request for assessment ends.	805
Recommendation for assessment.	Becomes a recommendation for assessment under the new Act. Is in force for 7 days after it commenced under the repealed Act.	805
Person being transported under assessment documents.	Transport can continue under the repealed Act. <i>Note: the person will be under a recommendation for assessment under the new Act, and can therefore be assessed under the new Act when admitted.</i>	806
Detention under assessment documents.	Detention can continue under new Act. Assessment period starts when assessment period started under the repealed Act. May be extended under new Act.	809
Justices examination order.	A justices examination order continues to apply under the repealed Act for the period of time stated in the order. This means that the powers that may be exercised under the repealed Act can be exercised. After an examination is undertaken, a recommendation for assessment may be made under the new Act.	807

Mental Health Act 2000	Mental Health Act 2016	Section
Person being transported under an emergency examination order by police or ambulance.	<p>Transport can continue under the repealed Act.</p> <p>An emergency examination order must be made under the repealed Act.</p> <p>Detention of the person may take place under the repealed Act (up to 6 hours).</p> <p>After an examination is undertaken, a recommendation for assessment may be made under the new Act.</p>	808
Classified patients		
Agreement for assessment.	Becomes an administrator consent under the new Act.	810
-	If a person who is subject to an agreement for assessment (administrator consent) is not transported to an authorised mental health service within 72 hours of the commencement of the new Act, a doctor or authorised mental health practitioner must notify the chief psychiatrist.	810
Custodian assessment authority.	Becomes a custodian consent under the new Act.	811
Recommendation for assessment and custodian assessment authority in place for a person.	<p>Person may be transported to an authorised mental health service.</p> <p><i>Note: the person will be under a recommendation for assessment under the new Act, and can therefore be assessed under the new Act when admitted.</i></p>	812
Classified patient.	<p>Becomes a classified patient under the new Act.</p> <p>If the person consented to being transported under the repealed Act, the person becomes a classified patient (voluntary).</p> <p><i>Note: the person becomes a classified patient under the new Act when admitted and can be assessed under the new Act.</i></p>	813
Involuntary treatment order		
Patient is on an involuntary treatment order.	<p>Patient is on a treatment authority.</p> <p>Same category of order applies under the new Act – community or inpatient.</p>	815

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
	<p>Any conditions continue under the new Act, including conditions relating to limited community treatment.</p> <p>Any limited community treatment continues under the new Act.</p> <p>The person is taken to be subject to a treatment authority for the period the person was on an involuntary treatment order.</p>	
Second examination by psychiatrist had not taken place (where an involuntary treatment order was made by an authorised doctor who is not a psychiatrist).	Review of the treatment authority must be undertaken by a psychiatrist under the new Act.	815
-	First assessment of patient under new Act must be undertaken within 3 months of commencement of the new Act.	815
Limited community treatment		
Limited community treatment has been authorised by an authorised doctor.	<p>Limited community treatment continues under new Act.</p> <p>Any conditions attaching to the limited community treatment continue as conditions under the new Act.</p>	818
Monitoring conditions.		
Director of Mental Health has imposed a monitoring condition, including wearing a tracking device.	<p>A monitoring condition to wear a tracking device ends.</p> <p>Another monitoring condition for a forensic patient continues under the new Act.</p>	819
ECT		
Consent is in place for ECT.	Consent continues under new Act.	820
Emergency ECT certificate has been made.	Emergency ECT certificate continues under new Act.	821

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
Interstate move of patients		
Tribunal or Mental Health Court has approved the move of a forensic patient to another State.	The person is taken to have been transferred to the other State by the tribunal under the new Act. Under the new Act, the forensic order ends after a period of 3 years. For this purpose, the 3 years includes the period that the person was interstate under the repealed Act.	822 840
Temporary absences		
Director of Mental Health has approved a temporary absence.	The temporary absence continues under the new Act for the same period and on the same conditions.	823
Tribunal reviews, hearings and decisions		
The tribunal has ordered the transfer of a patient to another authorised mental health service, but the transfer has not taken place.	The transfer must take place.	824
The tribunal has made a decision: <ul style="list-style-type: none"> • about a person’s fitness for trial • to approve ECT • to approve psychosurgery that is non-ablative neurosurgery. 	The decision continues in effect.	825
An application has been made to the tribunal for a review, or to approve ECT or psychosurgery that is non-ablative neurosurgery, and has not been decided.	The application is to continue to be heard under the repealed Act. The tribunal’s decision is taken to be an equivalent decision under the new Act.	826 828
A periodic review or a review on the tribunal’s own initiative had commenced and has not been decided.	The review is to continue to be heard under the repealed Act. The tribunal’s decision is taken to be an equivalent decision under the new Act.	827 828

Mental Health Act 2000	Mental Health Act 2016	Section
	<p>For the review of a forensic order, the tribunal must decide:</p> <ul style="list-style-type: none"> • the category of the order • any limited community treatment for the order • any conditions on the order <p><i>Note: The new Act establishes categories for forensic orders. This provision facilitates this by requiring the tribunal to decide the category of the order and any limited community treatment for the order.</i></p>	
<p>The Act requires the review of any of the following to occur within a stated time:</p> <ul style="list-style-type: none"> • a periodic review of an involuntary treatment order • a review of the detention of a minor in high security • a periodic review of a forensic order • a review of a person’s fitness for trial 	<p>The timing of the next review is calculated from when the latest review under the repealed Act occurred.</p>	829
-	<p>For a person on a treatment authority for over 12 months (including the period on an involuntary treatment order under the repealed Act), the requirement for an administrator to give the tribunal a report on whether a personal guardian should be appointed for the person, and for the tribunal to consider the appointment of a personal guardian, does not apply until 1 year after the commencement of the Act.</p>	863
Psychiatrist Reports		
<p>The Director of Mental Health was satisfied that chapter 7, part 2 applies to a patient but the matter had not been referred to the Mental Health Court or the Director of Public Prosecutions.</p>	<p>The procedures under chapter 7, parts 1 to 3 continue to apply, ending on a reference to the Mental Health Court by the Director of Mental Health or a decision of the Director of Public Prosecutions.</p> <p>A reference to the Mental Health Court is taken to be a reference under the new Act.</p>	832

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
Mental Health Court References		
A reference has been made to the Mental Health Court but not yet decided.	The reference is continued to be heard under the repealed Act. The Court may make the decisions it could make under the repealed Act. A decision of the Court is taken to be a decision under the new Act.	834
A person was detained under a court examination order.	The authority to detain and examination a person under the court examination order continues under the repealed Act.	849
Suspension of proceedings		
Proceedings for an offence have been suspended.	The suspension continues and ends in accordance with the new Act.	858
Appeals.		
A decision of the Mental Health Court is appealable to the Court of Appeal.	The appeal is to be heard under the repealed Act.	835
Another matter may be appealed or the appeal has commenced.	The appeal may commence or continue under the repealed Act.	860
Magistrates Powers		
-	Magistrates' powers under the new Act can be exercised in relation to any offence where proceedings commence after commencement of the Act, regardless of when the alleged offence occurred.	803
Forensic orders		
A forensic order (Mental Health Court) is in place for a person or is made by the Mental Health Court under the transitional provisions (section 834).	The person is on a forensic order (mental health). The category of the order is inpatient.	836

Mental Health Act 2000	Mental Health Act 2016	Section
	<p>Any conditions continue under the order.</p> <p>The person is taken to be subject to the forensic order (mental health) for the period the person was on the forensic order (Mental Health Court).</p> <p><i>Note: Any limited community treatment ordered or approved by the Court continues (section 838).</i></p> <p><i>Note: The new Act establishes categories for forensic orders. To facilitate the transition to the new Act, on the next review of the forensic order, the tribunal must decide the category of the order and any limited community treatment for the order (section 839).</i></p>	
<p>A forensic order (Mental Health Court - Disability) is in place for a person or is made by the Mental Health Court under the transitional provisions (section 834).</p>	<p>A person is on a forensic order (disability).</p> <p>The category of the order is inpatient.</p> <p>Any conditions continue under the order.</p> <p>The person is taken to be subject to the forensic order (disability) for the period the person was on the forensic order (Mental Health Court - Disability).</p> <p>Note:</p> <p>Any limited community treatment ordered or approved by the Court continues (section 838).</p> <p>Note: The new Act establishes categories for forensic orders. To facilitate the transition to the new Act, on the next review of the forensic order, the tribunal must decide the category of the order and any limited community treatment for the order (section 839).</p>	837
<p>Limited community treatment has been ordered or approved by the Court or the tribunal, or authorised by an authorised doctor.</p>	<p>The order, approval or authorisation for the limited community treatment continues unaffected.</p> <p>Prior to the first review of the forensic order under the new Act, the authorised doctor may amend or revoke the limited community treatment under the repealed Act.</p>	838

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
-	<p>On the first review of a forensic order under the new Act, the tribunal must decide:</p> <ul style="list-style-type: none"> • the category of the order • any limited community treatment for the order • any conditions on the order. <p><i>Note: The new Act establishes categories for forensic orders. This provision facilitates this by requiring the tribunal to decide the category of the order and any limited community treatment for the order.</i></p>	839
Victims		
A person is entitled to receive information under a forensic information order.	The person is entitled to receive the information under Schedule 1 of the new Act under an information notice	845
A person is entitled to receive information under a classified patient information order.	The person may continue to receive information under the new Act (see section 783).	846
Material has been submitted to the Mental Health Court or the tribunal by a victim.	The material is a victim impact statement under the new Act.	854
Entities and office holders		
Mental Health Court Registry, including employment of staff.	<p>Mental Health Court Registry continues under the new.</p> <p>The employment of staff is not affected.</p>	848
Authorised mental health services and the high security unit have been declared.	Authorised mental health services and the high security unit continue under the new Act.	856

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
<p>Office holders have been appointed, including:</p> <ul style="list-style-type: none"> • administrators • authorised doctors • authorised mental health practitioners • the President, members and registrar of the Mental Health Court • the President, members and executive officer of the Mental Health Review Tribunal • the Director of Mental Health • assisting psychiatrists 	<p>The appointments continue under the new Act.</p> <p>If the person was appointed for a term, the appointment continues until the end of that term.</p> <p>If the person was appointed on conditions, the conditions continue.</p> <p>The Director of Mental Health becomes the chief psychiatrist.</p> <p>Assisting psychiatrists become assisting clinicians.</p> <p><i>Note: authorised doctors and authorised mental health practitioners hold office on the condition that they have the competencies stated in the relevant Chief Psychiatrist Policy. This means that authorised doctors and authorised mental health practitioners are required to have competencies related to the new Act when the Act commences.</i></p>	857
Miscellaneous		
An administrator has issued a notice refusing a person to visit a patient in the service.	The notice continues under the new Act.	847
A person is required to give a notice to another person but has not done so.	The person must give the notice under the provision of the new Act that deals with a similar matter.	852
Administrator is required to keep certain records (including under the <i>Mental Health Regulation 2013</i>).	Records must be kept under the new Act (see section 336).	853
The Mental Health Court, tribunal or Director of Mental Health is required to prepare an annual report.	Instead of preparing an annual report under the repealed Act, a combined annual report may be prepared.	861

<i>Mental Health Act 2000</i>	<i>Mental Health Act 2016</i>	Section
Other transitional provisions		
-	A transitional regulation may be made about a matter if the new Act makes no or insufficient provision for the matter.	864
-	The Mental Health Court or the tribunal may make orders about transitional arrangements if the new Act makes no or insufficient provision for the matter	851