

A Guide to the *Mental Health Act 2016*

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Attachment – Structure of the Mental Health Act 2016

1. Introduction

1.1 Mental Health Act 2016

The Mental Health Act 2016 commenced on 5 March 2017.

1.2 Purpose

The purpose of the *Guide to the Mental Health Act 2016* is to assist persons to gain a detailed understanding of the Act.

The Guide summarises the provisions of the Act most likely to be of interest to a reader. Given the size of the Act, not all provisions are summarised in the Guide.

The Guide is not legal advice and should not be relied on for that purpose.

The Guide should be read in conjunction with the Act itself. References to relevant provisions of the Act are included to the right of the text to assist with this.

2. Objects and principles

2.1 Introduction

The Objects and Principles of the Act play a critical role in determining how the Act is to be interpreted and administered.

MHA 2016,
s.7

A person must have regard to the principles in performing a function under the Act.

2.2 Objects

MHA 2016,
s.3

The main objects of the Act are:

- to improve and maintain the health and wellbeing of persons who have a mental illness who do not have the capacity to consent to be treated
- to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial, and
- to protect the community if persons diverted from the criminal justice system may be at risk of harming others.

The main objects are to be achieved in a way that:

- safeguards the rights of persons
- is the least restrictive of the rights and liberties of a person who has a mental illness (see below), and
- promotes the recovery of a person who has a mental illness, and the person's ability to live in the community, without the need for involuntary treatment and care.

A way is the least restrictive of the rights and liberties of a person who has a mental illness if the way adversely affects the person's rights and liberties only to the extent required to protect the person's safety and welfare or the safety of others.

2.3 Principles

The following principles apply to the administration of this Act in relation to a person who has, or may have, a mental illness:

Same human rights

- the right of all persons to the same basic human rights must be recognised and taken into account
- a person's right to respect for his or her human worth and dignity as an individual must be recognised and taken into account

Matters to be considered in making decisions

- to the greatest extent practicable, a person is to be encouraged to take part in making decisions affecting the person's life, especially decisions about treatment and care
- to the greatest extent practicable, in making a decision about a person, the person's views, wishes and preferences are to be taken into account
- a person is presumed to have capacity to make decisions about the person's treatment and care and other matters under this Act

Support persons

- to the greatest extent practicable, family, carers and other support persons of a person who has a mental illness are to be involved in decisions about the person's treatment and care, subject to the person's right to privacy

Provision of support and information

- to the greatest extent practicable, a person is to be provided with necessary support and information to enable the person to exercise rights under this Act, including, for example, providing access to other persons to help the person express the person's views, wishes and preferences

Achievement of maximum potential and self-reliance

- to the greatest extent practicable, a person is to be helped to achieve maximum physical, social, psychological and emotional potential, quality of life and self-reliance

Acknowledgement of needs

- a person's age-related, gender-related, religious, communication and other special needs must be recognised and taken into account
- a person's hearing, visual or speech impairment must be recognised and taken into account

Aboriginal people and Torres Strait Islanders

- the unique cultural, communication and other needs of Aboriginal people and Torres Strait Islanders must be recognised and taken into account
- Aboriginal people and Torres Strait Islanders should be provided with treatment, care and support in a way that recognises and is consistent with Aboriginal tradition or Island custom, mental health and social and emotional wellbeing, and is culturally appropriate and respectful
- to the extent practicable and appropriate in the circumstances, communication with Aboriginal people and Torres Strait Islanders is to be assisted by an interpreter

Persons from culturally and linguistically diverse backgrounds

- the unique cultural, communication and other needs of persons from culturally and linguistically

diverse backgrounds must be recognised and taken into account

- services provided to persons from culturally and linguistically diverse backgrounds must have regard to the person's cultural, religious and spiritual beliefs and practices
- to the extent practicable and appropriate in the circumstances, communication with persons from culturally and linguistically diverse backgrounds is to be assisted by an interpreter

Minors

- to the greatest extent practicable, a minor receiving treatment and care must have the minor's best interests recognised and promoted, including, for example, by receiving treatment and care separately from adults if practicable and by having the minor's specific needs, wellbeing and safety recognised and protected

Maintenance of supportive relationships and community participation

- to the greatest extent practicable, the importance of a person's continued participation in community life and maintaining existing supportive relationships are to be taken into account, including, for example, by providing treatment in the community in which the person lives

Importance of recovery-oriented services and reduction of stigma

- the importance of recovery-oriented services and the reduction of stigma associated with mental illness must be recognised and taken into account

Provision of treatment and care

- treatment and care provided under this Act must be provided to a person who has a mental illness only if it is appropriate for promoting and maintaining the person's health and wellbeing

Privacy and confidentiality

- a person's right to privacy and confidentiality of information about the person must be recognised and taken into account.

The Act also establishes principles for victims of unlawful acts (see section 9 of this Guide).

3. Key terms used in the Act

3.1 Introduction

The key terms used in the Act are outlined below.

The Dictionary to the Act (Schedule 3 of the Act) has a full list of definitions for the Act.

3.2 What is a mental condition

Under the Act, a mental condition includes (but is not limited to) a mental illness and an intellectual disability. Epilepsy is an example of another mental condition.

MHA 2016,
Dictionary

The provisions of the Act related to examination, assessment and treatment authorities apply to persons with a mental illness.

The provisions of the Act related to the preparation of psychiatrist reports, the Mental Health Court, forensic orders and treatment support orders apply to persons with a mental condition.

Also, the power of magistrates to dismiss charges against a person who appears to have been of unsound mind at the time of an alleged offence or is unfit for trial apply to persons with a mental condition.

3.3 What is a mental illness

A mental illness is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.

MHA 2016,
Dictionary

However, a person must not be considered to have a mental illness merely because:

- the person holds or refuses to hold a particular religious, cultural, philosophical or political belief or opinion
- the person is a member of a particular racial group
- the person has a particular economic or social status
- the person has a particular sexual preference or sexual orientation
- the person engages in sexual promiscuity
- the person engages in immoral or indecent conduct
- the person takes drugs or alcohol
- the person has an intellectual disability
- the person engages in antisocial behaviour or illegal behaviour
- the person is or has been involved in family conflict, or
- the person has previously been treated for a mental illness or been subject to involuntary assessment or treatment.

However, a matter listed above does not prevent the person having a mental illness. An example of this is a person who has a mental illness and an intellectual disability.

A decision that a person has a mental illness must be made in accordance with internationally accepted medical standards.

3.4 What is an intellectual disability

An intellectual disability means:

- an intellectual disability as defined in the *Forensic Disability Act 2011*, section 12, or
- a cognitive disability as defined in the *Forensic Disability Act 2011*, section 11.

MHA 2016,
Dictionary

Intellectual disability (as defined in the *Forensic Disability Act 2011*) is a disability under the *Disability Services Act 2006* that:

Forensic
Disability Act,
ss.11 & 12

- is characterised by significant limitations in intellectual functioning and adaptive behaviour, and
- originates in a person before the age of 18.

Cognitive disability (under the *Forensic Disability Act 2011*) is a condition that is:

- attributable to a cognitive impairment, and
- a disability as defined in the *Disability Services Act 2000*.

Disability (under the *Disability Services Act 2000*) is a person's condition attributable to an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment that results in:

Disability
Services Act,
ss.11

- a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self-care or management, and
- the person needing support.

The impairment may result from an acquired brain injury.

The disability must be permanent or likely to be permanent.

The disability may be, but need not be, of a chronic episodic nature.

3.5 Who is an involuntary patient

An involuntary patient is:

MHA 2016,
s.11

- a person subject to a treatment authority
- a person subject to a forensic order
- a person subject to a treatment support order
- a person subject to an examination authority
- a person subject to a recommendation for assessment
- a person subject to a judicial order
- a person detained while a recommendation for assessment is being made for the person, or
- a person who is absent without permission from another State and is detained in an authorised mental health service.

Emergency examination authorities are made under the *Public Health Act 2005*, Chapter 4A. Persons subject to emergency examination authorities are not involuntary patients under the *Mental Health Act 2016*.

Treatment authorities are made by authorised doctors. They authorise the involuntary treatment and care of a person for a mental illness, and, if necessary, detention in an authorised mental health service.

Forensic orders are a forensic order (mental health), forensic order (disability) or forensic order (Criminal Code).

Forensic orders (mental health) and forensic orders (disability) are made by the Mental Health Court to protect the safety of the community. A forensic order (mental health) allows the involuntary treatment and care of a person for a mental condition, and if necessary, detention in an authorised mental health service. A forensic order (disability) allows the involuntary care of a person for an intellectual disability, and, if necessary, detention in the Forensic Disability Service or an authorised mental health service.

Forensic orders (Criminal Code) are made by the Supreme Court or District Court under the Criminal Code, sections 613, 645 or 647. These orders require a person to be admitted to an authorised mental health service to be dealt with under the *Mental Health Act 2016*. A forensic order (Criminal Code) allows the involuntary treatment and care of a person for a mental condition and, if necessary, detention in an authorised mental health service.

Treatment support orders are made by the Mental Health Court to protect the safety of the community in circumstances where a forensic order is not warranted.

A treatment support order cannot be made for a person who only requires care for an intellectual disability.

There are two main differences between a forensic order and a treatment support order, namely:

- the way in which treatment in the community (i.e. a community category or limited community treatment) is authorised, and
- the nature of clinical oversight of the person on the order under the Chief Psychiatrist Policies.

While treatment support orders authorise involuntary treatment, the Mental Health Court and the Mental Health Review Tribunal do not set limits on the extent of community treatment under treatment support orders. As with treatment authorities, this is the responsibility of authorised doctors in accordance with the criteria under the Act.

As with treatment authorities, the category for these orders must be a community category, unless it is necessary for the person to be an inpatient.

The Act requires the Chief Psychiatrist to make Policies for the clinical management of persons on forensic orders and treatment support orders (see section 4.1.3 of this Guide). These Policies provide a more stringent level of oversight for persons on forensic orders than those on treatment support orders.

A treatment support order may also be made by the Mental Health Review Tribunal when a forensic order is reviewed. The making of a treatment support order by the Tribunal acts as a 'step down' from a forensic order as part of a person's recovery.

A treatment support order allows the involuntary treatment and care of a person for a mental condition and, if necessary, detention in an authorised mental health service.

Examination authorities are made by the Mental Health Review Tribunal.

Examination authorities authorise a doctor or authorised mental health practitioner to enter premises to detain and involuntarily examine a person to decide if a recommendation for assessment should be made for the person.

Recommendations for assessments are made by doctors and authorised mental health practitioners.

A recommendation for assessment authorises an authorised doctor to detain and involuntarily assess a

person to decide if a treatment authority should be made for the person.

Judicial orders are:

- a 'court examination order', made by the Mental Health Court requiring a person before the Court to be involuntarily examined to prepare a report on the matters requested by the Court MHA 2016, s.668
- an 'examination order' made by a magistrate requiring a person before the Court to be involuntarily examined to decide the person's treatment and care needs s.177
- an order of the Mental Health Court that a person be detained in an authorised mental health service when the Court has decided that criminal proceedings against the person are to be continued s.124
- an order of the Supreme Court or District Court that a person be detained in an authorised mental health service when the Court has referred the person to the Mental Health Court s.183
- an order of a Court that a person be detained in an authorised mental health service during an adjournment in a trial s.193
- an order of the Mental Health Court that a person be detained in an authorised mental health service when the Court has ordered a stay of a decision being appealed against s.544
- an order of the Court of Appeal that a person be detained in an authorised mental health service when the Court has decided to return a matter to the Mental Health Court. s.551

A judicial order does not authorise the involuntary treatment and care of a person.

Recommendation for assessment being made. A person may be detained in an authorised mental health service or public sector health service facility while a recommendation for assessment is being made for the person if there is a risk that the person may leave the service or facility while a recommendation for assessment is being made. MHA 2016, s.36

The person may be detained for up to one hour.

Absent without permission from another State. A person who is absent without permission from another State, for whom an apprehension authority has been issued in the other State, may be apprehended and taken to an authorised mental health service by an authorised person. MHA 2016, s.368

The person may be detained in the service until arrangements are made for the person's return interstate.

3.6 What are the criteria for the making of treatment authorities

A treatment authority may be made for a person if:

- the treatment criteria apply to the person, and
- there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

MHA 2016,
s.48

Meaning of treatment criteria

The treatment criteria for a person are all of the following:

- the person has a mental illness
- the person does not have capacity to consent to be treated for the illness (see below), and
- because of the person's illness, the absence of involuntary treatment, or the absence of continued involuntary treatment, is likely to result in:
 - imminent serious harm to the person or others, or
 - the person suffering serious mental or physical deterioration.

MHA 2016,
s.12

Meaning of capacity to consent to be treated

A person has capacity to consent to be treated if the person is capable of understanding, in general terms:

- that the person has an illness, or symptoms of an illness, that affects the person's mental health and wellbeing
- the nature and purpose of the treatment for the illness
- the benefits and risks of the treatment, and alternatives to the treatment, and
- the consequences of not receiving the treatment.

MHA 2016,
s.14

The person must also be capable of making a decision about the treatment and communicating the decision in some way.

The fact that a person decides not to receive treatment does not mean that the person does not have capacity to consent to be treated.

The Act promotes supported decision making by providing that a person may be supported by another person in understanding the matters listed above and in making a decision about treatment.

These provisions do not affect the common law in relation to the capacity of a minor to consent to be treated or for a parent of a minor to consent to treatment of the minor.

Meaning of less restrictive way

Under the Act, there is a less restrictive way for a person to receive treatment and care if the person is able to receive the treatment and care that is reasonably necessary for the person's mental illness in one of the following ways:

- if the person is a minor - with the consent of the minor's parent
- if the person has made an advance health directive - under the advance health directive
- if a personal guardian has been appointed for the person - with the consent of the personal guardian

MHA 2016,
s.13

- if an attorney has been appointed by the person - with the consent of the attorney, or
- with the consent of the person's statutory health attorney, other than the Public Guardian.

(See definitions in section 3.8 of this Guide).

The Act provides examples of when there may **not** be a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person's mental illness, namely:

- an advance health directive does not cover the matters that are clinically relevant or appropriate for the person's treatment and care
- an advance health directive does not authorise the administration of the medications that are clinically necessary for the person's treatment and care, and
- an attorney does not consent to the administration of the medications that are clinically necessary for the person's treatment and care.

In deciding whether there is a less restrictive way for a person to receive the treatment and care that is reasonably necessary for the person's mental illness, a person must also comply with the relevant Chief Psychiatrist Policy (see section 4.1.3 of this Guide).

3.7 What is treatment in the community

Treatment in the community is relevant to persons subject to a treatment authority, forensic order of treatment support order and means:

MHA 2016,
Dictionary

- limited community treatment (for a patient on an inpatient category)
- a community category, where the person receives treatment and care while living in the community.

Limited community treatment is treatment and care of a person in the community, including in the grounds and buildings of an authorised mental health service (other than an inpatient unit), for a period of not more than seven consecutive days.

MHA 2016,
Dictionary

The purpose of limited community treatment is to support a patient's recovery by transitioning the patient to living in the community with appropriate treatment and care.

MHA 2016,
s.16

3.8 Other definitions

Advance health directive means an advance health directive made under the *Powers of Attorney Act 1998*

MHA 2016,
Dictionary

Attorney means an attorney appointed under an advance health directive or under an enduring power of attorney (for a personal matter), under the *Powers of Attorney Act 1998*

Dictionary

Enduring power of attorney is an enduring power of attorney made under *Powers of Attorney Act 1998*

Dictionary

Nominated support person is someone appointed by a person under the Act to be the person's nominated support person if the person becomes an involuntary patient (see section 11.11.2 of this Guide)

Dictionary

Personal guardian means a guardian for a personal matter appointed by the Queensland Civil and Administrative Tribunal (QCAT) under the *Guardianship and Administration Act 2000*

Dictionary

Relevant circumstances, of a person, means:

- the person's mental state and psychiatric history
- any intellectual disability of the person
- the person's social circumstances, including family and social support
- the person's response to treatment and care and the person's willingness to receive appropriate treatment and care, and
- if relevant, the person's response to previous treatment in the community

MHA 2016,
Dictionary

Minor means a person under 18 years of age

Acts Int. Act,
Sch. 1

Statutory health attorney is the first, in order, of the following people who is readily available and culturally appropriate to make decisions for the person:

Powers of Att.
Act 1998, s.63

- a spouse of the adult if the relationship between the adult and the spouse is close and continuing
- a person who is 18 years or more and who has the care of the adult and is not a paid carer for the adult, and
- a person who is 18 years or more and who is a close friend or relation of the adult and is not a paid carer of the adult

Spouse includes a de facto partner and a civil partner under the *Civil Partnerships Act 2011*

Acts Int. Act,
Sch. 1

4. Positions and bodies established under Act

4.1. Chief Psychiatrist

4.1.1 Functions

The position of the Chief Psychiatrist is established under the Act.

MHA 2016,
s.298

The Chief Psychiatrist must be a psychiatrist.

The Chief Psychiatrist has the following functions:

s.301

- to the extent practicable, ensuring the protection of the rights of patients under this Act, while balancing their rights with the rights of others
- to the extent practicable, ensuring the involuntary examination, assessment, treatment, care and detention of persons under this Act complies with this Act
- facilitating the proper and efficient administration of this Act
- monitoring and auditing compliance with this Act
- promoting community awareness and understanding of this Act
- advising and reporting to the Minister on any matter relating to the administration of this Act on the Chief Psychiatrist's own initiative or on the written request of the Minister
- preparing and giving to the Minister a report on the competencies the Chief Psychiatrist considers necessary for a health practitioner to perform a function or exercise a power of an authorised doctor (see section 4.4 of this Guide), and
- performing other functions stated in the Act, such as approving limited community treatment and temporary absences for certain patients.

The Chief Psychiatrist has responsibility for 'patients' of authorised mental health services, namely:

s.297

- involuntary patients, and
- persons receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

In performing a function under the Act, the Chief Psychiatrist is not under the control of the Minister or another person.

s.302

4.1.2 Power to require information

To perform the Chief Psychiatrist's functions, the Chief Psychiatrist may require the administrator of an authorised mental health service to provide a particular document or other information about a patient of the service.

MHA 2016,
s.304

4.1.3 Policies and Practice Guidelines

The Chief Psychiatrist **must** make a Policy about each of the following matters:

MHA 2016,
s.305(1)

- the application of the treatment criteria to patients and less restrictive ways for patients to receive treatment and care for their mental illness
- the way in which records for patients are to be kept
- the management of complaints by patients and support persons
- the way in which a second opinion may be obtained
- the treatment and care of forensic patients
- the treatment and care of forensic patients where the order relates to a prescribed offence (see section 8.2 of this Guide)
- the treatment and care of persons subject to treatment support orders
- the minimisation of the risk of patients absconding, and
- the competencies necessary for a person to be an authorised doctor or authorised mental health practitioner (see sections 4.4 and 4.5 of this Guide).

The Chief Psychiatrist must also make a Policy in relation to the use of mechanical restraint, seclusion, physical restraint and the appropriate use of medications.

MHA 2016,
s.273

The Chief Psychiatrist may make a Policy or Practice Guideline for other matters relating to the administration of the Act.

s.305(2)

An authorised doctor, authorised mental health practitioner, administrator of an authorised mental health service, or other person performing a function under the Act must comply with a Policy or Practice Guideline.

s.305(3),
s.273(2)

All Policies and Practice Guidelines must be made publicly available.

s.306

4.1.4 Annual report

The Chief Psychiatrist must provide to the Minister an annual report on the administration of the Act within 90 days of the end of the financial year. The Act states the matters that must be included in the annual report.

MHA 2016,
s.307

The Minister must table a copy of the annual report in the Parliament within 14 days of receiving the report.

4.1.5 Investigations

The Chief Psychiatrist may investigate a matter relevant to the Chief Psychiatrist's functions under the Act.

MHA 2016,
s.308

In undertaking an investigation, the Chief Psychiatrist and inspectors have the powers under Chapter 14 of the Act (see section 4.7 of this Guide).

An investigation report may include recommendations relating to the improvement of the operations of an authorised mental health service.

s.309

Where a report includes such recommendations, the Chief Psychiatrist may direct the administrator of the authorised mental health service to take particular actions and to report to the Chief Psychiatrist about the actions taken.

s.310

Details of any directions given and the actions taken are to be included in the Chief Psychiatrist's annual report.

MHA 2016,
s.307(2)

4.1.6 Actions where there is a serious risk to persons

The Chief Psychiatrist may take particular actions in relation to a forensic patient or a class of forensic patients if there is a serious risk to the life, health or safety of a person or to public safety. The purpose of this action is to minimise risks to the community.

MHA 2016,
s.313

The action may be to:

- order the suspension of limited community treatment for a forensic patient or patients for up to seven days
- order the category of a forensic order or orders to be changed to inpatient for up to seven days
- order an administrator to report to the Chief Psychiatrist on the circumstances that led to a particular matter happening
- review the treatment and care provided to a forensic patient or patients
- review any Policies or Practice Guidelines about treatment in the community, or
- take any other action necessary to prevent a similar matter happening in the future.

A person may appeal a decision to take this action (see section 15.2 of this Guide).

The Minister may direct the Chief Psychiatrist to review a particular matter where there is a serious risk to the life, health or safety of a person or to public safety, and report to the Minister on the outcome of the review. This power does not allow the Minister to direct the Chief Psychiatrist to take any particular action.

s.312

4.2 Authorised mental health services

Authorised mental health services are health services that provide treatment and care to persons with a mental illness that are declared by the Chief Psychiatrist by gazette notice. An authorised mental health service may be in the public sector or private sector.

MHA 2016,
s.329

A declaration by the Chief Psychiatrist may include conditions that facilitate the provision of treatment and care to persons in rural and remote areas, for example, by allowing a more limited range of services to be provided at a small rural hospital.

Authorised mental health services are primarily responsible under the Act for the treatment and care of persons subject to treatment authorities, forensic orders and treatment support orders.

A **high security unit** is a public sector authorised mental health service declared by the Chief Psychiatrist by gazette notice. The Act places additional safeguards on admitting patients to high security units.

s.330

An **authorised mental health service (rural and remote)** is an authorised mental health service declared by the Chief Psychiatrist by gazette notice. The Act provides enhanced flexibility for the assessment of persons and in reviewing the making of a treatment authority by an authorised psychiatrist in an authorised mental health service (rural and remote) (see sections 5.7 and 5.8.2 of this Guide).

s.331

4.3 Administrators of authorised mental health services

The Chief Psychiatrist is responsible for appointing an administrator for each authorised mental health service.

MHA 2016,
s.332

Administrators have the following functions:

s.333

- to the extent practicable, ensuring the operation of the authorised mental health service complies with the Act
- taking reasonable steps to ensure patients of the authorised mental health service receive appropriate treatment and care
- notifying patients, the Chief Psychiatrist, the Tribunal and others of decisions and other matters as required under the Act
- appointing authorised doctors and authorised mental health practitioners
- performing other functions under the Act such as approving the transfer of involuntary patients and arranging for the transport of persons required to return to a service (see sections 18.1 and 18.2 of this Guide).

Administrators must keep records for each involuntary patient and classified patient (voluntary) (see section 6.2 of this Guide for information on classified patients (voluntary)).

s.336

4.4 Authorised doctors

Administrators are responsible for appointing authorised doctors. Authorised doctors have the responsibilities outlined in the Act, including making treatment authorities, and providing treatment and care to involuntary patients.

MHA 2016,
s.338

An administrator may only appoint a person as an authorised doctor if the person has the competencies stated in the relevant Chief Psychiatrist Policy.

s.338 &
305(1)

An authorised doctor who is a psychiatrist is an authorised psychiatrist.

Dictionary

If an administrator is a psychiatrist, the administrator is automatically an authorised doctor.

s.339

Authorised doctors must give written notice to the relevant administrator of decisions made by the authorised doctor under the Act. An example of a decision under the Act is the making of a treatment authority.

s.345

Health practitioners, other than doctors, may be appointed by an administrator to perform some or all of the functions of an authorised doctor. For an appointment to be made, a class of health practitioners must first be prescribed by regulation in relation to particular functions of an authorised doctor. Before a regulation is made, the Minister must be satisfied that the class of practitioners has the competencies that the Chief Psychiatrist considers necessary to perform the relevant functions of an authorised doctor.

s.341

A position of authorised doctor ends if the Chief Psychiatrist is satisfied the person is unable to perform the functions of an authorised doctor because the doctor does not have the competencies outlined in the Chief Psychiatrist Policy.

s.343(2)

4.5 Authorised mental health practitioners

Administrators are responsible for appointing authorised mental health practitioners. Authorised mental health practitioners have the responsibilities outlined in the Act, including making recommendations for assessment.

MHA 2016,
s.340

An administrator may only appoint a person as an authorised mental health practitioner if the person has the competencies stated in the relevant Chief Psychiatrist Policy.

s.340 &
305(1)

A position of authorised mental health practitioner ends if the Chief Psychiatrist is satisfied the person is unable to perform the functions of an authorised mental health practitioner due to not having the competencies outlined in the Chief Psychiatrist Policy.

s.343(2)

4.6 Authorised persons

Each of the following is an authorised person for the Act:

MHA 2016,
s.359

- the administrator of an authorised mental health service
- an ambulance officer
- a health practitioner
- a police officer
- a corrective services officer for the purpose of taking a person to or from a corrective services facility or court, and
- a youth detention employee for the purpose of taking a person to or from a youth detention centre or court.

In addition, the administrator of an authorised mental health service may appoint a health service employee as an authorised person.

Authorised persons are responsible for transporting persons under the Act (see section 18.2 of this Guide).

4.7 Inspectors

The Chief Psychiatrist is responsible for the appointment of inspectors.

MHA 2016,
s.555

The Chief Psychiatrist is also an inspector.

The functions of an inspector are to:

s.556

- investigate a matter under Chapter 10, part 4 of the Act when directed to do so by the Chief Psychiatrist, for example, if there is a concern about patients' rights in a service, and
- to monitor and enforce compliance with the Act, including where the Act provides for an offence for non-compliance.

An inspector may enter a place:

- with the consent of the occupier of the place
- if the place is a public place while open to the public
- under a warrant, or
- if the place is an authorised mental health service or public sector health service facility and is open to the public.

MHA 2016,
Chapt. 14, pt.
3

Inspectors are given general powers after entering places, including to search the place, confer alone with a patient, and inspect any document such as a health record.

Chapt. 14, pt.
4-8

Inspectors have powers to seize things.

Inspectors have powers to obtain information.

A person may appeal against a thing being seized or forfeited.

4.8 Authorised security officers

An authorised security officer is:

- a person employed or engaged by an authorised mental health service to provide security services
- an appropriately qualified health service employee who is authorised by the administrator to provide security services.

MHA 2016,
s.384

An authorised security officer has powers and responsibilities for searching particular persons under the Act (see section 18.3 of this Guide).

Chapt. 11, pt.
7

4.9 Mental Health Court

The Mental Health Court is continued under the Act.

MHA 2016,
s.637

The Court consists of Supreme Court judges who are appointed to the Court by the Governor-in-Council.

s.641 & 645

One of the members is appointed president.

The Mental Health Court is assisted by assisting clinicians appointed by the Governor-in-Council.

s.652

Assisting clinicians may be psychiatrists or persons with expertise in the care of persons who have an intellectual disability.

The jurisdiction of the Court is to:

s.639

- hear and decide references under Chapter 5 of the Act (see Chapter 8 of this guide)
- hear appeals (see section 15.3 of this Guide), and
- review a person's detention in an authorised mental health service or the Forensic Disability Service established under the *Forensic Disability Act 2011* (see section 8.11 of this Guide).

Chapt. 16, pt.
1, div. 6

The Mental Health Court is supported by a registry established under the Act.

The registry consists of a registrar and other staff.

4.10 Mental Health Review Tribunal

The Mental Health Review Tribunal is continued under the Act.

MHA 2016,
s.704

The Tribunal consists of the president, deputy president and other members appointed by the Governor-in-Council.

s.707

Members must have the competencies developed by the president in administrative law, the operation of the Act, and mental health and intellectual disability issues, including forensic mental health and forensic disability issues.

s.707(4) &
714(2) & (3)

The Tribunal reviews:

s.705

- treatment authorities
- forensic orders
- treatment support orders
- a person's fitness for trial, and
- the detention of a minor in a high security unit.

The Tribunal hears applications for:

- examination authorities
- approvals of regulated treatments (electroconvulsive therapy and non-ablative neurosurgery), and
- approvals of transfers of forensic patients and patients subject to treatment support orders out of Queensland, and forensic patients into Queensland.

These functions are detailed in Chapter 14 of this Guide.

The Tribunal also hears and decides appeals (see section 15.2 of this Guide).

The Tribunal is assisted by an executive officer and other staff.

s.713

5. Examinations, assessments and treatment authorities

5.1 Overview

An examination of a person may be undertaken to decide if a recommendation for assessment should be made for the person.

A recommendation for assessment authorises an assessment of a person to be undertaken to decide if a treatment authority should be made for the person.

A treatment authority authorises the treatment and care of a person for a mental illness without the person's consent.

See Chapter 2 of the Act (Making of treatment authorities after examination and assessment).

5.2 Definitions

Advance health directive—see section 3.8 of this Guide.

Attorney—see section 3.8 of this Guide.

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

Acts Interp.
Act, Sch. 1

Nominated support person—see section 3.8 of this Guide.

Personal guardian—see section 3.8 of this Guide.

Prosecuting authority—see section 8.2 of this Guide.

Relevant circumstances - see section 3.8 of this Guide.

5.3 How an examination may be undertaken

A doctor or authorised mental health practitioner may examine a person to decide whether to make a recommendation for assessment for the person.

MHA 2016,
s.31

An examination may be undertaken in any way, for example, with the person's consent or under a provision of the Act.

The Act provides for examinations to be made under an examination authority (see section 5.5 of this Guide). The *Public Health Act 2005* provides for examinations to be made under an emergency examination authority (see section 5.4 of this Guide).

The use of force may only be used for the examination of a person if the person is subject to an emergency examination authority or an examination authority, or if it is permitted under another law such as the *Guardianship and Administration Act 2000*.

There are no restrictions on where an examination may be undertaken.

An examination may be undertaken by audio-visual link if the doctor or authorised mental health practitioner considers it is clinically appropriate.

s.795

5.4. Emergency examination authorities (under the *Public Health Act 2005*)

5.4.1 Definitions (for *Public Health Act 2005* only)

Authorised person means a police officer, security officer, ambulance officer or a health service employee appointed as an authorised person by the person-in-charge of a public sector health service facility or the administrator of an authorised mental health service.

PHA, 157A

Health practitioner means a person registered under the Health Practitioner Regulation National Law, or another person who provides health services, such as a social worker.

PHA, 157A

Health service employee is an employee of a Hospital and Health Service under the *Hospital and Health Boards Act 2011*.

Inpatient hospital means a hospital where a person may be discharged on a day other than the day on which the person was admitted to the hospital.

PHA, 157B

Public sector health service facility, under the *Hospital and Health Boards Act 2011*, is a facility at which public sector health services are provided.

Treatment and care place means a public sector health service facility or another place, other than a watch house, where the person may receive appropriate treatment and care. Another place may be the person's home.

PHA, 157A

5.4.2 Overview

The emergency examination authority provisions allow ambulance officers and police officers to transport a person with a major disturbance in mental capacity to a public sector health service facility, or another place in emergency circumstances.

These provisions are located in Chapter 4A of the *Public Health Act 2005* as a disturbance in a person's mental capacity may be caused by illness, disability, injury, intoxication or other reason.

These provisions do not affect the operation of the *Guardianship and Administration Act 2000* in relation to providing urgent health care. This means that the provisions of both Acts can apply to a person being examined or treated in urgent circumstances.

PHA, 157ZG

5.4.3 Emergency examination authorities

The emergency examination authority provisions apply if an ambulance officer or police officer reasonably believes that:

PHA,
157B(1)&(3)

- a person's behaviour indicates the person is at immediate risk of serious harm, for example, by threatening to commit suicide
- the risk appears to be the result of major disturbance in the person's mental capacity caused by illness, disability, injury, intoxication or other reason, and
- the person appears to require urgent examination, treatment or care.

Where this occurs, the officer may detain and transport the person to a treatment and care place.

If the treatment and care place is a public sector health service facility that is not an inpatient hospital, the transport of the person to the facility requires the approval of the person in charge of the facility.

Under section 609(1)(a)(i) of the *Police Powers and Responsibilities Act 2000*, a police officer may enter a place if the officer reasonably suspects there is an imminent risk of injury to a person at the place. The *Public Health Act 2005* provides that a police officer may consider advice from a health practitioner in forming a view about whether there is an imminent risk of injury to a person. This could occur, for example, if an acutely unwell patient left a hospital and was at risk of self-harm. PHA, 157B (2)

The ambulance officer or police officer must explain to the person that the person is being detained and transported to a treatment and care place. The officer must take reasonable steps to ensure the person understands this information, including by having regard to the person's culture, mental impairment and communication ability. PHA, 157C

When a person is transported to a treatment and care place that is a public sector health service facility, the ambulance officer or police officer must immediately make an emergency examination authority for the person. PHA, 157D

The emergency examination authority must be in the approved form.

The ambulance officer or police officer must give the emergency examination authority to a health service employee at the facility or service.

The person may be detained at the facility or service while the emergency examination authority is being made. PHA, 157D (3)

A person who is subject to an emergency examination authority may be detained for up to six hours at the facility to be examined to decide the person's treatment and care needs or to make a recommendation for assessment. PHA, 157E (1)

A doctor or health practitioner may extend this period for up to 12 hours if necessary for the examination. PHA, 157E (4)

The doctor or health practitioner must explain to the person the effect of the emergency examination authority. The doctor or health practitioner must take reasonable steps to ensure the person understands this information, including by having regard to the person's culture, mental impairment, and communication ability. PHA, 157E (2) & (3)

An examination may be undertaken by audio-visual link if the doctor or health practitioner considers it is clinically appropriate. PHA, 157F (3)

An outcome of the examination may be the making of a recommendation for assessment for the person under the *Mental Health Act 2016*, section 39.

5.4.4 Absconding persons

Where a person absconds from a public sector health service facility while being detained under the *Public Health Act 2005* (sections 157D(3) or 157(E)), the person in charge of the facility may make arrangements for the person to be returned. PHA, 157H & 157J

This is achieved by:

- authorising an authorised person, other than a police officer, to return the person (the authorised person may request a police officer to assist in returning the person), or
- requesting a police officer to return the person.

Before making an authorisation or request, the person in charge of the facility or the administrator of the service must make reasonable efforts to contact the person and encourage the person to return. However, this is not required if it may risk the person harming himself, herself or others.

The authorisation or request must be in the approved form.

The authorisation or request is in force for three days.

PHA, 157I

The period for which a person may be detained under an emergency examination authority recommences when the person is returned to the facility.

PHA, 157K

5.4.5 Warrants

An authorised person may apply to a magistrate for a warrant to apprehend and transport a person to a public sector health service facility.

PHA, Chapt 4A, pt. 5

This applies to a person who has absconded from a facility while detained under the *Public Health Act 2005*, part 4A.

A warrant issued by a magistrate authorises an authorised person to enter a place, such as a person home, to search for the person, and to detain and transport the person to a public sector health service facility.

5.4.6 Other matters

A person subject to an emergency examination authority in a public sector health service facility may be transferred to another public sector health service facility.

PHA, 157M

This transfer does not extend the period for which a person may be detained under the authority.

A person under an emergency examination authority must be returned to a place in the community reasonably requested by the person at the end of the examination period. This does not apply if a recommendation for assessment is made for the person, as this is addressed under the *Mental Health Act 2016*.

PHA, 187P

5.4.7 Searches

A person who is detained in a public sector health service facility under the *Public Health Act 2005*, part 4A, may be searched by a doctor or health practitioner.

PHA, Chapt. 4A, pt. 6

A search may be undertaken if the doctor or health practitioner believes the person may have possession of a harmful thing.

A search may occur without the person's consent.

Provisions of the *Public Health Act 2005* outline the way in which searches must be undertaken. These provisions are equivalent to those under the *Mental Health Act 2016* (see section 18.3.3 of this Guide).

5.5 Examination authorities

Examination authorities are made by the Mental Health Review Tribunal (see section 14.9 of this Guide).

The purpose of an examination authority is to examine a person to decide if a recommendation for assessment should be made for the person in circumstances where powers are required to enter premises and detain a person for an examination.

An examination authority authorises a doctor or authorised mental health practitioner to enter a place, such as a person's home, to examine the person without the person's consent.

MHA 2016,
s.32

The person may be detained for the examination, in a public sector health services facility or authorised mental health service for up to 6 hours, which may be extended up to 12 hours; or in any other place up to 1 hour.

An authorised person may transport the person to an authorised mental health service or public sector health facility, where the person may be detained for an examination.

The doctor or authorised mental health practitioner may exercise these powers with the help and using the force that is necessary and reasonable in the circumstances.

s.33 & s.34
PPRA, s.16

In performing these functions, the doctor or authorised mental health practitioner is a public official for the purposes of the *Police Powers and Responsibilities Act 2000*. This means that a police officer may be asked to assist the doctor or health practitioner in the exercise of these powers. Where this occurs, the police officer has the same powers as the public official.

Before exercising these powers, the doctor or health practitioner must:

MHA 2016,
s.35

- identify himself or herself to the person
- tell the person an examination authority has been made
- explain to the person, in general terms, the nature and effect of the authority
- give the person a copy of the authority, if requested, and
- if the doctor or health practitioner is entering a place—give the person an opportunity to allow the doctor or health practitioner entry to the place without using force.

However, the doctor or practitioner need not comply with the steps if it may affect the authority being actioned.

If requested, the doctor or health practitioner must give a copy of the authority to the person's nominated support person, personal guardian, or attorney.

5.6 Recommendations for assessment

A doctor or authorised mental health practitioner may, within seven days of examining a person, make a recommendation for assessment for a person.

MHA 2016,
s.39

A recommendation for assessment may be made if:

- the treatment criteria may apply to the person, and
- there appears to be no less restrictive way for the person to receive treatment and care for the person's mental illness.

The recommendation for assessment must be in the approved form.

As soon as practicable after deciding to make a recommendation for assessment, the doctor or authorised mental health practitioner must explain the effect of the decision to the person.

s.40

If requested, the doctor or authorised mental health practitioner must give a copy of the recommendation for assessment to the person. However, this does not apply if this would adversely affect the health and wellbeing of the person.

s.40

If requested, the doctor or authorised mental health practitioner must give a copy of the recommendation to the person's nominated support person, personal guardian or attorney.

A recommendation for assessment is in force for seven days after it is made.

MHA 2016,
s.41

Provisions of the Act apply where a doctor or authorised mental health practitioner decides to make a recommendation for assessment for a person at an authorised mental health service or public sector health service facility and there is a risk the person may leave the service or facility before the recommendation for assessment is made.

s.36

In these circumstances, the person may be detained in the service or facility for up to one hour for the recommendation for assessment to be made.

5.7 Assessments by authorised doctors

A recommendation for assessment authorises an authorised doctor to assess a person to decide if a treatment authority should be made for the person.

MHA 2016,
s.43

In undertaking an assessment, an authorised doctor must take reasonable steps to find out whether there is a less restrictive way to treat the person, for example, by searching the person's health records to find out whether the person has an advance health directive.

The authorised doctor who makes the assessment must not be the same authorised doctor who made the recommendation for assessment. However, this does not apply in an authorised mental health service (rural and remote) if there is no other authorised doctor reasonably available to make the assessment.

s.43

An assessment may be undertaken in an authorised mental health service, public sector health service facility or any other clinically appropriate place. However, force may not be used outside of an authorised mental service or a public sector health service facility.

s.44 & s.631

A person may be detained in an authorised mental health service or public sector health service facility for an assessment for up to 24 hours (the assessment period). This period may be extended for a total period of 72 hours if necessary for the assessment.

s.45

If the person is at an authorised mental health service or public sector health service facility when the recommendation for assessment is made, the doctor or authorised mental health practitioner must note on the recommendation for assessment when the assessment period commences.

s.46

If a person is transported to a service or facility after a recommendation for assessment is made, a health service employee at the service or facility must note on the recommendation for assessment when the assessment period commences.

5.8 Treatment authorities

5.8.1 Making of treatment authorities

An authorised doctor may make a treatment authority for a person if:

MHA 2016,
s.48

- the treatment criteria apply to the person, and
- there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

A treatment authority is to be made in the approved form.

s.50

When making a treatment authority, the authorised doctor must decide the category for the treatment authority, namely, inpatient or community.

MHA 2016,
s.51

In deciding the category of the treatment authority, the authorised doctor must have regard to the relevant circumstances of the person. The authorised doctor may only decide to make an inpatient category of a treatment authority if the person's treatment and care needs, the safety and welfare of the person, and the safety of others, cannot reasonably be made under a community category of the authority.

This is consistent with taking a least restrictive approach to treatment.

If the category of the treatment authority is inpatient, the responsible authorised mental health service must not be a high security unit without the prior approval of the Chief Psychiatrist.

s.50(2) &
Dictionary
(‘inpatient’)

A treatment authority authorises the involuntary treatment and care of a person for the person's mental illness.

s.632

An inpatient category of a treatment authority authorises the person's detention in an authorised mental health service.

s.629

If the authorised doctor decides the category of the treatment authority is inpatient, the authorised doctor must decide whether to authorise limited community treatment for the patient. In deciding whether to authorise limited community treatment, the authorised doctor must have regard to the relevant circumstances of the person and the purpose of limited community treatment.

s.52

s.16

The authorised doctor, in deciding the nature and extent of treatment and care to be provided to the person under the treatment authority, must:

s.53

- discuss the treatment and care to be provided with the person, and
- have regard to the views, wishes and preferences of the person, including in an advance health directive.

Provisions of the Act apply if the authorised doctor decides to make a treatment authority for a person despite the person having an advance health directive, or the treatment and care to be provided to the person is inconsistent with the views, wishes and preferences of the person in the directive.

s.54

In these circumstances, the authorised doctor must explain the reasons for the decision and record the reasons in the person's health records.

As soon as practicable after making a treatment authority for a person, the authorised doctor must explain the effect of the decision to the person.

s.55

If the authorised doctor is a psychiatrist, the relevant administrator must, within seven days:

s.58(2)

- give a copy of the treatment authority to the person
- if requested, give a copy of the treatment authority to the person's nominated support person, personal guardian or attorney, and
- give written notice of the making of the authority to the Tribunal.

If the authorised doctor is not a psychiatrist, the relevant administrator must, within seven days:

MHA 2016,
s.58(2)

- if requested, give a copy of the authority to the person, and
- if requested, give a copy of the authority to the person's nominated support person, personal guardian or attorney.

The notification provisions are different for authorised doctors who are not psychiatrists as, in these cases, the making of the treatment authority must be reviewed by an authorised psychiatrist (see below).

5.8.2 Review of treatment authorities by authorised psychiatrists

Where a treatment authority is made by an authorised doctor who is not a psychiatrist, an authorised psychiatrist must review the treatment authority to decide whether to confirm the treatment authority, with or without amendment, or revoke the treatment authority.

MHA 2016,
s.56

The review is to occur within three days after the treatment authority is made. However, if the person subject to the treatment authority is a patient of an authorised mental health service (rural and remote) and it is not reasonably practicable to complete the review within three days, the review may be completed within seven days.

For the purpose of the review, an authorised doctor may require the person to attend at an authorised mental health service or public sector health service facility.

The person may be detained for a period of up to six hours for the purpose of the review.

The review of the treatment authority by an authorised psychiatrist does not affect the operation of the treatment authority before a decision is made to confirm or revoke it by the authorised psychiatrist.

In reviewing the treatment authority, the authorised psychiatrist has the same decision-making responsibilities as an authorised doctor has in making the treatment authority.

s.57

As soon as practicable after making a decision on a review of a treatment authority, the authorised psychiatrist must explain the effect of the decision to the person.

s.58

If the decision of the authorised psychiatrist is to confirm the treatment authority, the relevant administrator must, within seven days:

s.58

- give a copy of the treatment authority to the person, and
- give the Tribunal written notice of the decision.

5.8.3 Regular assessments of treatment authorities

An authorised doctor who makes a treatment authority must decide and record in the person's health records the date for the first regular assessment of the treatment authority (see section 11.5.1 of this Guide).

MHA 2016,
s.59

This assessment must be within three months of the treatment authority being made.

The purpose of a regular assessment is to decide whether the treatment authority should continue and, if so, the extent of treatment in the community under the authority.

6. Classified patients

6.1 Overview

The Act deals with circumstances where a person in custody (in prison, a watch-house, or youth detention centre) becomes acutely unwell and needs to be transferred to an authorised mental health service for assessment, or treatment and care.

These persons are referred to as 'classified patients'.

See Chapter 3 of the Act (Persons in custody).

6.2 Becoming a classified patient

There are three situations where a person may be transported to an authorised mental health service and become a classified patient.

A person may be transported to an authorised mental health service and become a classified patient if:

MHA 2016,
s.65

- the person is subject to a recommendation for assessment made under Chapter 2 of the Act
- an administrator consent has been made for the person (see below), and
- a custodian consent has been made for the person (see below).

A person may be transported to an authorised mental health service and become a classified patient if:

s.66

- the person is subject to a treatment authority, forensic order (mental health) or treatment support order
- a transfer recommendation has been made for the person (see below)
- an administrator consent has been made for the person, and
- a custodian consent has been made for the person.

A person may be transported to an authorised mental health service and become a classified patient if:

s.67

- the person consents to being treated in an authorised mental health service
- a transfer recommendation has been made for the person
- an administrator consent has been made for the person, and
- a custodian consent has been made for the person.

A person who consents to being treated in an authorised mental health service may withdraw the consent at any time.

A person who consents to being a classified patient may subsequently be made subject to a treatment authority under Chapter 2 of the Act.

The person becomes a classified patient when transported and admitted to an inpatient unit of an authorised mental health service.

s.64

A person subject to a recommendation for assessment, treatment authority, forensic order or treatment support order who is transported to an authorised mental health service is a classified patient (involuntary).

A person who consents to being transported to an authorised mental health service is a classified patient (voluntary).

6.3 Transfer recommendation

A transfer recommendation may be made by a doctor or authorised mental health practitioner.

MHA 2016,
s.68

The transfer recommendation must be in the approved form.

A transfer recommendation may be made if the doctor or authorised mental health practitioner is satisfied it is clinically appropriate for the person to receive treatment and care for the person's mental illness in an authorised mental health service.

As soon as practicable after making the transfer recommendation, the doctor or authorised mental health practitioner must explain the effect of the decision to the person.

If requested, the doctor or authorised mental health practitioner must give a copy of the transfer recommendation to the person, unless the doctor or authorised mental health practitioner considers this would adversely affect the health and wellbeing of the person.

If requested, the doctor or authorised mental health practitioner must give a copy of the transfer recommendation to the person's nominated support person, personal guardian or attorney.

6.4 Administrator consent

An administrator consent may be made by an administrator of an authorised mental health service if the service has the capacity to carry out an assessment or to provide treatment and care for the person's mental illness.

MHA 2016,
s.69

If the authorised mental health services is not a high security unit, the administrator must also be satisfied that the admission of the person would not pose an unreasonable risk to the safety of the person or others.

The administrator consent must be in the approved form.

The Chief Psychiatrist must give written approval for the transport of a minor to a high security unit.

s.70

6.5 Custodian consent

A custodian consent may be made by the custodian of the person proposed to be transported to an authorised mental health service.

MHA 2016,
s.71

The custodian must give consent unless carrying out the assessment or providing treatment and care to the person at the service would pose an unreasonable risk to the safety of the person or others, having regard to the security requirements for the person.

The custodian consent must be in the approved form.

6.6 Chief Psychiatrist consent

If a person is not transported within 72 hours of a recommendation for assessment or recommendation for transfer being made, a doctor or authorised mental health practitioner in the service must notify the Chief Psychiatrist.

MHA 2016,
s.72

The Chief Psychiatrist may consent to a person being transported to an authorised mental health service after receiving a notice from a doctor or authorised mental health practitioner, or if the Chief Psychiatrist otherwise becomes aware a person has not been transported to a service.

MHA 2016,
s.73

When the Chief Psychiatrist consents to the transport of a person, the administrator of a service must arrange for a person to be transported to the service as soon as practicable, subject to a custodian consent being made for the person.

6.7 Persons already in an authorised mental health service

The Act also deals with circumstances where a person who would otherwise be in custody is already in an authorised mental health service under an 'examination order' or a 'court examination order' (see section 3.5 of this Guide).

MHA 2016,
s.74

The person may remain in the service as a classified patient if:

- the person is subject to a treatment authority, forensic order (mental health) or treatment support order, or the person consents to being treated in the service
- an authorised doctor recommends, in writing, that the person receive treatment and care in the service
- an administrator consent is made for the person, and
- a custodian consent is made for the person.

An administrator consent and a custodian consent are made in the same way as consents may be given to transport a person.

6.8 Requirements on becoming a classified patient

If a classified patient is subject to an authority or order under the Act, the category of the authority or order must be inpatient, any authorisation for limited community treatment made by an authorised doctor is revoked, and any order or approval for limited community treatment by the Mental Health Court or Tribunal is of no effect.

MHA 2016,
s.66(4) &
s.74(9)

Classified patients may only receive escorted limited community treatment in the grounds and buildings of an authorised mental health service. This limited community treatment must be approved by the Chief Psychiatrist.

s.219

When a person becomes a classified patient, any criminal proceedings against the person are suspended (see section 16.2 of this Guide).

The relevant administrator must give written notice to the Chief Psychiatrist that a person has become a classified patient.

s.76

The relevant administrator must give written notice to the Tribunal that a minor has become a classified patient in a high security unit. This triggers a tribunal review of the minor's detention in a high security unit (see section 14.8 of this Guide).

s.77

An authorised doctor must examine the patient and decide the nature and extent of treatment to be provided to the patient. In undertaking this examination, the authorised doctor must decide whether it is clinically appropriate for the patient to receive treatment and care in an authorised mental health service. If this is not the case, the person may be returned to custody (see section 6.9.3 of this Guide).

s.78

s.201

6.9 Becoming a classified patient (voluntary)

If the relevant order or authority for a classified patient (involuntary) is revoked and no other order or authority is made by the Tribunal, the patient may become a classified patient (voluntary) if the person consents to being treated in an authorised mental health service.

MHA 2016,

s.79

A classified patient (voluntary) may withdraw the consent at any time.

6.9.1 Ceasing to be a classified patient

A person may continue to be a classified patient only if:

- the person is subject to an order or authority under the Act, or consents to treatment in an authorised mental health service, and
- it is clinically appropriate for the person to receive treatment and care in an authorised mental health service, and
- the person would be in lawful custody under another law if the person were not a classified patient.

6.9.2 Authority or order ends, or consent is withdrawn

An authorised doctor must notify the Chief Psychiatrist, in the approved form, if the relevant authority or order for the person is revoked and another order or authority is made by the Tribunal or, after an assessment, a treatment authority is not made for a person. In these cases, the person is no longer an involuntary patient. However, a notification is not required if the person consents to treatment in an authorised mental health service, as the person could continue to be detained in the service as a classified patient (voluntary).

MHA 2016,

s.81

An authorised doctor must also give the Chief Psychiatrist written notice if a classified patient (voluntary) withdraws consent to being treated in an authorised mental health service. However, this does not apply if a treatment authority is made for the person, as the person could continue to be detained in the service as a classified patient (involuntary).

s.80

Where these events happen, arrangements must be made for the person to return to a place of custody.

s.83

The Chief Psychiatrist must give written notice of the event to the relevant custodian and, if the person has an outstanding offence, the chief executive (justice).

The chief executive (justice) must, in turn, give a copy of the notice to:

- the registrar of the relevant court
- the prosecuting authority, and
- if the person is a child within the meaning of the *Youth Justice Act 1992* – the chief executive (youth justice).

Within one day of receiving the notice, the custodian must make arrangements for the person to return to a place of custody.

The person stops being a classified patient when the person is discharged from the service into the custody of the custodian.

6.9.3 Not clinically appropriate to remain in the service

An authorised doctor must also notify the Chief Psychiatrist, in the approved form, if the authorised doctor is satisfied that it is not or is no longer, clinically appropriate for the person to receive treatment and care in an authorised mental health service.

MHA 2016,
s.81

The Chief Psychiatrist may, on receiving a written notice from an authorised doctor, decide it is not clinically appropriate for the person to receive treatment and care in an authorised mental health service.

s.82

The Chief Psychiatrist may also make this decision on the Chief Psychiatrist's own initiative.

When this occurs, the person must be returned to a place of custody as outlined above in section 6.9.2 of this Guide.

s.83

6.9.4 No longer would be in custody

A classified patient is to be released if there is no longer a reason that the patient would be in lawful custody if the person were not a classified patient. The Act provides examples of when this would occur, namely:

MHA 2016,
s.85

- the person is granted bail, or the prosecution of the charge is discontinued
- for a person awaiting sentencing, a term of imprisonment is suspended, or an order of imprisonment is not made, or
- the person is released on parole, or the term of imprisonment ends.

Within one day of one of these events happening, the person's custodian must give the administrator written notice of the event.

Immediately after the administrator receives the notice the person stops being a classified patient.

This does not affect the person's status under other provisions of the Act, for example, being an inpatient under a treatment authority.

The administrator must give the Chief Psychiatrist written notice of the event.

6.9.5 Mental Health Court decision

If a reference is made to the Mental Health Court, the person stops being a classified patient in relation to the reference when the Court makes its decision. This does not prevent the person remaining a classified patient for reasons other than the reference to the Court.

MHA 2016,
s.84

7. Psychiatrist reports

7.1 Overview

A person subject to a treatment authority, forensic order or treatment support order, who is charged with a serious offence (as defined), may request a psychiatrist report be prepared.

The Chief Psychiatrist may also direct the preparation of a psychiatrist report for a person who is charged with a serious offence if it is in the public interest.

The purpose of a report is to provide an opinion on whether the person was of unsound mind at the time of the alleged offence or is unfit for trial.

The provisions apply to persons with an intellectual disability in particular ways (see section 7.9 of this Guide).

See Chapter 4 of the Act (Psychiatrist Reports for Serious Offences).

7.2 Definitions

Associated offence—see section 8.2 of this Guide.

Attorney—see section 3.8 of this Guide.

Brief of evidence—see the Dictionary to the Act.

Fit for trial—see section 8.2 of this Guide.

Nominated support person—see section 3.8 of this Guide.

Personal guardian—see section 3.8 of this Guide.

Prosecuting authority—see section 8.2 of this Guide.

Serious offence—see section 8.2 of this Guide.

Unsound mind—see section 8.2 of this Guide.

7.3 Initiation of psychiatrist reports

7.3.1 On request

A person may request the Chief Psychiatrist to arrange for the preparation of a psychiatrist report.

A request may be made if the following applies:

- the person is subject to a treatment authority, a forensic order for which an authorised mental health service is responsible, or a treatment support order, and
- the person is charged with a serious offence, other than an offence against a Commonwealth law.

A request may be made at any time before the Court makes a final decision on the matter.

Also, the right to make a request is not affected if the authority or order is revoked before the Court makes a final decision.

MHA 2016,
s.88

The relevant administrator must explain to the person the right to request a psychiatrist report. This must happen as soon as practicable after the administrator becomes aware that the person is entitled to request a report under the Act.

MHA 2016,
s.89

If the person is a minor, the relevant administrator must also explain the right to make a request to one of the minor's parents. However, this does apply if it does not appear to be in the minor's best interests.

A request may be made by:

s.90

- the person
- the person's nominated support person, if it is in the person's best interests
- a personal guardian who has the authority to make this decision for the person
- an attorney who has the authority to make this decision for the person
- a parent of a minor, or
- the person's lawyer, acting on instructions of the person.

The Chief Psychiatrist must, within seven days, direct the relevant administrator to arrange for an authorised psychiatrist to prepare a report if the person is entitled to make a request for a report.

s.91

The direction may include a direction for a report to be prepared about associated offences.

7.3.2 Directed by Chief Psychiatrist

The Chief Psychiatrist may, on the Chief Psychiatrist's own initiative, direct the preparation of a psychiatrist report about a person. This applies where a person is charged with a serious offence, other than an offence against a Commonwealth law.

MHA 2016,
s.92

The person need not be on an authority or order under the Act for a direction to be made.

s.93

The direction may be to an administrator, to arrange for an authorised psychiatrist to prepare a report, or to an authorised psychiatrist.

The Chief Psychiatrist may give the direction only if the person:

- may have a mental condition
- may have been of unsound mind at the time of the alleged offence or may be unfit for trial, and
- the preparation of the report is in the public interest.

The direction may include a direction for a report to be prepared about associated offences.

The Chief Psychiatrist must give written notice of the direction to the person and, where the person is subject to an authority or order under the Act, the relevant administrator.

s.94

7.4 Preparation of reports

An authorised psychiatrist must prepare a report within 60 days.

MHA 2016,
s.95

This period can be extended to 90 days by the Chief Psychiatrist.

The report must include information about the following:

- the person's mental state and, to the extent practicable, the person's mental state when the serious offence was allegedly committed
- whether the authorised psychiatrist considers the person was of unsound mind when the serious offence was allegedly committed
- whether the authorised psychiatrist considers the person is fit for trial, and
- if the authorised psychiatrist considers the person is unfit for trial - whether the authorised psychiatrist considers the unfitness for trial is permanent.

An administrator, authorised psychiatrist or the Chief Psychiatrist may request the prosecuting authority to provide copies of documents in the brief of evidence for the alleged offence.

MHA 2016,
s.96

7.5 Examinations

A person being examined by a psychiatrist for the preparation of a report may be accompanied by a support person, such as a nominated support person, lawyer, or personal guardian. The support person must not interfere with the examination.

MHA 2016,
s.97

Where a report is being prepared as a result of a request made under the Act, the person and any support person must participate in an examination for the report in good faith.

s.98

The Act provides examples of participating on good faith, namely:

- attending appointments in relation to the examination
- answering questions during the examination, and
- allowing access to the person's health records.

If the person or support person does not participate in the examination in good faith, steps may be taken to revoke the direction to prepare the report. The steps include giving the person a show cause notice for the proposed revocation.

Where a report is being prepared on the initiative of the Chief Psychiatrist, the person must attend for an examination for the report. If the person is not an inpatient, the Chief Psychiatrist must give the person a written notice requiring the person to attend for an examination.

s.99

7.6 Second psychiatrist reports

The Chief Psychiatrist may direct the preparation of a second psychiatrist report if the Chief Psychiatrist considers the matters in an initial psychiatrist report require further examination. The direction may be to an administrator, to arrange for an authorised psychiatrist to prepare a report, or to an authorised psychiatrist.

MHA 2016,
s.100

The matters outlined above in relation to an initial psychiatrist report (sections 95 to 99 of the Act) also apply to the preparation of a second psychiatrist report.

7.7 Referral to Mental Health Court

On receiving a psychiatrist report (an initial psychiatrist report or second psychiatrist report), the Chief Psychiatrist may refer the matter to the Mental Health Court.

MHA 2016,
s.101

This applies whether the report was prepared as a result of a request under the Act or on the Chief Psychiatrist's own initiative.

A referral may be made by the Chief Psychiatrist if:

- the person may have been of unsound mind when the serious offence was allegedly committed or may be unfit for trial
- there is a compelling reason in the public interest for the referral, having regard to the report and the protection of the community, and
- the matter has not already been referred to the Mental Health Court (a person who made a request for a report may refer the matter to the Court).

The reference is to be made by the Chief Psychiatrist within 28 days of receiving the relevant report.

The reference may include a reference in relation to an associated offence.

7.8 Copies of reports

The Chief Psychiatrist must, within seven days, give a copy of a psychiatrist report to:

MHA 2016,
s.102

- the person
- the person who requested the report, and
- the administrator of the person's treating health service.

However, the Chief Psychiatrist need not give a report to the person if it may adversely affect the person's health and wellbeing. Where this applies, the Chief Psychiatrist may instead give a copy of the report to another person who has a sufficient interest in the person's health and wellbeing, such as a nominated support person, lawyer or personal guardian.

Also, where the matter is referred to the Mental Health Court, the Chief Psychiatrist must give a copy of the psychiatrist report or reports to the Court.

The Chief Psychiatrist must not otherwise give a copy of a psychiatrist report to anyone else without the consent of the person, the subject of the report, or the consent of a personal guardian or attorney who has the authority to make this decision for the person.

The administrator of the relevant services must include a copy of the psychiatrist report in the person's health records.

7.9 Application to persons with an intellectual disability

The above provisions in relation to psychiatrist reports apply to persons with an intellectual disability. The Director of Forensic Disability (under the *Forensic Disability Act 2011*) also has a role in the preparation of reports for persons with an intellectual disability.

MHA 2016,
s.104

Where a person is subject to a forensic order for which the Forensic Disability Service is responsible, a person may request the Director of Forensic Disability for a senior practitioner (under the *Forensic Disability Act 2011*) to prepare a report.

Also, the Director of Forensic Disability may direct a report be prepared for a person with an intellectual disability if it is in the public interest. This does not limit the role of the Chief Psychiatrist to direct a report for a person with a mental condition.

7.10 Other

The provisions of the Act in relation to psychiatrist reports no longer apply if the prosecution for the relevant offence is discontinued.

MHA 2016,
s.103

8. Mental Health Court

8.1 Overview

The Act continues the Mental Health Court

See section 4.9 of this Guide for an overview of the functions of the Mental Health Court.

See Chapter 5 of the Act (Mental Health Court References) and Chapter 16, part 1 of the Act (Mental Health Court).

8.2 Definitions

Associated offence means an offence that the person is alleged to have committed at or about the same time as the offence that is referred to the Mental Health Court for decision.

[MHA 2016, s.107](#)

Brief of evidence—see the Dictionary to the Act.

[Dictionary](#)

Chief executive (forensic disability) means the chief executive of the department in which the *Forensic Disability Act 2011* is administered.

[Dictionary](#)

Criminal history—see the Dictionary to the Act.

[Dictionary](#)

Diminished responsibility has the meaning under section 304A(1) of the Criminal Code. Section 304A(1) provides that a person who unlawfully kills another under circumstances which would constitute murder but, at the relevant time, has a state of abnormality of mind as outlined in that section, is guilty of manslaughter only.

[s.108](#)

Fit for trial is not defined in the Act. As with the criminal jurisdiction, a person's fitness for trial relies on the common law interpretation of the term.

Interested person means a nominated support person or another person who has sufficient interest in the person.

[Dictionary](#)

Prescribed offence means an offence against any of the following provisions of the Criminal Code:

[Dictionary](#)

- section 302 (Definition of murder) and 305 (Punishment of murder)
- section 303 (Definition of manslaughter) and 310 (Punishment of manslaughter)
- section 306 (Attempt to murder)
- section 317 (Acts intended to cause grievous bodily harm and other malicious acts)
- section 320 (Grievous bodily harm)
- section 349 (Rape)
- section 350 (Attempt to commit rape), and
- section 351 (Assault with intent to commit rape).

Prosecuting authority means the commissioner of police, the Director of Public Prosecutions or another person responsible for the prosecution.

[Dictionary](#)

Serious offence, means an indictable offence other than an offence that is a 'relevant offence' under the Criminal Code, section 552BA(4). A 'relevant offence' must be heard and decided summarily by a magistrate. An example of a relevant offence is common assault.

MHA 2016,
Dictionary

Treatment in the community—see section 3.7 of this Guide.

Dictionary

Unsound mind means:

- a state of mental disease or natural mental infirmity described in the Criminal Code, section 27(1), and
- a state of mind described in the Criminal Code, section 28(1) for which the Criminal Code, section 27(1) applies to a person.

MHA 2016,
s.109 &
Criminal
Code, ss. 27
& 28

However, unsound mind does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.

Section 27(1) of the Criminal Code provides that:

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission the person is in such a state of mental disease or natural mental infirmity as to deprive the person of capacity to understand what the person is doing, or of capacity to control the person's actions, or of capacity to know that the person ought not to do the act or make the omission.

Section 28(1) of the Criminal Code provides that:

The provisions of section 27 apply to the case of a person whose mind is disordered by intoxication or stupefaction caused without intention on his or her part by drugs or intoxicating liquor or by any other means.

Victim and close relative—see section 9.2 of this Guide.

8.3 References to Mental Health Court

A reference may be made to the Mental Health Court in relation to a serious offence, other than an offence against a Commonwealth law.

A reference may be made if there is a reasonable belief that the person charged with the offence was:

- of unsound mind when the offence was allegedly committed
- is unfit for trial, or
- for a charge of murder, was of diminished responsibility when the offence was allegedly committed.

A reference may include a reference in relation to an associated offence.

A reference may be made by the person, the person's lawyer or the Director of Public Prosecutions.

In addition, a reference may be made by:

- the Chief Psychiatrist or the Director of Forensic Disability (see section 7.9 of this Guide)
- a magistrates court (see section 10.3.1 of this Guide), or
- the Supreme Court or District Court (see section 10.3.3 of this Guide).

A reference is made by filing a notice in the approved form in the Mental Health Court registry. MHA 2016,
s.111
The notice must be accompanied by a copy of any relevant psychiatrist or other clinical report in relation to the person.

When a reference is made, proceedings for the offence, and any associated offences, are suspended (see section 16.2 of this Guide). s.616

The registrar of the Mental Health Court must, as soon as practicable, give written notice of the reference to the following persons: s.113

- the person the subject of the reference or, if known, the person's lawyer
- the Director of Public Prosecutions
- the Chief Psychiatrist
- the chief executive (justice)
- the Director of Forensic Disability (under the *Forensic Disability Act 2011*)
- the chief executive (youth justice), if the person is a child within the meaning of the *Youth Justice Act 1992*, and
- if known, any nominated support person, personal guardian or attorney for the person.

The chief executive (justice) must, as soon as practicable, give written notice of the reference to the registrar of the relevant court, and the prosecuting authority if the prosecuting authority is not the Director of Public Prosecutions. s.113

The parties to the proceeding are: s.114

- the person the subject of the reference
- the Director of Public Prosecutions, and
- the Chief Psychiatrist.

However, if the person has an intellectual disability, the Director of Forensic Disability may elect to be a party and, where this applies, the Chief Psychiatrist may elect not to be a party.

The registrar of the Court must give written notice of the hearing to: s.115

- each party to the proceeding
- if an authorised mental health service or the Forensic Disability Service is responsible for the person, the administrator of the service, and
- where relevant, the person's custodian.

A person who made the reference to the Court may apply to withdraw the reference. Chapt. 5, pt.
3, div. 5

8.4. Decisions on references

8.4.1 Unsoundness of mind and diminished responsibility

On the hearing of a reference the Court must first decide:

MHA 2016,
s.116

- whether the person was of unsound mind when the offence was allegedly committed, or
- if the person is alleged to have committed the offence of murder, whether the person was of diminished responsibility at the relevant time.

The Court must not make one of these decisions if there is a substantial dispute about whether the person committed the offence, unless the dispute is due to:

s.117

- the person's mental condition, or
- the operation of the Criminal Code sections 304 (Killing on provocation), 304A (diminished responsibility) or 304B (Killing for preservation in an abusive relationship in an abusive relationship).

Also, where there is not a substantial dispute about an alternative offence (an offence with the same elements as the disputed offence), the Court may make a decision of unsoundness of mind in relation to the alternative offence.

The Court may not make a decision about a person's unsoundness of mind if the Court is satisfied there is a substantial dispute about a fact that is material to an opinion contained in an expert's report received in evidence.

s.117A

8.4.2 Fitness for trial

Provisions of the Act apply if:

MHA 2016,
s.118

- the Court decides the person was not of unsound mind at the time of the alleged offence, or
- the Court is not permitted under the Act to decide whether the person was of unsound mind due a substantial dispute about whether the person committed the offence, or
- the Court has not made a decision about whether a person was of unsound mind due to a substantial dispute about a fact that is material to the opinion of expert whose report has been received by the Court as evidence.

In these circumstances, the Court must proceed to decide whether the person is fit for trial. If the Court decides the person is unfit for trial, the Court must also decide whether the unfitness is permanent or temporary.

8.5 Effect of decisions of unsoundness of mind and fitness for trial

8.5.1 Finding of unsoundness of mind

If the Court decides a person was of unsound mind when the offence was allegedly committed, proceedings against the person for the offence are discontinued.

MHA 2016,
s.119

8.5.2 Election to be brought to trial

Provisions of the Act apply where the Court decides a person was of unsound mind when the offence was allegedly committed.

MHA 2016,
s.119

Despite this decision, a person may elect to be tried for the offence.

The election is made by giving the Director of Public Prosecutions written notice of the election within 28 days.

If a forensic order or treatment support order has been made for a person who elects to be brought to trial (see section 8.7 and 8.8 of this Guide), the order remains in force until a decision is made on the hearing of the election.

8.5.3 Finding of diminished responsibility

If the Court decides the person was of diminished responsibility when an alleged offence of murder is committed, proceedings against the person for the offence are discontinued.

However, proceedings may be continued against the person for another offence (e.g. manslaughter) related to the act that formed the basis for the murder offence.

8.5.4 Finding of fitness for trial

If the Court decides a person is unfit for trial and the unfitness is not permanent, proceedings for the offence are stayed until the Mental Health Review Tribunal decides a person is fit for trial (see section 14.7 of this Guide). [s.121](#)

If the Court decides a person is unfit for trial and the unfitness is permanent, proceedings against the person for the offence are discontinued. [s.122](#)

If the Court decides the person is fit for trial, proceedings against the person for the offence must be continued. [s.123 & s.124](#)

Where proceedings against the person are to be continued, the Court may order:

- the person be remanded in custody
- bail be granted, or
- the person be detained in an authorised mental health service. (see 'judicial orders' in section 3.5 of this Guide)

8.6 Making of orders

Where the Court decides a person was of unsound mind at the time of an alleged offence or is permanently unfit for trial, the Court may make a forensic order or treatment support order for the person or make no order. [MHA 2016, s.131](#)

In making a decision in relation to an order, the Court must have regard to: [s.133](#)

- the relevant circumstances of the person
- the nature of the relevant offence, and
- any victim impact statement produced to the Court (see section 9.4 of this Guide).

Where the Court decides a person is temporarily unfit for trial, the Court must make a forensic order or treatment support order for the person. [s.132](#)

8.7 Forensic orders

8.7.1 Making of forensic orders

The Act outlines when the Mental Health Court must make a forensic order.

MHA 2016,
s.134

The Court must make a forensic order for the person if a forensic order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

In making this decision, the Court must also have regard to the Chief Psychiatrist Policies made in relation to the management of persons on forensic orders and treatment support orders (see section 4.1.3 of this Guide). These Policies will assist the Court in deciding which type of order is appropriate having regard to the way in which persons are managed under each type of order.

If the Court decides to make a forensic order, there are two types of forensic orders that the Court may make, namely:

- a forensic order (mental health), or
- a forensic order (disability).

s.134

The Court must make a forensic order (mental health) if:

- the person's unsoundness of mind or unfitness for trial is due to a mental condition other than an intellectual disability, or
- the person has a dual disability (a mental illness and an intellectual disability) and needs involuntary treatment and care for the person's mental illness, as well as care for the person's intellectual disability.

The Court must make a forensic order (disability) if:

s.134

- the person's unsoundness of mind or unfitness for trial is due to an intellectual disability, and
- the person needs care for the person's intellectual disability but does not need treatment and care for any mental illness.

The Court may impose conditions on a forensic order. A condition may provide that the person subject to the order must not contact a victim of the relevant unlawful act. A condition may provide that the person wear a tracking device. The Court cannot impose a condition that the person take a particular medication or dosage of medication.

s.135 &
Dictionary
(‘condition’)

In making a forensic order, the Court may also make recommendations about intervention programs, such as drug and alcohol programs, anger management counselling programs and sexual offender programs. The person's willingness to participate in these programs, if offered to the person, are considered by the Tribunal when the forensic order is reviewed (see section 14.4 of this Guide).

s.136

The Court may set a non-revocation period for a forensic order (unless it is made because of a finding of temporary unfitness) if the order relates to a ‘prescribed offence’. A non-revocation period may be set for a period of up to 10 years.

s.137

A forensic order cannot be revoked by the Tribunal during a non-revocation period.

In deciding whether to make a non-revocation period, the Court must also have regard to the object of the Act in relation to protecting the community.

8.7.2 Forensic orders—categories and treatment in the community

In making a forensic order, the Court must also decide the category of the order, namely, inpatient or community.

MHA 2016,
s.138

The Court may decide the category of the order is community only if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

If the Court decides the category of a forensic order is inpatient, the Court must also make decisions about treatment in the community for the person, namely:

s.139

1. the Court may order that the person have no limited community treatment.
2. the Court may decide not to approve limited community at the time of making the forensic order but approve that an authorised doctor may authorise treatment in the community (community category or limited community treatment) for the person (see section 11.6.2 of this Guide). In making this decision, this Court may decide the extent of the treatment in the community and any conditions on the treatment, or
3. the Court may order that the person is to have limited community treatment of a stated extent. In making this decision, the Court may decide whether or not an authorised doctor may amend the forensic order in relation to treatment in the community (see section 11.6.2 of this Guide).

For an inpatient, the Court may only order or approve treatment in the community if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

If the Court decides the category of a forensic order is community, the Court must also make decisions about treatment in the community (community category or limited community treatment) for the person, namely:

s.140

1. the Court may order that an authorised doctor must not change the category of the order to inpatient, or
2. the Court may decide that an authorised doctor may change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the Court. The Act provides examples of this, namely, changing the category of the forensic order from community to inpatient, with or without limited community treatment.

An authorised doctor must not amend a forensic order in a way that is contrary to a decision of the Mental Health Court (see section 11.6.2 of this Guide).

8.7.3 Other matters

Where a person subject to a forensic order (disability) is placed on an inpatient category for which the Forensic Disability Service is responsible, the category of the order may be referred to as 'residential'.

MHA 2016,
s.141

Where the Court makes a forensic order and the person is to be detained in a high security unit, the Court may stay the order for a period of up to seven days. The purpose of the stay is to enable the high security unit to make a physical place available for the person.

s.142

8.8 Treatment support orders

8.8.1 Making of treatment support orders

The Act outlines when the Court must make a treatment support order.

MHA 2016,
s.143

The Court must make a treatment support order if a treatment support order, but not a forensic order, is necessary because of the person's mental condition to protect the safety of the community, including from the risk of serious harm to other persons or property.

In making this decision, the Court must also have regard to the Chief Psychiatrist Policies in relation to the management of persons on forensic orders and treatment support orders (see section 4.1.3 of this Guide). These Policies will assist the Court in deciding which type of order is appropriate having regard to the way in which persons are managed under each type of order.

A treatment support order cannot be made if the person has an intellectual disability and the person does not need any treatment and care for a mental illness.

The Court may impose conditions on a treatment support order. A condition may provide that the person subject to the order must not contact a victim of the relevant unlawful act. The Court cannot impose a condition that the person take a particular medication or dosage of medication.

s.144

8.8.2 Treatment support orders—categories and treatment in the community

In making a treatment support order, the Court must also decide the category of the order, namely, inpatient or community.

MHA 2016,
s.145

The Court may decide the category of the order is inpatient only if the person's treatment and care needs, the safety and welfare of the person, and the safety of others cannot be met if the category of the order is community. This criteria is the same that applies where authorised doctors decide the category of treatment authorities.

If the Court decides the category of the treatment support order is inpatient, the Court may approve limited community treatment for the person.

If the Court decides the category of the treatment support order is community, or approves limited community treatment for the person, the Court must also decide whether an authorised doctor may reduce the extent of treatment in the community received by the person. This enables the Court to take a 'least restrictive' approach to treatment. The Act provides that an authorised doctor cannot reduce the level of treatment in the community in a way that is contrary to a decision of the Court (see section 11.7.2 of this Guide).

8.9 Responsibility for treatment and care

If the Court makes a forensic order (mental health) or a treatment support order for a person, the Court must decide the authorised mental health service responsible for the person.

MHA 2016,
s.146

If the Court makes a forensic order (disability) for a person, the Court must decide that an authorised mental health service or the Forensic Disability Service is responsible for the person.

s.147 & s.148

However, the Court may decide the Forensic Disability Service is responsible for the person only if the chief executive (forensic disability), certifies that the Forensic Disability Service has the required capacity for the person.

A forensic order (mental health) and a treatment support order authorises the following in accordance with the order.

MHA 2016,
s.151 & s.152

If the person has a mental condition other than an intellectual disability, the order authorises the provision of involuntary treatment and care for the person's mental illness or other mental condition.

If the person has a dual disability (mental illness and intellectual disability), the order authorises the provision of involuntary treatment and care for the person's mental illness and the provision of involuntary care for the person's intellectual disability.

Also, if the category of the order is inpatient, the order authorises the detention of the person in the authorised mental health service that is responsible for the person.

A forensic order (disability) authorises the provision of involuntary care for the person's intellectual disability.

Also, if the category of the order is inpatient, the order authorises the person's detention in an authorised mental health service or the Forensic Disability Service.

8.10 Other matters

8.10.1 Discontinuing proceedings

Provisions of the Act apply if:

MHA 2016,
s.154

- the Court makes a forensic order or treatment support order for a person because the person is temporarily unfit for trial, and
- the Director of Public Prosecutions decides to discontinue proceedings in relation to the relevant offence for reasons other than the person's mental state (this may apply, for example, if new evidence indicates that the person did not commit the alleged offence).

If proceedings are discontinued for this reason, the forensic order or treatment support order ends, as the basis for the making of the order no longer exists.

See section 14.7.2 of this Guide for the other ways that proceedings may be discontinued.

8.10.2 Notice of the Court's decision

The registrar of the Mental Health Court must, within seven days of the Court's decision, give written notice of the decision to each person that was given notice of the reference and to the Tribunal.

MHA 2016,
s.155

If a victim impact statement was given to the Court, the registrar must also give the Tribunal a copy of the statement.

The chief executive (justice) must, as soon as practicable, give written notice of the decision to the registrar of the relevant court, and the prosecuting authority if the prosecuting authority is not the Director of Public Prosecutions.

8.10.3 Admissibility of evidence in other proceedings

The Act deals with the admissibility and use of evidence that is given to the Mental Health Court in other proceedings.

MHA 2016,
Chapt. 5, pt.
5, div. 2

8.10.4 Victim impact statements

The Act deals with the preparation and production of victim impact statements where the Court decides a person was of unsound mind when the offence was allegedly committed or is unfit for trial.

MHA 2016,
Chapt. 5, pt.
5, div. 3

See section 9.4 of this Guide.

8.10.5 Existing authorities and orders

If the person before the Court is already subject to a forensic order, the Court may amend the existing forensic order, convert the forensic order to a treatment support order or revoke the existing forensic order and make a new forensic order.

MHA 2016,
s.166 &
s.167B

If the person before the Court is already subject to a treatment support order, the Court may amend the existing treatment support order, convert the treatment support order to a forensic order or revoke the existing treatment support order and make a new treatment support order.

s.166A &
s.167A

If a forensic order (mental health) is made for a person who is already subject to a treatment authority, the treatment authority automatically ends.

If a treatment support order is made for a person who is already subject to a treatment authority, the treatment authority automatically ends.

s.167C

A person may be subject to both a forensic order (disability) and a treatment authority. Where this applies, the forensic order (disability) prevails if there is any inconsistency between the order and the authority, for example, in relation to treatment in the community.

s.167

8.11 Review of detention in a service

MHA 2016,
s.674

The Mental Health Court may review a person's detention in an authorised mental health service or the Forensic Disability Service to decide whether the person's detention is lawful.

This does not apply if the person is detained by order of the Mental Health Court. In these cases the person may appeal the decision to the Court of Appeal.

A review may be undertaken on the application of the relevant person, an interested person for the person, or the Attorney-General.

A review may also be initiated by the Court.

s.675

The Court registrar must give written notice of a hearing for the review to:

- the person who is detained in the service
- an applicant
- the administrator of the relevant service
- the Chief Psychiatrist or the Director of Forensic Disability, and
- the Attorney-General.

The parties to the proceeding for the review are:

- the person who is detained in the relevant service
- the applicant, and
- the Chief Psychiatrist or the Director of Forensic Disability.

The Attorney-General may also elect to be a party.

The Court may appoint a person to inquire into the detention.

MHA 2016,
s.677 – s.681

An appointed person has power to enter the relevant service, examine the person, inspect and copy documents, and require persons to answer questions about the person's detention.

If the Court is satisfied the person's detention in the relevant service is unlawful, the Court must direct that the person be immediately discharged from the service.

8.12. Administration and procedures of the Court

8.12.1 Constitution of the Court

Hearings of the Mental Health Court are constituted by a single member, who is a Supreme Court judge appointed to the Court.

MHA 2016,
s.638

The Court may be assisted by one or two assisting clinicians.

However, there are no assisting clinicians if the hearing is a directions hearing or a hearing about a question of law.

The Act outlines where the assisting clinician or clinicians for a hearing may be a psychiatrist or a person with expertise in the care of persons who have an intellectual disability.

8.12.2 Powers of the registrar and the Court

The Court registrar may issue a subpoena requiring a person to produce a document or attend before the Court to give evidence.	MHA 2016, s.660
The court registrar may require an administrator of an authorised mental health service or the Forensic Disability Service to produce a particular document to the Court.	s.661
The court registrar may require an administrator of an authorised mental health service or the Forensic Disability Service, or a custodian, to bring a person to a Court hearing.	s.662
The court registrar may require a prosecuting authority to provide the Court with the criminal history or brief of evidence for a person.	s.663
The Court may make a 'court examination order' requiring the person before the Court to submit to an examination by a practitioner (see 'judicial orders' in section 3.5 of this Guide). The Act outlines the steps that apply before and after the examination.	s.668 – s.671
8.12.3 Proceedings	
A party to a proceeding may appear in person or be represented by a lawyer or, with the leave of the Court, another person.	MHA 2016, s.683
In conducting a proceeding, the Court is not bound by the rules of evidence.	s.684
No party to a proceeding bears the onus of proof of any matter.	s.685
The Court may give directions about the hearing of a proceeding.	s.686
Advice given by an assisting clinician to the Court must be made available to the parties. However, this does not apply if the advice relates to a procedural matter concerning the hearing of the proceedings or the administration of the Court.	s.687 – s.689
Also, in its reasons for decisions, the Court must include advice given by an assisting clinician if it materially contributed to the Court's decision.	
Hearings of the Court are generally open to the public, unless the Court directs otherwise.	s.693 – s.695
However, hearings in relation to appeals and reviews of detention of a person are not to be open to the public unless the Court directs otherwise.	
Also, hearings in relation to minors are not open to the public.	
The Court may make confidentiality orders to prohibit or restrict the disclosure of information or documents given to the Court, or reasons for decisions.	s.696
Each party to a proceeding is to bear the party's own costs	s.697
8.13 Annual report	
The president must prepare and give to the Minister a report on the operations of the Court and the registry each financial year. The Minister must table the report in the Parliament within 14 days after the report is received.	MHA 2016, s.701

9. Victims of unlawful acts

9.1 Overview

The Act supports victims of unlawful acts committed by persons who have a mental condition by allowing victims to present victim impact statements to the Mental Health Court and the Mental Health Review Tribunal, and to apply for the right to receive particular information about the relevant person under an 'information notice'.

9.2 Definitions

Close relative, means:

- the person's spouse
- a child, grandchild, parent, brother, sister, grandparent, aunt or uncle (whether of whole or half-blood) of the person or the person's spouse.

MHA 2016,
Dictionary

Patient required to return—see section 14.2 of this Guide.

Prosecuting authority—see section 8.2 of this Guide.

Publish means:

- publish to the public by way of television, newspaper, radio, the internet or other form of communication, or
- the public dissemination of information, including, for example, distributing information by leaflets in letterboxes, or announcing information at a meeting.

Dictionary

Victim of an unlawful act, means a person against whom the unlawful act was committed or allegedly committed.

Dictionary

9.3 Principles

The Act establishes principles in relation to:

- a victim of an unlawful act
- a close relative of the victim, and
- another person who has suffered harm because of an unlawful act.

MHA 2016,
s.6 & s.7

A person must have regard to the principles when performing a function under the Act.

The principles are:

- the physical, psychological and emotional harm caused to the victim by the unlawful act must be recognised with compassion
- the benefits of counselling, advice on the nature of proceedings under this Act and other support services to the recovery of the victim from the harm caused by the unlawful act must be recognised
- the benefits to the victim of being advised in a timely way of proceedings under this Act against a person in relation to the unlawful act must be recognised, and
- the benefits to the victim of the timely completion of proceedings against a person in relation to the unlawful act must be recognised.

9.4 Victim impact statements

9.4.1 Mental Health Court

A victim impact statement may be prepared by a victim or a close relative of a victim if the Mental Health Court decides a person was of unsound mind when the offence was allegedly committed or is unfit for trial. A victim impact statement is given to the prosecuting authority. MHA 2016, s.161 & s.162

The victim impact statement may include:

- the views of the victim or close relative about the risk the person represents to the victim, close relative or other person, and
- a request that the Court impose a condition on a forensic order or treatment support order that the person not contact the victim, close relative or other person.

The prosecuting authority must give the statement to the Mental Health Court. s.163

The Mental Health Court must not disclose the victim impact statement to the relevant person unless the victim or close relative asks that the statement be disclosed. s.164

However, the Court may prohibit the disclosure of a statement to the relevant person if satisfied that it may adversely affect the health and wellbeing of the person.

These provisions do not prevent the Court disclosing the statement to a lawyer for the person if the Court is satisfied it is in the best interests of the person. The lawyer may only disclose a statement to the person if the victim or close relative asks that the statement be disclosed and the Court has not ordered otherwise.

When the court registrar gives notice of the Court's decision to the Tribunal, it must also provide any victim impact statement to the Tribunal. s.155(2)

9.4.2 Mental Health Review Tribunal

A victim of an unlawful act, or a close relative of the victim, may prepare, and give to the Mental Health Review Tribunal a victim impact statement. MHA 2016, s.742

The victim impact statement may include a request by the victim or close relative that the Tribunal impose a condition on an order that the person must not contact the victim, close relative, or other person.

A victim impact statement may be given to the Tribunal even if a previous statement has been given to the Mental Health Court or the Tribunal.

A victim or close relative is not required to provide a further victim impact statement if one has already been provided to the Mental Health Court.

The same confidentiality obligations for victim impact statements apply to the Tribunal that apply to the Mental Health Court as outlined above. s.741

In reviewing a forensic order or treatment support order, the Tribunal must have regard to a victim impact statement provided to the Mental Health Court or the Tribunal. s.432 & s.464

9.5 Information notices

9.5.1 Application

An application for an information notice may be made to the Chief Psychiatrist by a victim of the relevant unlawful act or a close relative of a victim in relation to a patient of an authorised mental health service subject to a forensic order or treatment support order or whose order has been revoked but the appeal period has not expired, or appeal proceedings have not been finalised.

MHA 2016,
s.318

An application may also be made by another individual who has suffered harm because of the relevant unlawful act and has sufficient personal interest in receiving the information under the notice.

The application must be in the approved form.

The applicant may nominate another person (the applicant's nominee) to receive information under the notice. The purpose of this is to support the victim in receiving the information.

The application must be accompanied by a statutory declaration by the applicant (and any applicant's nominee) that they will not publish information received under the notice in contravention of the Act (see section 9.5.5 of this Guide).

The Chief Psychiatrist may refuse the application if:

s.319

- the application is frivolous or vexatious
- for an application made by 'another individual' (see above), the applicant does not meet the criteria of having 'suffered harm' and having 'sufficient personal interest' in receiving the information under the notice
- the disclosure of information under the notice is likely to result in serious harm to the patient's health or welfare, or put the safety of the patient or someone else at serious risk
- a previous information notice for the person was revoked due to a breach of the confidentiality obligations
- the applicant's nominee is not suitable to receive the information, or
- the person in relation to whom the application was made is no longer subject to a forensic order or treatment support order and any appeal of revocation of the person's order is finalised.

The Act outlines circumstances where a person may be considered to have 'sufficient personal interest' in receiving the information.

An application by a victim or close relative must be decided within 14 days.

An application by another individual must be decided within 28 days.

Where the Chief Psychiatrist approves an application, the person may subsequently apply to the Chief Psychiatrist to amend a nominee or add a nominee.

s.321

9.5.2 Receiving information under information notice

The Chief Psychiatrist must ensure that a person entitled to receive information about a patient under an information notice receives the information outlined in Schedule 1 of the Act.

s.320 &
Schedule 1

Information about a 'patient required to return' is to be provided to the patient as soon as practicable after the Chief Psychiatrist becomes aware of the information. (The Chief Psychiatrist is

only required to provide this information if satisfied it is relevant to the safety or welfare of the person).

Other information is to be provided within 14 days.

The Chief Psychiatrist may make arrangements with a victim support service to provide the information on behalf of the Chief Psychiatrist.

9.5.3 Duration of information notice

An information notice relating to a patient on a forensic order or treatment support order ceases to have effect if:

- the patient's order is revoked or ends and any period for appeal has passed or any appeal proceedings commenced are finalised;
- the patient's transfer out of Queensland has been approved by the Tribunal (see section 14.11.3 of this Guide) and they have left Queensland;
- the person who receives the information under the information notice asks the Chief Psychiatrist to revoke the notice; or
- the Chief Psychiatrist revokes the information notice.

MHA 2016,
s.322

If a patient is transferred out of Queensland and returns before their forensic order or treatment support order ends, the information notice is reinstated on the day they return to Queensland.

The Chief Psychiatrist must give written notice of the ending of an information notice to the person entitled to receive the information under the notice within seven days of the notice ceasing to have effect.

9.5.4 Revocation of information notice

The Chief Psychiatrist *must* revoke an information notice if satisfied that disclosure of information under the notice is likely to result in serious harm to the patient's health or welfare or put the safety of the patient or someone else at serious risk.

The Chief Psychiatrist *may* revoke an information notice if they have been unable to locate the person entitled to receive information under the notice or if the person has contravened the confidentiality obligations of the Act (see section 9.5.5 of this Guide).

Before revoking an information notice because they have been unable to locate a person or where a person has contravened confidentiality obligations, the Chief Psychiatrist must give the person who holds the information notice a reasonable opportunity to make a submission about why the notice should not be revoked.

The Chief Psychiatrist must give written notice of the decision to revoke the information notice to the person entitled to receive the information notice within seven days of deciding to revoke the notice.

The person may appeal the revocation to the Tribunal against the decision within 28 days after the person receives notice from the Chief Psychiatrist.

MHA 2016,
s.323

9.5.5 Confidentiality

The Chief Psychiatrist (or other person performing a function under the Act) must not tell the relevant patient of the making of an information notice.

However, the patient may be told of the making of an information notice or the name of the applicant for the notice if:

- the applicant requests that information be given to the patient, and
- the Chief Psychiatrist or an authorised doctor considers it is in the patient's best interests.

A person who receives information under an information notice must not publish the information unless it is permitted under the information notice, or an Act or law.

9.5.6 Application to forensic disability clients

The information notice provisions also apply to persons on a forensic order (disability) for which the Forensic Disability Service is responsible.

For these patients, the Director of Forensic Disability (under the *Forensic Disability Act 2011*) is responsible for all provisions of the Act related to information notices.

MHA 2016,
s.325

s.326

MHA 2016,
s.327

10. Magistrates and other courts

10.1 Overview

Magistrates Courts, the Supreme Court and the District Court have particular powers under the Act to deal with persons before the Court who have a mental illness or other mental condition.

See Chapter 6 of the Act (Powers of Courts Hearing Criminal Proceedings and Related Processes).

10.2 Definitions

A reference to a Magistrates Court includes the Children's Court if the offence is being dealt with under the *Youth Justice Act 1992*.

MHA 2016,
s.170

Simple offence has the meaning under the *Justices Act 1886* (section 4), namely - any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, or otherwise.

s.171

10.3 Magistrates Court

10.3.1 General powers

Provisions of the Act apply if a Magistrates Court is reasonably satisfied, on the balance of probabilities, that a person charged with a simple offence:

MHA 2016,
s.172

- was, or appears to have been, of unsound mind when the offence was allegedly committed, or
- is unfit for trial.

In these circumstances, the Court may dismiss the complaint.

Under the *Justices Act 1886*, 'complaint' includes a charge before a Magistrates Court.

If the person is unfit for trial but is likely to become fit within 6 months, the Court may adjourn the hearing.

s.173

If the Court has dismissed a complaint or adjourned a hearing and the person does not appear to have a mental illness, the Court may refer the person to a disability services agency or the health department. This referral does not mandate treatment or care (see section 10.3.2 of this Guide for persons who may have a mental illness).

s.174

A Magistrates Court may refer an indictable offence to the Mental Health Court if:

s.175

- the person was, or appears to have been, of unsound mind when the offence was allegedly committed, or the person is unfit for trial
- the nature and circumstances of the offence create an exceptional circumstance in relation to the protection of the community, and
- the making of a forensic order or treatment support order for the person may be justified.

10.3.2 Examination orders

A Magistrates Court may make an examination order (see 'judicial orders' in section 3.5 of this Guide) for a person charged with a simple offence if:

MHA 2016,
s.177

- the Court has dismissed a complaint, adjourned a hearing or is satisfied the person would benefit from an examination by an authorised doctor, and
- the person has, or may have, a mental illness.

The examination order authorises an authorised doctor to examine the person, without the person's consent, to decide whether to:

- make a treatment authority for the person
- make a recommendation for the person's voluntary treatment and care, or
- if the person is already subject to an authority or order, change the nature of the treatment and care provided to the person under the authority or order.

The examination order may also direct:

- an authorised person to transport the person immediately to an inpatient unit of an authorised mental health service, or
- the person to attend an authorised mental health service or public sector health service facility within a time of not more than 28 days.

For the purpose of examining the person, the person may be detained in the service or facility for a period of up to six hours. An authorised doctor may extend this up to 12 hours if it is necessary to carry out or finish the examination of the person.

s.178

After an examination, the authorised doctor must prepare a report outlining:

s.179

- the details of the examination carried out under the examination order
- the recommendations or decision made as a result of the examination, and
- if the authorised doctor makes a recommendation for the person's voluntary treatment and care, details of the explanation given to the person of the benefits of being treated voluntarily.

An examination report is not prepared to assist a court in deciding whether a person was of unsound mind at the time of an alleged offence or is unfit for trial, but may assist, for example, in deciding at a future hearing whether to refer an indictable offence to the Mental Health Court, or to make another examination order.

MHA 2016,
s.180 & s.181

An examination report is admissible at the trial of the person for an offence for which the Examination Order was made, and any future criminal proceedings to allow the Magistrates Court:

- to decide whether to make an Examination Order for the person at a future proceeding, or
- to decide whether to refer the matter to the Mental Health Court.

Any oral or written statements made by the person in the process of an examination are not admissible in any criminal or civil proceedings, except:

- where the proceedings relate to charges of contempt of court
- or an offence relating to the administration of justice (Chapter 16 of the Criminal Code),
- or in a proceeding before the Mental Health Court.

In all other circumstances where a report or oral or written statement is received in evidence, it can only be used with permission from the Court.

10.3.3 Supreme Court and District Court—Reference to Mental Health Court

Provisions of the Act apply where a person pleads guilty to a charge before the Supreme Court or District Court and the Court is reasonably satisfied, on the balance of probabilities, that the person:

MHA 2016,
s.181- s.183

- was, or appears to have been, of unsound mind when the offence was allegedly committed
- for the offence of murder, the person was, or appears to have been, of diminished responsibility when the offence was allegedly committed, or
- is unfit for trial.

Where this occurs, the Court may enter a plea of not guilty for the person, adjourn the proceeding, and refer the matter of the person's mental state to the Mental Health Court.

The Court may also order that the person be remanded in custody, granted bail or detained in an authorised mental health service (see 'judicial orders' in section 3.5 of this Guide).

s.183(c)

An order for the detention of the person in an authorised mental health service requires the agreement of the administrator of the service or, if the administrator does not agree, the Chief Psychiatrist. An agreement may be made only if the service has the capacity to detain the person.

s.185 – s.187

The detention of a minor in a high security unit requires the approval of the Chief Psychiatrist.

10.4 Forensic orders (Criminal Code)

A forensic order (Criminal Code) is an order made under the Criminal Code, sections 613, 645 or 647, that a person be admitted to an authorised mental health service to be dealt with under this Act.

MHA 2016,
Dictionary

These orders are made where a person is found of unsound mind at the time of an alleged offence or is unfit for trial.

When a court makes a forensic order (Criminal Code), the registrar of the court that made the order must, within seven days, give notice of the order to the Chief Psychiatrist and the Tribunal.

MHA 2016,
s.190

This notice triggers a review of the order by the Tribunal to decide whether a forensic order (mental health) or a forensic order (disability) should be made for the person, and associated decisions such as the category of the order (see section 14.5 of this Guide).

Where the order of the Court relates to sections 613 and 645 of the Criminal Code, the notice also triggers a review of the order by the Tribunal to decide when the person becomes fit for trial (see section 14.7 of this Guide).

10.5 Detention in authorised mental health service during trial

A court (Supreme Court, District Court or Magistrates Court) may order that a person be detained in an authorised mental health service during an adjournment in a trial (see 'judicial orders' in section 3.5 of this Guide).

MHA 2016,
s.193

The order requires the agreement of the administrator of the service or, if the administrator does not agree, the Chief Psychiatrist. An agreement may be made only if the service has the capacity to detain the person.

s.194 – s.196

The detention of a minor in a high security unit requires the approval of the Chief Psychiatrist.

11. Treatment and care of patients

11.1 Overview

The Act deals with:

- the responsibilities of authorised doctors and administrators in providing treatment and care to patients
- the assessment of patients subject to treatment authorities to decide whether to continue an authority
- the authorisation of treatment in the community (community category or limited community treatment) for involuntary patients
- the approval of temporary absences for particular involuntary patients
- the appointment of nominated support persons
- the recording of advance health directives and enduring powers of attorney
- placing of restrictions on the use of electroconvulsive therapy and non-ablative neurosurgical procedures to treat a mental illness, and
- the prohibition of psychosurgery and other treatments.

See Chapter 7 of the Act (Treatment and care of patients).

11.2 Definitions

Advance health directive—see section 3.8 of this Guide.

Attorney—see section 3.8 of this Guide.

Electroconvulsive therapy (ECT) means the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent for the treatment of a mental illness.

Limited community treatment—see section 3.7 of this Guide.

Non-ablative neurosurgical procedure means a procedure on the brain, that does not involve deliberate damage to or removal of brain tissue, for the treatment of a mental illness. An example of a non-ablative neurosurgical procedure is deep brain stimulation

Personal guardian—see section 3.8 of this Guide.

Psychosurgery means a procedure on the brain, that involves deliberate damage to, or removal of, brain tissue for the treatment of a mental illness.

Relevant circumstances—see section 3.8 of this Guide.

11.3 Relationship with custodial status

A person making a decision about a patient's treatment authority, forensic order or treatment support order in relation to treatment in the community must make the decision without having regard to whether the person is being held in custody under another Act, such as being imprisoned.

MHA 2016,
s.198

MHA 2016,
Dictionary

Dictionary

Dictionary

MHA 2016,
s.199

Where a person subject to an authority or order is being held in custody, the person's custodial status is to take precedence. For example, a person who is on a community category of a treatment authority serving a sentence of imprisonment must be held in custody in the prison. The exception to this is where the classified patient provisions apply (see Chapter 6 of this Guide).

11.4 Responsibility to provide treatment and care

The provisions of the Act related to the responsibility to provide treatment and care to patients apply to:

MHA 2016,
s.200

- a person subject to a treatment authority
- a person subject to a forensic order
- a person subject to a treatment support order
- a classified patient (voluntary)
- a person who is absent without permission from another State and is detained in an authorised mental health service (see section 18.2.4 of this Guide), and
- a patient receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

A classified patient (involuntary) who is subject to a treatment authority, forensic order or treatment support order is covered by these provisions by virtue of being on the authority or order.

An authorised doctor must, as soon as practicable, examine the patient and decide the nature and extent of treatment and care to be provided to the patient. In deciding the treatment and care to be provided to the patient, the authorised doctor must:

s.201

- discuss the treatment and care to be provided with the patient, and
- have regard to the views, wishes and preferences of the patient, to the extent they can be expressed, including in an advance health directive.

These provisions do not apply to persons on treatment authorities, unless the person becomes a classified patient, as equivalent provisions for patients on treatment authorities are located elsewhere in the Act (see section 5.8.1 of this Guide).

An authorised doctor must ensure the treatment and care to be provided to the patient is, and continues to be, appropriate for the patient's treatment and care needs and in compliance with the requirements of this Act.

s.202

The authorised doctor must record in the patient's health records the treatment and care planned to be provided, and that is provided, to the patient.

For each patient, the relevant administrator must take reasonable steps to ensure:

s.203

- the patient receives the treatment and care planned to be provided to the patient, as recorded in the patient's health records
- to the extent practicable, the patient receives the treatment and care appropriate for any other illness or condition affecting the patient, and
- the patient's treatment and care complies with the requirements of this Act.

Administrators must also ensure

- the systems for recording the patient's treatment and care, both planned and provided, can be audited, and
- regular assessments of the patient happen as decided by an authorised doctor.

11.5 Patients subject to treatment authorities

11.5.1 Assessments

Under the Act, assessments are undertaken to decide whether a person should continue to be subject to a treatment authority.

MHA 2016,
s.205

An authorised doctor must make an assessment of a patient on a treatment authority before the date recorded in the patient's health records when the treatment authority was made (see section 5.8.3 of this Guide).

An authorised doctor must also make an assessment of the patient if the doctor considers, at any time, that the treatment criteria may no longer apply to the patient, or that there may be a less restrictive way for the patient to receive treatment and care.

The authorised doctor must discuss the assessment with the patient.

After the assessment, the authorised doctor must decide, and record in the patient's health records:

- whether the treatment criteria continue to apply to the patient and whether there is a less restrictive way for the patient to receive treatment and care
- if the patient's treatment authority continues, whether the category of the patient's treatment authority and any limited community treatment continues to be appropriate, and
- the date of the patient's next assessment, which must be within three months.

11.5.2 Revocation

An authorised doctor must revoke the patient's treatment authority if the treatment criteria no longer apply to the patient or there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness. However, the authorised doctor is not required to revoke the treatment authority if the patient's capacity to consent is not stable, for example, if the person gains and loses capacity to consent to be treated during a short time period.

MHA 2016,
s.206

Also, if the authorised doctor is not an authorised psychiatrist, the revocation takes effect only if the authorised doctor has consulted with an authorised psychiatrist.

An authorised doctor must tell the patient of the revocation as soon as practicable after the revocation.

The administrator must give written notice of the revocation to the patient and the Tribunal, within seven days of the revocation.

An authorised psychiatrist may revoke a patient's treatment authority if the authorised mental health service has not been able to locate the patient for a period of at least six months. The administrator must give written notice of the revocation to the Tribunal within seven days of the revocation.

s.207

The Chief Psychiatrist may revoke a patient's treatment authority if the treatment criteria no longer apply to the patient or there is a less restrictive way for the patient to receive treatment and care for the patient's mental illness. The Chief Psychiatrist must give written notice of the revocation to the administrator as soon as practicable after the revocation.

An authorised doctor must tell the patient of the revocation as soon as practicable after the revocation.

The administrator of the patient's treating health service must give written notice of the revocation to the Tribunal within seven days of the revocation.

11.5.3 Amendment of treatment authority by authorised doctor

An authorised doctor may amend a patient's treatment authority:

- to change the category of the authority
- to authorise, revoke or change limited community treatment, or
- to impose or change a condition of the authority.

These provisions do not apply if the patient is a classified patient (see section 11.8 of this Guide).

The authorised doctor may change the category of the authority to inpatient only if the patient's treatment and care needs, the safety and welfare of the patient, or the safety of others cannot reasonably be met if the category of the authority is community. This is consistent with taking a least restrictive approach to treatment.

The authorised doctor must also have regard to the patient's relevant circumstances in making this decision and, where relevant, the purpose of limited community treatment.

As part of its least restrictive role, the Tribunal may decide that a patient must be placed on a community category or have a stated amount of limited community treatment, which an authorised doctor must not reduce (see section 14.3.3 of this Guide). An authorised doctor cannot make a decision contrary to this, other than in the limited circumstances outlined below.

The authorised doctor must tell the patient of any amendment to the authority and explain the effect of the amendment to the patient.

In limited circumstances, an authorised doctor may amend a patient's treatment authority to change the category of the authority to inpatient contrary to a tribunal decision. This applies if the authorised doctor reasonably believes there has been a material change in the patient's mental state and the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

The administrator must, as soon as practicable after the treatment authority is amended, give the Tribunal written notice of the amendment.

The Tribunal must review the treatment authority within 14 days after receiving written notice of the amendment of the authority (see section 14.3.2 of this Guide).

However, if before the Tribunal commences hearing the review of the treatment authority, an authorised doctor changes the category of the authority back to community, the administrator must give the Tribunal written notice of the amendment. Where this applies, the Tribunal does not need to proceed with a review.

11.6 Patients subject to forensic orders

11.6.1 General

Provisions of the Act allow an authorised doctor to amend a forensic order for which an authorised mental health service is responsible in particular ways.

MHA 2016,
s.211

These provisions do not apply if the patient is a classified patient (see section 11.8 of this Guide).

The *Forensic Disability Act 2011* has equivalent provisions for forensic orders for which the Forensic Disability Service is responsible.

11.6.2 Amendment of forensic order (mental health) or forensic order (disability) by authorised doctor

An authorised doctor may amend a patient's forensic order to:

MHA 2016,
s.212

- change the category of the order
- authorise, revoke or change limited community treatment, or
- impose or change a condition on the order

However, the amendment must not be contrary to a decision of the Mental Health Court or the Tribunal. The Act provides an example of when it would be contrary to a decision of the Mental Health Court or Tribunal, namely, authorising limited community treatment to a greater extent than the Mental Health Court or the Tribunal has approved.

The authorised doctor may increase the extent of treatment in the community only if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

In amending a forensic order, the authorised doctor must have regard to:

- the patient's relevant circumstances
- the purpose of limited community treatment, where relevant, and
- the nature of the relevant unlawful act and the period of time that has passed since the act happened.

The authorised doctor must tell the patient of an amendment to the order and explain the effect of the amendment to the patient.

In limited circumstances, an authorised doctor may amend a patient's forensic order to change the category of the authority to inpatient contrary to a decision of the Mental Health Court or the Tribunal.

This applies if the authorised doctor reasonably believes there has been a material change in the patient's mental state and the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

MHA 2016,
s.213

The administrator must, as soon as practicable after the order is amended, give the Tribunal written notice of the amendment. The Tribunal must review the order within 21 days after receiving written notice of the amendment of the authority (see section 14.4.2 of this Guide).

However, if before the Tribunal commences hearing the review of the order, an authorised doctor changes the category of the order back to community, the administrator must give the Tribunal written notice of the amendment. Where this applies, the Tribunal does not need to proceed with a review.

11.6.3 Amendment of forensic order (Criminal Code)

Persons subject to a forensic order (Criminal Code) are admitted as inpatients under the Criminal Code, sections 613, 645 and 647.

An authorised doctor may authorise, revoke or change limited community treatment for a person on a forensic order (Criminal Code) with the written approval of the Chief Psychiatrist.

MHA 2016,
s.214

Limited community treatment can only be approved and authorised if there is not an unacceptable risk to the safety of the community because of the person's mental condition, including the risk of serious harm to other person's or property.

In approving limited community treatment, the authorised doctor and Chief Psychiatrist must have regard to:

- the patient's relevant circumstances
- the purpose of limited community treatment, and
- the nature of the relevant unlawful act and the period of time that has passed since the act happened.

11.7 Patients subject to treatment support orders

11.7.1 General

Provisions of the Act allow an authorised doctor to amend a treatment support order in particular ways.

MHA 2016,
s.215

These provisions do not apply if the patient is a classified patient (see section 11.8 of this Guide).

11.7.2 Amendment of treatment support order by authorised doctor

An authorised doctor may amend a patient's treatment support order:

MHA 2016,
s.216

- to change the category of the order
- to authorise, revoke or change limited community treatment, or
- to impose or change a condition of the order.

The authorised doctor may change the category of the order to inpatient only if the patient's treatment and care needs, the safety and welfare of the patient, or the safety of others cannot reasonably be met if the category of the order is community. This is consistent with taking a least restrictive approach to treatment.

The authorised doctor must also have regard to the patient's relevant circumstances in making this decision and, where relevant, the purpose of limited community treatment.

As part of its least restrictive role, the Mental Health Court or the Tribunal may decide that a patient must be placed on a community category or have a stated amount of limited community treatment, which an authorised doctor must not reduce (see sections 8.7.2 and 14.4.3 of this Guide). An authorised doctor cannot make a decision contrary to this, other than in the limited circumstances outlined below.

The authorised doctor must tell the patient of any amendment to the order and explain the effect of the amendment to the patient.

In limited circumstances, an authorised doctor may amend a patient's treatment support order to change the category of the order to inpatient contrary to a decision of the Mental Health Court or Tribunal.

MHA 2016,
s.217

This applies if the authorised doctor reasonably believes there has been a material change in the patient's mental state and the patient requires urgent treatment and care as an inpatient in an authorised mental health service.

The administrator must, as soon as practicable after the order is amended, give the Tribunal written notice of the amendment. The Tribunal must review the order within 14 days of receiving the notice. (see section 14.6.2 of this Guide).

However, if before the Tribunal commences hearing of the review of the order, an authorised doctor changes the category of the authority back to community, the administrator must give the Tribunal written notice of the amendment. Where this applies, the Tribunal does not need to proceed with a review.

11.8 Classified patients and patients subject to judicial orders

A classified patient or a patient subject to a judicial order (see section 3.5 of this Guide) may receive limited community treatment only on the grounds and buildings of the authorised mental health service. The patient must remain in the physical presence of a health service employee while receiving the limited community treatment.

MHA 2016,
s.218 & s.219

An authorised doctor may authorise limited community treatment for the patient with the written approval of the Chief Psychiatrist.

An approval by the Chief Psychiatrist and an authorisation by an authorised doctor may only be given if the patient is unlikely to abscond from the authorised mental health service while receiving the limited community treatment.

11.9 Obligation for treatment in the community

Provisions of the Act apply if a patient subject to a treatment authority, forensic order or treatment support order is authorised to receive treatment in the community (community category or limited community treatment) outside of an authorised mental health service.

MHA 2016,
s.220

An authorised doctor must decide:

- the treatment and care to be provided to the patient while receiving the treatment in the community, and
- the patient's obligations while receiving the treatment in the community, for example, attending scheduled appointments.

Before the patient leaves the authorised mental health service, the authorised doctor must:

- explain the treatment and care to be provided to the patient, and the patient's obligations
- record the matters in the patient's health records, and
- give the patient a written notice summarising the matters.

An authorised doctor is required to comply with this only once for each type of treatment in the community for a patient. For example, if a patient is authorised to receive treatment in the community of day leave on each day of the week, an authorised doctor is required to comply only once, and not on each day of the week.

Also, these requirements do not apply if the treatment in the community is escorted day leave.

11.10 Temporary absences

The Chief Psychiatrist may approve the temporary absence from an authorised mental health service of a patient subject to a forensic order (inpatient category), a classified patient or a patient subject to a judicial order.

MHA 2016,
s.221

The approval may be given for the patient:

- to receive medical, dental or other health treatment
- to appear before a court, tribunal or other body
- to look for accommodation for the patient for when the patient is discharged from the service
- for a purpose based on compassionate grounds, or
- for another purpose the Chief Psychiatrist is satisfied justifies approving the absence.

11.11 Advance health directives and nominated support persons

11.11.1 Advance health directives

The Act clarifies that an advance health directive made under the *Powers of Attorney Act 1998* may include the person's views, wishes and preferences about the person's future treatment and care for a mental illness. The views, wishes and preferences about treatment and care expressed in an advanced health directive must be taken into account in deciding the nature and extent of treatment and care to be provided under a treatment authority (see section 5.8.1 of this Guide.)

MHA 2016,
s.222

11.11.2 Nominated support persons

A person may appoint one or two nominated support persons.

MHA 2016,
s.223

The appointment must be made in writing when the appointing person has capacity to make the appointment.

The appointment is only effective if there is a record of the appointment in the records system (see below).

The appointing person may revoke the appointment of a nominated support person by written notice given to the nominated support person when the person has capacity to make the revocation.

A nominated support person may resign by written notice given to the appointing person.

If the appointing person becomes an involuntary patient, a nominated support person:

s.224

- must receive notices for the person under this Act
- may receive confidential information relating to the person
- may request a psychiatrist report for the person, and
- may act as the person's support person or represent the person in the Tribunal.

11.11.3 Records of advance health directives. Attorneys and nominated support persons

The Chief Psychiatrist must establish and maintain a system for keeping electronic records of:

MHA 2016,
s.225

- advance health directives
- enduring powers of attorney for personal matters, and
- appointments of nominated support persons.

Provisions of the Act apply where a person makes an advance health directive or appoints an enduring power of attorney related to future treatment and care for a mental illness or appoints a nominated support person.

s.226

The person may ask the administrator of an authorised mental health service to keep a record of the matter on the records system. The administrator must comply with the request and give the person written notice confirming compliance with the request.

Provisions of the Act apply where an advance health directive or enduring power of attorney recorded on the records system is revoked.

s.227

The person must give the administrator written notice of the revocation.

Also, if an attorney resigns, the person or the attorney must give the administrator written notice of the resignation. On receiving one of these notices, the administrator must amend the records system.

Provisions of the Act apply where the appointment of a nominated support person recorded in the records system is revoked by the appointing person. The appointing person must give the administrator written notice of the revocation. On receiving the notice, the administrator must remove the record of the appointment from the records system.

s.228

A nominated support person may resign by giving the administrator written notice of the resignation. On receiving the notice, the administrator must remove the record of the appointment from the records system.

s.229

11.12 Regulated treatments

11.12.1 Overview

The Act regulates two types of treatments for a mental illness:

- electroconvulsive therapy, and
- non-ablative neurosurgical procedures.

11.12.2 Electroconvulsive therapy

It is an offence under the Act for a person to perform electroconvulsive therapy (ECT) on another person unless it is performed in accordance with the Act.

MHA 2016,
s.235

A doctor may perform electroconvulsive therapy in an authorised mental health service if: s.236

- the patient is an adult and has given informed consent to the treatment
- the patient is an adult who is unable to give informed consent and the Tribunal has approved the treatment (see section 14.10 of this Guide),
- the patient is subject to a treatment authority, treatment support order or forensic order and the Tribunal has approved the treatment, or
- the patient is a minor and the Tribunal has approved the performance of the treatment (see section 14.10 of this Guide).

The Act outlines the requirements for giving informed consent, including requiring the benefits and risks of the procedure to be explained to the person. MHA 2016, s.233

In addition, electroconvulsive therapy may be performed on particular patients in emergency circumstances, namely: s.237

- an involuntary patient subject to a treatment authority, forensic order or treatment support order, or
- a person who is absent without permission from another State and is detained in an authorised mental health service.

A doctor may perform electroconvulsive therapy on one of these patients in an authorised mental health service if:

- the doctor and the senior medical administrator of the service have certified in writing that the performance of the therapy is necessary to save the patient's life or prevent the patient from suffering irreparable harm, and
- an application has been made to the Tribunal to perform electroconvulsive therapy on the person.

The application to the Tribunal may have been made prior to the certificate being made or when the certificate is made.

11.12.3 Non-ablative neurosurgical procedures

It is an offence under the Act for a person to perform a non-ablative neurosurgical procedure on a person for a mental illness unless it is performed in accordance with the Act. MHA 2016, s.238

To remove doubt, the Act states illnesses that are not a mental illness and, therefore, not an offence under the Act to perform a non-ablative neurosurgical procedure for the illness, namely:

- chronic tic disorder, dystonia, epilepsy, Gilles de la Tourette syndrome, Parkinson's disease or tremor, or
- another neurological disorder prescribed by regulation

A doctor may perform a non-ablative neurosurgical procedure on a person for a mental illness if: s.239

- the person has given informed consent to the treatment, and
- the Tribunal has approved the treatment (see section 14.10 of this Guide).

The Act outlines the requirements for giving informed consent, including requiring the benefits and risks of the procedure to be explained to the person. s.233

11.13 Prohibited treatments

It is an offence under the Act for a person to perform psychosurgery on another person.

MHA 2016,
s.241

It is an offence under the Act for a person to perform insulin induced coma therapy or deep sleep therapy on another person.

MHA 2016,
s.240

12. Mechanical restraint, seclusion, physical restraint and other practices

12.1 Overview

The Act regulates the use of mechanical restraint, seclusion, physical restraint and the use of medications in authorised mental health services.

See Chapter 8 of the Act (Use of mechanical restraint, seclusion, physical restraint and other practices).

12.2 Defined terms

Mechanical restraint means the restraint of a person by the application of a device to the person's body, or a limb of the person, to restrict the person's movement. However, this does not include: MHA 2016,
s.244

- the appropriate use of a medical or surgical appliance in the treatment of physical illness or injury, or
- the restraint of a person that is authorised or permitted under another law, such as the *Police Powers and Responsibilities Act 2000*.

Patient means:

s.243

- an involuntary patient, and
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

Physical restraint of a patient means the use by a person of his or her body to restrict the patient's movement. However, this does not include: s.268

- the giving of physical support or assistance reasonably necessary to enable a patient to carry out daily living activities or to redirect a patient because the patient is disoriented
- physical restraint of a patient that is authorised under another law, or
- physical restraint that is required in urgent circumstances.

Reduction and elimination plan is a written plan developed by an authorised doctor that provides for the reduction and elimination of the use of mechanical restraint or seclusion on a relevant patient. s.264

Relevant patient means:

s.243

- an involuntary patient in an authorised mental health service subject to a treatment authority, forensic order or treatment support order, and
- a person who is absent without permission from another State detained in an authorised mental health service (see section 18.2.4 of this Guide)

Seclusion means the confinement of a person, at any time of the day or night, alone in a room or area from which free exit is prevented. However, seclusion does not include: s.254

- confinement of a person in a high security unit or another authorised mental health service approved by the Chief Psychiatrist for a period, approved by the administrator of the service, of not more than 10 hours between 8 pm and 8 am for security purposes, or
- confinement that is authorised under another law

12.3 Mechanical restraint

12.3.1 Offence

A person must not use mechanical restraint on a patient (as defined) in an authorised mental health service other than under the Act.

MHA 2016,
s.245

12.3.2 Approval and authorisation

An authorised doctor, or a health practitioner authorised by an authorised doctor, may use mechanical restraint on a relevant patient (as defined) in an authorised mental health service if:

MHA 2016,
s.246

- the authorised mental health service is a high security unit or another authorised mental health service approved by the Chief Psychiatrist
- the device used is approved by the Chief Psychiatrist
- the Chief Psychiatrist has given approval to use the mechanical restraint
- the use of the mechanical restraint is authorised by an authorised doctor in accordance with the Act (see below)
- the use of the mechanical restraint complies with the Restraint, Seclusion and Other Practices Policy (see section 12.8 of this Guide)
- the use of the mechanical restraint complies with any reduction and elimination plan (see section 12.5 of this Guide)
- the use of the mechanical restraint is done with no more force than is necessary and reasonable in the circumstances, and
- the patient is observed continuously while restrained.

An authorised doctor may apply to the Chief Psychiatrist, in the approved form, for approval to authorise the use of mechanical restraint on the patient.

s.247- s.249

The Chief Psychiatrist may require the application to include a reduction and elimination plan.

The Chief Psychiatrist may give an approval only if there is no other reasonably practicable way to protect the relevant patient or others from physical harm. An approval may include an approval of a reduction and elimination plan.

The approval may include limitations and conditions.

An approval is in force for up to seven days.

An authorised doctor may authorise the use of mechanical restraint on a relevant patient in an authorised mental health service if:

s.250

- there is no other reasonably practicable way to protect the patient and others from physical harm
- the authorisation complies with the approval given by the Chief Psychiatrist

- the authorisation complies with the Restraint, Seclusion and Other Practices Policy, and
- the use of the mechanical restraint complies with any reduction and elimination plan.

The authorisation must be in writing and state:

- the period, of not more than three hours, during which mechanical restraint may be used on the patient
- the approved device that must be used
- the time at which the use of mechanical restraint on the relevant patient is to start and end
- the measures that must be taken to ensure the health, safety and comfort of the patient
- the way in which the patient must be observed continuously while restrained, and
- whether a health practitioner may end the use of mechanical restraint.

The authorisation may state a start time that is immediately after the end of a previous authorisation. However, an authorisation may not be given if the total period for the use of mechanical restraints could be more than nine hours in a 24-hour period.

This limitation does not apply if an approved reduction and elimination plan provides for the use of mechanical restraint on the patient for more than nine hours in a 24-hour period.

12.3.3 Duties of health practitioner in charge of unit

The health practitioner in charge of an inpatient or other unit must:

- ensure the use of the mechanical restraint complies with the authorised doctor's authorisation
- ensure the relevant patient's reasonable needs are met, for example, being given sufficient bedding and clothing, sufficient food and drink, and access to toilet facilities, and
- record the required information about the use of mechanical restraint for the relevant patient (see section 12.8 of this Guide).

MHA 2016,
s.251

12.3.4 Removal and re-use

The Chief Psychiatrist must direct the removal of a mechanical restraint if it is no longer necessary to protect the relevant patient or others from physical harm.

MHA 2016,
s.252

An authorised doctor must remove a mechanical restraint if it is no longer necessary to protect the relevant patient or others from physical harm.

The health practitioner in charge of the inpatient or other unit must remove a mechanical restraint if:

- it is no longer necessary to protect the relevant patient or others from physical harm, and
- the initial authorisation permitted the health practitioner to remove the device before the end of the approved period.

The health practitioner must advise the authorised doctor of the removal of a mechanical restraint.

Where an authorised doctor or health practitioner in charge of a unit has removed a mechanical restraint, the authorised doctor or health practitioner may re-use the mechanical restraint on the patient before the end of the initial approved period for the use of the restraint.

MHA 2016,
s.253

This may only occur if it is necessary to protect the patient or others from physical harm.

The re-use of the mechanical restraint must comply with the initial authorisation.

The health practitioner must advise the authorised doctor of the re-use of a mechanical restraint.

12.4 Seclusion

12.4.1 Offence

A person must not keep a patient (as defined) in seclusion in an authorised mental health service other than under the Act.

MHA 2016,
s.255

12.4.2 Authorisation

An authorised doctor, or a health practitioner authorised by an authorised doctor, may keep a relevant patient (as defined) in seclusion in the authorised mental health service if:

MHA 2016,
s.256

- the seclusion of the relevant patient is authorised by an authorised doctor (see below)
- the seclusion complies with any direction given by the Chief Psychiatrist (see below)
- the seclusion complies with the Restraint, Seclusion and Other Practices Policy (see section 12.8 of this Guide)
- the seclusion complies with any reduction and elimination plan (see section 12.5 of this Guide)
- the seclusion is done with no more force than is necessary and reasonable in the circumstances, and
- the patient is observed continuously, or at 15 minute intervals, while secluded.

The Chief Psychiatrist may give a written direction to an authorised mental health service about the use of seclusion in the service. A direction may relate to an individual patient, a class of patients or all patients in the service.

s.257

An authorised doctor may authorise the seclusion of a relevant patient in an authorised mental health service if:

- there is no other reasonably practicable way to protect the patient or others from physical harm
- the seclusion complies with any direction about seclusion from the Chief Psychiatrist
- the seclusion complies with the Restraint, Seclusion and Other Practices Policy, and
- the seclusion complies with any reduction and elimination plan.

The authorisation must be in writing and state:

- the period, of not more than three hours, during which the patient may be kept in seclusion
- the time at which the seclusion of the relevant patient is to start and end
- the measures that must be taken to ensure the health, safety and comfort of the patient
- the way in which the patient must be observed while kept in seclusion, and
- whether a health practitioner may remove the relevant patient from seclusion.

The authorisation may state a start time that is immediately after the end of a previous authorisation. However, an authorisation may not be given if the total period for all authorisations (including emergency seclusions—see section 12.4.6 of this Guide) could be more than nine hours in a 24-hour period.

This limitation does not apply if an approved reduction and elimination plan provides for the use of seclusion on the patient for more than nine hours in a 24-hour period.

12.4.3 Extension of seclusion to make reduction and elimination plan

Provisions of the Act apply if the total period for which a relevant patient, may be kept in seclusion is more than nine hours in a 24-hour period.

An authorised doctor may extend the period during which the patient may be kept in seclusion for a further period of not more than 12 hours if:

- the basis for the seclusion of the patient continues (see above)
- it has not been reasonably practicable for a reduction and elimination plan for the patient to be approved, and
- the clinical director has given written approval for the extension.

As soon as practicable after giving the extension, the authorised doctor must notify the Chief Psychiatrist and make an application for a reduction and elimination plan.

12.4.4 Duties of health practitioners in charge of unit

The health practitioner in charge of the inpatient or other unit must:

MHA 2016,
s.260

- ensure the use of seclusion complies with the authorised doctor's authorisation
- ensure the relevant patient's reasonable needs are met, for example, being given sufficient bedding and clothing, sufficient food and drink, and access to toilet facilities, and
- record the required information about the use of seclusion for the relevant patient (see section 12.8 of this Guide)

12.4.5 Removal and return

The Chief Psychiatrist must direct the removal of a person from seclusion if it is no longer necessary to protect the relevant patient or others from physical harm.

MHA 2016,
s.261

An authorised doctor must remove a person from seclusion if it is no longer necessary to protect the relevant patient or others from physical harm.

The health practitioner in charge of the inpatient or other unit must remove a person from seclusion if:

- it is no longer necessary to protect the relevant patient or others from physical harm, and
- the initial authorisation permitted the health practitioner to remove the person from seclusion before the end of the approved period.

The health practitioner must advise the authorised doctor of the removal of a person from seclusion.

Where an authorised doctor or health practitioner in charge of a unit has removed a person from seclusion, the authorised doctor or health practitioner may return the person to seclusion before the end of the initial approved period for the seclusion.

s.262

This may only occur if it is necessary to protect the patient or others from physical harm.

The return of a person to seclusion must comply with the initial authorisation.

The health practitioner must advise the authorised doctor of the return of a person to seclusion.

12.4.6 Emergency seclusion

The health practitioner in charge of an inpatient or other unit, or an appropriately qualified person authorised by the health practitioner, may keep a relevant patient in seclusion if:

MHA 2016,
s.263

- there is no other reasonably practicable way to protect the relevant patient or others from physical harm
- the seclusion complies with any Chief Psychiatrist direction about seclusion
- it is not practicable in the circumstances for an authorised doctor to authorise the seclusion of the patient
- the patient is observed continuously during the seclusion
- the seclusion is for a period of not more than one hour, and
- an authorised doctor is notified of the seclusion.

An authorised doctor must examine the relevant patient to decide whether to authorise the seclusion of the patient (as above).

The patient may be kept in seclusion under these circumstances for not more than three hours in a 24-hour period.

12.5 Reduction and elimination plans

A reduction and elimination plan must include:

MHA 2016,
s.265

- information about the previous use of mechanical restraint or seclusion on the patient
- strategies previously used to reduce the use of mechanical restraint or seclusion of the patient and the effectiveness of the strategies, and
- information about the strategies proposed to reduce and eliminate the use of mechanical restraint or seclusion of the patient in the future.

An authorised doctor may apply to the Chief Psychiatrist to approve a reduction and elimination plan for a patient.

s.266

The Chief Psychiatrist may approve a reduction and elimination plan if the strategies proposed to reduce and eliminate the use of mechanical restraint or seclusion of the patient are appropriate.

s.267

12.6 Physical restraint

A person must not use physical restraint on a patient (as defined) other than under the Act.

MHA 2016,
s.269

The definition of physical restraint excludes the use of physical restraint in particular circumstances (see section 12.2 of this Guide).

An authorised doctor, or a health practitioner in charge of an inpatient or other unit may authorise the use of physical restraint on a patient:

s270

- to protect the patient or others from physical harm
- to provide treatment and care to the patient
- to prevent the patient from causing serious damage to property, or
- to prevent a patient detained in the service from leaving the service.

12.7 Clinical need for medication

A person must not administer medication, including sedation, to a patient unless the medication is clinically necessary for the patient's treatment and care for a medical condition.

MHA 2016,
s.271 & s.272

A patient's treatment and care for a medical condition includes preventing imminent serious harm to the patient or others.

12.8 Chief Psychiatrist Policies

The Chief Psychiatrist must make a Policy about:

- the use of mechanical restraint, seclusion, physical restraint and the appropriate use of medication, including ways of minimising any adverse impacts on patients
- information to be recorded and given to the Chief Psychiatrist about the use of mechanical restraint, seclusion, physical restraint and medication
- the time and way in which this information is to be recorded and given to the Chief Psychiatrist.

MHA 2016,
s.273

For these provisions, 'physical restraint' has a wider meaning than the offence provision (see section 12.6 of this Guide) and allows a Policy to be made in relation to any use by a person of his or her body to restrict a patient's movement.

An authorised doctor, authorised mental health practitioner, administrator or other person performing a function under this Act must comply with the Policy.

13. Rights of patients and others

13.1 Overview

Chapter 9 of the Act (Rights of patients and others) deals with:

MHA 2016,
s.275

- a Statement of Rights
- the right of a patient to be visited by the patient's nominated support persons, family, carers and other support persons
- the right of a patient to be visited by a health practitioner, and legal or other advisers, and to communicate with other persons
- the right of a patient to be given oral explanations of the patient's treatment and care
- the giving of written notices to a patient's nominated support persons, family, carers and other support persons
- the right for a second opinion to be obtained about a patient's treatment and care
- the roles and responsibilities of a patient's nominated support persons, family, carers and other support persons, and
- the appointment and functions of Independent Patient Rights Advisers.

13.2 Definitions

Patient means:

MHA 2016,
s.276

- an involuntary patient, and
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

13.3 Statement of rights

The Chief Psychiatrist must prepare a Statement of Rights about:

MHA 2016,
s.277

- the rights of patients, and of nominated support persons, family, carers and other support persons under this Act, and
- the rights of patients to make complaints about the treatment and care provided at an authorised mental health service and how complaints are made.

After the admission of a patient to an authorised mental health service, the administrator must:

s.278

- explain the Statement of Rights to the patient
- if requested, give a copy of the Statement of Rights to the patient, and
- if requested, give a copy of the Statement of Rights to the patient's nominated support persons, family, carers and other support persons.

The administrator must display signs in prominent positions in the service stating that a copy of the Statement of Rights is available on request.

s.279

13.4 Visits

A patient in an authorised mental health service may be visited by the patient's nominated support persons, family carers and other support persons at any reasonable time. A reasonable time for visits is decided by the administrator having regard to the practices of the service and the comfort of patients. However, this does not apply if:

MHA 2016,
s.281

- the person is excluded from visiting the patient under another provision of the Act (see section 18.3.7 of this Guide), or
- the patient does not wish to be visited by the person.

A patient in an authorised mental health service may be visited and examined by a health practitioner at any reasonable time. The health practitioner may also consult with an authorised doctor about the patient's treatment and care. The health practitioner may do this only:

s.282

- if asked by the patient or a nominated support person, family, carers or other support person, and
- under arrangements made with the administrator of the authorised mental health service

A patient in an authorised mental health service may be visited by a legal or other adviser at any reasonable time. The adviser may do this only:

s.283

- if asked by the patient or a nominated support person, family, carers or other support person, and
- under arrangements made with the administrator of the authorised mental health service.

13.5 Communication and information

13.5.1 General right to communicate

A patient of an authorised mental health service may communicate, in a reasonable way, with another person by post, a fixed line telephone, a mobile telephone or another electronic communication device.

MHA 2016,
s.284

However, this does not apply if:

- the other person has asked the administrator to ensure the patient does not communicate with the person, or
- the communication is prohibited under another provision of this Act, for example, under a non-contact condition of a forensic order.

An administrator may also prohibit or restrict a patient from communicating by telephone or electronic communication device if communicating is likely to be detrimental to the health or wellbeing of the person or others.

13.5.2 Information about treatment and care

An authorised doctor providing treatment and care to a patient must, to the extent practicable, provide timely, accurate and appropriate information to the patient about the treatment and care.

MHA 2016,
s.285

13.5.3 Requirements to tell, explain or discuss matters to a patient

Where the Act requires persons, such as authorised doctors, to tell, explain or discuss a matter with a patient, the person must:

MHA 2016,
s.286

- tell or explain something to, or discuss the thing with, the patient in an appropriate way having regard to the patient's age, culture, mental illness, ability to communicate and any disability, and
- tell or explain the thing to, or discuss the thing with, the patient in a way the patient is most likely to understand, for example, in the patient's language.

The Act provides examples of this, namely:

- if a patient is acutely unwell and does not appear to understand the information given, an authorised doctor may explain the information again when the patient's condition improves
- after providing information to a patient, an authorised doctor may ask the patient to restate the information to ensure it has been understood, and
- an authorised doctor may explain information to a patient in the presence of a family member who can help the patient understand the information.

The person may also tell, explain or discuss the matter with a patient at a later time if the patient would better understand the matter at a later time.

13.5.4 Requirements to tell, explain or discuss matters to nominated support person and others

Where the Act require persons, such as authorised doctors, to tell, explain or discuss a matter with a patient, the following also applies.

MHA 2016,
s.286

If the patient has a nominated support person, the person must tell, explain or discuss the matter with the nominated support person.

If the patient does not have a nominated support person, the person must tell, explain or discuss the matter with one or more of the patient's family, carers or other support persons.

Some limitations apply to this (see section 13.5.6 of this Guide)

13.5.5 Requirements for written notices

The Act requires written notices to be given to other persons in addition to patients. These provisions also apply where a person is admitted as a classified patient or transferred from an authorised mental health service to another place.

MHA 2016,
s.287

If the patient has a nominated support person, the notice must be given to the nominated support person, and need not be given to the patient if the patient may not understand or benefit from receiving the notice.

If the person required to give the notice is aware the patient has a personal guardian or attorney, the notice must be given to the guardian or attorney, and need not be given to the patient if the patient may not understand or benefit from receiving the notice.

If the patient does not have a nominated support person, or a personal guardian or attorney, the person required to give the notice may give the required written notice to one or more of the patient's family, carers or other support persons as well as, or instead of, to the patient if the patient may not understand or benefit from receiving the notice, it appears to be in the patient's best interests, and the patient has not asked for the communication not to happen.

If the patient is a minor, the person may give the required written notice to one or more of the minor's parents as well as, or instead of, to the minor if the minor may not understand or benefit from seeing the notice and, it appears to be in the minor's best interests.

13.5.6 Exceptions to requirement to tell, explain or discuss matters

The provisions of the Act that require a person to tell, explain or discuss a matter with a patient's nominated support persons, family, carers or other support persons do not apply if:

MHA 2016,
s.288

- the patient requests, at a time when the patient has capacity, that the communication not take place
- the person is not readily available or willing for the communication to take place (for example, the person is not willing to visit the patient in hospital), or
- the communication with the person is likely to be detrimental to the patient's health and wellbeing (for example, the person has previously disrupted the patient's treatment and care resulting in the patient's condition deteriorating).

13.5.7 Disclosure provisions of the *Hospital and Health Boards Act 2011*

The Act clarifies that the provisions requiring certain communications to take place (for example with a nominated support person) does not limit the ability to disclose information to other persons if it is permitted under the confidentiality provisions of the *Hospital and Health Boards Act 2011*.

MHA 2016,
s.289

This includes section 144 of that Act (Disclosure with consent), section 145 (Disclosure of confidential information for care and treatment of person), and section 146 (Disclosure to person who has sufficient interest in health and welfare of person).

13.6 Second opinions

If an authorised mental health service has been unable to resolve a complaint about the provision of treatment and care to a patient, the patient, or an interested person for the patient, may request the administrator to obtain a second opinion about the patient's treatment and care from another health practitioner.

MHA 2016,
s.290

The administrator must make arrangements to obtain the second opinion from a health practitioner who is independent of the patient's treating team.

13.7 Roles and responsibilities of nominated support persons, family, carers and other support persons

A patient's nominated support persons, family, carers and other support persons may, subject to the Act:

MHA 2016,
s.291

- contact the patient while the patient is receiving treatment and care
- participate in decisions about the patient's treatment and care
- receive timely, accurate and appropriate information about the patient's treatment, care, support, rehabilitation and recovery, and
- arrange support services for the patient, including, for example, counselling, community care and respite care.

A patient's nominated support persons, family, carers and other support persons have a responsibility to:

MHA 2016,
s.292

- respect the patient's dignity and humanity
- consider the opinions and skills of health practitioners who provide treatment and care to the patient, and
- cooperate with reasonable programs of assessment, treatment, care, support, rehabilitation and recovery of the patient.

13.8 Independent Patient Rights Advisers

Authorised mental health services must have systems in place to ensure that patients are advised of their rights under the Act.

MHA 2016,
s.293

Public sector authorised mental health services must appoint an Independent Patient Rights Adviser or advisers in accordance with the Policies made by the Chief Psychiatrist.

An Independent Patient Rights Adviser may be an employee of an entity that a Hospital and Health Service has engaged to provide services, or an employee of a Hospital and Health Service but not employed in the service's mental health service.

The functions of an Independent Patient Rights Adviser are to:

s.294

- ensure that a patient and support persons are advised of their rights and responsibilities under the Act
- help the patient and support persons to communicate the patient's views, wishes and preferences about the patient's treatment and care to health practitioners
- work cooperatively with community visitors performing functions under the *Public Guardian Act 2014*
- consult with authorised mental health practitioners, authorised doctors, administrators and the Chief Psychiatrist on the rights of patients under the Act, the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998*
- advise the patient and support persons of the patient's rights at Tribunal hearings
- if requested, help the patient engage a representative for a hearing
- work cooperatively with any personal guardian or attorney to further the patient's interests, and
- advise the patient of the benefits of an advance health directive or enduring power of attorney for a personal matter.

An Independent Patient Rights Adviser must act independently and impartially.

s.295

An Independent Patient Rights Adviser is not subject to the direction of another person in the performance of a function under the Act.

14. Mental Health Review Tribunal

14.1 Overview

See section 4.10 of this Guide for an overview of the functions of the Mental Health Review Tribunal.

See Chapter 12 of the Act (Mental Health Review Tribunal proceedings) and Chapter 16, part 2 (Mental Health Review Tribunal).

14.2 Definitions

Chief executive (forensic disability) means the chief executive of the department responsible for the *Forensic Disability Act 2011*.

[Dictionary](#)

Interested person means the person's nominated supported person or another individual who has a sufficient interest in the person.

[Dictionary](#)

Less restrictive way—see section 3.6 of this Guide.

Patient required to return means a patient:

[Dictionary](#)

- for whom a person has given an authorisation or request for a patient's return
- who has not been transported under the authorisation or request, or come voluntarily to the service or facility.

Prescribed offence—see section 8.2 of this Guide.

Relevant circumstances—see section 3.8 of this Guide.

Treatment criteria—see section 3.6 of this Guide.

14.3 Review of treatment authorities

14.3.1 General

In making a decision on the review of a treatment authority, the Tribunal must have regard to the relevant circumstances of the person. The Act may also require other matters to be considered in making particular decisions.

[MHA 2016, s.412](#)

14.3.2 Initiation of reviews

A periodic review of a treatment authority must occur as follows:

[MHA 2016, s.413 – s.416](#)

- within 28 days after the authority is made
- within six months after the initial review and within six months thereafter, and
- at subsequent intervals of not more than 12 months.

However, the timing for a periodic review is amended if the relevant matters were considered in a previous applicant review or tribunal review (see below).

In addition, a review of a treatment authority occurs:

- on application of the relevant person, someone on the person's behalf (an interested person), or the Chief Psychiatrist (an applicant review)
- on the initiation of the Tribunal (a tribunal review), or

- where the Tribunal receives written notice that a community category of a treatment authority has been amended to an inpatient category contrary to a Tribunal decision (a review is not required if, prior to the review, the Tribunal receives a further notice that the category has been changed back to community (see section 11.5.3 of this Guide)).

The Tribunal must not review a treatment authority if the Mental Health Court has, on appeal, stayed a previous Tribunal decision for the treatment authority.

The Tribunal must give written notice of the hearing to relevant persons, at least seven days before the hearing, namely:

MHA 2016,
s.418

- the person subject to the treatment authority
- an applicant (where relevant)
- the administrator of the relevant authorised mental health service, and
- if the person is a classified patient, the Chief Psychiatrist.

On a periodic review of a treatment authority, the Tribunal must decide whether to confirm or revoke the authority. (See below for the criteria for revoking a treatment authority and other decisions the Tribunal can make if the authority is confirmed).

s.419

On an applicant review of a treatment authority, the Tribunal must decide whether to make the orders sought by the applicant and may make other orders it considers appropriate.

On a Tribunal review of a treatment authority, the Tribunal must decide:

- the matters the Tribunal decided to consider when it initiated the review, and
- where the review was required as a result of the category being changed to inpatient by an authorised doctor, whether to confirm the category of the treatment authority as inpatient.

Provisions of the Act apply for a periodic review that occurs 12 months after the treatment authority is made if the person subject to the authority does not have a personal guardian for health matters.

s.420

In these circumstances:

- the relevant administrator must give the Tribunal a report about whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person's mental illness, and
- the Tribunal must consider whether the appointment of a personal guardian for health matters may result in there being a less restrictive way for the person to receive the treatment and care for the person's mental illness.

14.3.3 Decisions on review

On a review of a treatment authority, the Tribunal must revoke the authority if the Tribunal considers:

MHA 2016,
s.421

- the treatment criteria no longer apply to the person, and
- there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

However, this does not apply if the person's capacity to consent to be treated is not stable, for example, if the person gains and loses capacity to consent to be treated during a short time period.

If the Tribunal confirms the treatment authority and the category of the treatment authority is inpatient, the Tribunal must change the category of the authority to community unless the Tribunal considers that the person's treatment and care needs, the safety and welfare of the person or the safety of others cannot reasonably be met if the category of the authority is community. This decision reflects the Tribunal's role in taking a least restrictive approach to treatment.

MHA 2016,
s.423

If the category of the treatment authority is community or the Tribunal changes the category of the treatment authority to community, the Tribunal must decide whether an authorised doctor may, reduce the extent of treatment in the community received by the person. This decision also reflects the Tribunal's role in taking a least restrictive approach to treatment.

s.424

The Act provides that an authorised doctor cannot reduce the level of treatment in the community in a way that is contrary to a decision of the Tribunal unless specific circumstances apply (see section 11.5.3 of this Guide).

If the category of the treatment authority is inpatient, the Tribunal may approve limited community treatment, or an extension of limited community treatment, for the person. If the Tribunal approves or extends limited community, the Tribunal must decide whether an authorised doctor may, reduce the extent of treatment in the community received by the person (see section 11.5.3 of this Guide).

s.425

The Tribunal may also impose, change or remove a condition for the treatment authority. However, the tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or a particular dosage of a medication.

s.426

The Tribunal may order the person's transfer to another authorised mental health service if it would be in the best interests of the person, for example, by allowing closer proximity to the person's family, carers and other support persons.

s.427

Under limited circumstances, the Tribunal may change the category of a treatment authority to inpatient. This may occur only if the Tribunal considers it is necessary for an authorised doctor to examine the person to review the person's treatment and care needs. Once this examination takes place, the authorised doctor may change the nature or extent of the person's treatment in the community (community category or limited treatment).

s.428

14.4 Review of forensic orders (mental health) and forensic orders (disability)

14.4.1 General

In making a decision on a review of a forensic order (mental health) or forensic order (disability), the Tribunal must have regard to:

MHA 2016,
s.432

- the relevant circumstances of the person
- the nature of the relevant unlawful act and the period of time that has passed since the act happened
- any victim impact statement given to the Tribunal relating to the relevant unlawful act (see section 9.4 of this Guide), and
- if the Mental Health Court made a recommendation about an intervention program for the person, the person's willingness to participate in the program if offered to the person.

The Act may also require other matters to be considered in making particular decisions.

14.4.2 Initiation of reviews

A periodic review of a forensic order occurs every six months.

MHA 2016,
s.433 – s.437

However, the timing for a periodic review is amended if the relevant matters were considered in a previous applicant review or tribunal review (see below).

In addition, a review occurs:

- on application of the relevant person, someone on the person's behalf (an interested person), or the Chief Psychiatrist (an applicant review)
- on the initiation of the Tribunal (a tribunal review), or
- where the Tribunal receives written notice that a community category of a forensic order has been amended to an inpatient category contrary to a decision of the Tribunal or Mental Health Court (a review is not required if, prior to the review, the Tribunal receives a further notice that the category has been changed back to community) (see section 11.6.2 of this Guide).

A periodic review is not required if the person subject to the forensic order is transferred interstate or to another country.

The Tribunal must not review a forensic order if the Mental Health Court has, on appeal, stayed a previous Tribunal decision on a review of the order.

The Act also provides that hearings may be adjourned if a patient is absent (see section 14.12.4 of this Guide).

The Tribunal must give written notice of the hearing to relevant persons, at least 14 days before the hearing, namely:

s.439

- the person subject to the forensic order
- an applicant (where relevant)
- the Attorney-General
- if an authorised mental health service is responsible for the person, the administrator of the service and the Chief Psychiatrist, and
- if the Forensic Disability Service is responsible for the person, the administrator and the Director of Forensic Disability under the *Forensic Disability Act 2011*.

On a periodic review of a forensic order, the Tribunal must decide whether to confirm or revoke the order. (See below for the criteria for revoking a forensic order and other decisions the Tribunal can make if the order is confirmed).

s.441

On an applicant review of a forensic order, the Tribunal must decide whether to make the orders sought by the applicant and may make other orders it considers appropriate.

On a tribunal review of a forensic order, the Tribunal must decide:

- the matters the Tribunal decided to consider when it initiated the review, and
- where the review was required as result of the category being changed to inpatient by an authorised doctor, whether to confirm the category of the forensic order as inpatient.

If a forensic order is revoked, the Tribunal may make a treatment support order or treatment authority for the person (see below).

14.4.3 Decisions on review

The Tribunal must confirm the forensic order if the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

MHA 2016,
s.442

s452 – s.454

Also, the forensic order must be confirmed during any non-revocation period for the forensic order set by the Mental Health Court.

Where a person has been found temporarily unfit for trial, a forensic order can only be revoked if it is replaced by a treatment support order.

If the forensic order relates to a prescribed offence, the order cannot be revoked unless the Tribunal has considered a report from an independent examining practitioner, such as a psychiatrist.

If the Tribunal confirms the forensic order, the Tribunal may change the category of the order.

s.444

However, the Tribunal may change the category of the order to community, or confirm the category of the order as community, only if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

If the Tribunal confirms the forensic order, and the category of the order is confirmed or changed to inpatient, the Tribunal must also make decisions about treatment in the community (community category or limited community treatment) for the person, namely:

s.445

1. the Tribunal may order that the person have no limited community treatment.
2. the Tribunal may decide not to approve limited community at the time of the review but approve that, an authorised doctor may authorise treatment in the community for the person (see section 11.6.2 of this Guide). In making this decision, the Tribunal may decide the extent of the treatment in the community and any conditions on the treatment, or
3. the Tribunal may order that the person is to have limited community treatment of a stated extent. In making this decision, the Court may decide whether or not an authorised doctor may amend the forensic order in relation to treatment in the community (see section 11.6.2 of this Guide).

The Tribunal may only order or approve treatment in the community if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

If the Tribunal confirms the forensic order, and the category of the order is confirmed or changed to community, the Tribunal must also make decisions about treatment in the community for the person, namely:

s.446

1. the Tribunal may order that an authorised doctor must not change the category of the order to inpatient, or
2. the Tribunal may decide that an authorised doctor may change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the Tribunal (see section 11.6.2 of this Guide). The Act provides examples of this, namely, changing the category of the forensic order from community to inpatient, with or without limited community treatment.

The Tribunal may impose, change or remove a condition on a forensic order. A condition may provide that the person subject to the order must not contact a victim of the relevant unlawful act. A condition may provide that the person wear a tracking device. The Tribunal cannot impose a condition that the person take a particular medication or dosage of medication.

MHA 2016,
s.447

Dictionary
(‘condition’)

The Tribunal may order the person’s transfer to another authorised mental health service or the Forensic Disability Service (for a forensic order (disability)). In deciding whether to order transfer the Tribunal must consider whether the transfer is appropriate, for example because of a person’s treatment needs or to allow closer proximity to the person’s family, carers and other support persons and to the greatest extent practicable must consider a person’s views, wishes and preferences.

s.456

However, the Tribunal may transfer a person to the Forensic Disability Service only if the chief executive (forensic disability) certifies, in writing, that the Forensic Disability Service has the physical capacity to accommodate the person and the capacity to provide care for the person under the order.

If a patient has a dual disability (mental illness and intellectual disability) and is subject to a forensic order (mental health), the Tribunal must revoke the order and make a forensic order (disability) if the person no longer requires involuntary treatment and care for a mental illness.

s.457

14.4.4 Making of treatment support orders

The Tribunal may revoke a forensic order and make a treatment support order if a treatment support order, but not a forensic order, is necessary, because of the person’s mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

MHA 2016,
s.450

(See section 3.5 of this Guide for an explanation of the difference between a forensic order and a treatment support order).

Particular provision of Chapter 5 of the Act are applied for the making of a treatment support order by the Tribunal (see section 8.8 of this Guide).

14.4.5 Making of treatment authorities

If the Tribunal considers that neither a forensic order or a treatment support order is necessary, the Tribunal may make no further order or make a treatment authority for the person.

MHA 2016,
s.451

The Tribunal may make a treatment authority only on the recommendation of an authorised psychiatrist who considers, after examining the person, that the treatment criteria apply to the person, and there is no less restrictive way for the person to receive treatment and care for the person’s mental illness.

The Tribunal must also decide treatment in the community for the person in the same that applies to an authorised doctor making a treatment authority. An authorised doctor may amend the amount of treatment in the community (see section 11.5.3 of this Guide).

Where the Tribunal makes a treatment authority, the first periodic review is undertaken by the Tribunal in six months.

14.5 Review of forensic orders (Criminal Code)

The Tribunal must review a forensic order (Criminal Code) within 21 days of being notified of the making of the order by the registrar of the relevant court.

MHA 2016,
s.459

The Tribunal must give written notice of the hearing to relevant persons, at least 14 days before the hearing, namely:

MHA 2016,
s.460

- the person subject to the forensic order
- the Attorney-General
- the Chief Psychiatrist
- the administrator of the relevant authorised mental health service, and
- the Director of Forensic Disability.

The Tribunal must make a forensic order (disability) for the person if:

- the person has an intellectual disability but does not have a dual disability, or
- the person has a dual disability but does not require involuntary treatment and care for the person's mental illness.

Otherwise, the Tribunal must make a forensic order (mental health) for the person.

Particular provisions of Chapter 5 of the Act, related to the making of forensic orders, apply to the making of an order by the Tribunal.

On the making of a forensic order (mental health) or a forensic order (disability), the forensic order (Criminal Code) ends.

14.6 Review of treatment support orders

14.6.1 General

The Act provides for the review of treatment support orders. In making a decision on a review of a treatment support order, the Tribunal must have regard to:

MHA 2016,
s.464

- the relevant circumstances of the person
- the nature of the relevant unlawful act and the period of time that has passed since the act happened
- any victim impact statement given to the Tribunal relating to the relevant unlawful act (see section 9.4 of this Guide), and
- if the Mental Health Court made a recommendation about an intervention program for the person, the person's willingness to participate in the program if offered to the person.

The Act may also require other matters to be considered in making particular decisions.

14.6.2 Initiation of reviews

MHA 2016,
s.465 - s.469

A periodic review of a treatment support order must take place every 6 months.

However, the timing for a periodic review is amended if the relevant matters were considered in a previous applicant review or tribunal review (see below).

In addition, a review occurs:

- on application of the relevant person, someone on the person's behalf (an interested person), or the Chief Psychiatrist (an applicant review)
- on the initiation of the Tribunal (a Tribunal review, or
- where the Tribunal receives written notice that a community category of a treatment support order has been amended to an inpatient category contrary to a decision of the Mental Health Court or Tribunal (a review is not required if, prior to the review, the Tribunal receives a further notice that the category has been changed back to community) (see section 11.7.2 of this Guide).

A periodic review is not required if the person subject to the treatment support order is transferred interstate or to another country.

The Tribunal must not review a treatment support order if the Mental Health Court has, on appeal, stayed a previous Tribunal decision on a review of the order.

The Tribunal must give written notice of the hearing to relevant persons, at least seven days before the hearing, namely:

MHA 2016,
s.471

- the person subject to the treatment support order
- an applicant (where relevant)
- the relevant administrator, and
- the Chief Psychiatrist.

On a periodic review of a treatment support order, the Tribunal must decide whether to confirm or revoke the order. (See below for the criteria for revoking a treatment support order and other decisions the Tribunal can make if the order is confirmed).

s.472

On an applicant review of a treatment support order, the Tribunal must decide whether to make the orders sought by the applicant and may make other orders it considers appropriate.

On a Tribunal review of a treatment support order the Tribunal must decide:

- the matters the Tribunal decided to consider when it initiated the review, and
- where the review was required as result of the category being changed to inpatient by an authorised doctor, whether to confirm the category of the treatment support order as inpatient.

If a treatment support order is revoked, the Tribunal may make a treatment authority for the person (see below).

14.6.3 Decisions on review

The Tribunal must confirm the treatment support order if the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property.

MHA 2016,
s.473

A treatment support order cannot be revoked where a person has been found temporarily unfit for trial.

If the Tribunal confirms the treatment support order and the category of the order is inpatient, the Tribunal must change the category of the order to community unless the Tribunal considers that the person's treatment and care needs, the safety and welfare of the person or the safety of others cannot reasonably be met if the category of the order is community. This decision reflects the Tribunal's role in taking a least restrictive approach to treatment. s.474

If the category of the treatment support order is community or the Tribunal changes the category of the order to community, the Tribunal must decide whether an authorised doctor may reduce the extent of treatment in the community received by the person. This decision also reflects the Tribunal's role in taking a least restrictive approach to treatment. The Act provides that an authorised doctor cannot reduce the level of treatment in the community in a way that is contrary to a decision of the Tribunal (see section 11.7.2 of this Guide). MHA 2016,
s.475

If the category of the treatment support order is inpatient, the Tribunal may approve limited community treatment, or an extension of limited community treatment, for the person. s.475

If the Tribunal approves or extends limited community, the Tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

The Tribunal may also impose, change or remove a condition for the treatment support order. A condition may provide that the person subject to the order must not contact a victim of the relevant unlawful act. However, the Tribunal cannot impose a condition on the treatment support order that requires the person to take a particular medication or a particular dosage of a medication. s.476

The Tribunal may order the person's transfer to another authorised mental health service. In deciding whether to order transfer the Tribunal must consider whether the transfer is appropriate, for example because of a person's treatment needs or to allow closer proximity to the person's family, carers and other support persons and to the greatest extent practicable must consider a person's views, wishes and preferences. s.479

Under limited circumstances, the Tribunal may change the category of a treatment support order to inpatient. This may occur only if the Tribunal considers it is necessary for an authorised doctor to examine the person to review the person's treatment and care needs. Once this examination takes place, the authorised doctor may change the nature or extent of the person's treatment in the community (community category or limited treatment). s.480

14.6.4 Making of treatment authorities

If the Tribunal considers that a treatment support order is not necessary, the Tribunal may make no further order or make a treatment authority for the person. MHA 2016,
s.483

The Tribunal may make a treatment authority only on the recommendation of an authorised psychiatrist who considers, after examining the person, that the treatment criteria apply to the person, and there is no less restrictive way for the person to receive treatment and care for the person's mental illness.

The Tribunal must also decide treatment in the community for the person in the same way that applies to an authorised doctor making a treatment authority. An authorised doctor may amend the amount of treatment in the community (see section 11.5.3 of this Guide).

Where the Tribunal makes a treatment authority, the first periodic review is undertaken in six months.

14.7 Review of fitness for trial

14.7.1 Reviews and decisions

Provisions of the Act apply where:

- the Mental Health Court has decided that a person is temporarily unfit for trial, or
- a jury finds a person unfit for trial under sections 613 or 645 of the Criminal Code.

MHA 2016,
s.485

Where this applies, the Tribunal must regularly review the person's fitness for trial as follows:

s.486

- for the first year, at intervals of not more than three months, and
- afterwards, at intervals of not more than six months.

In addition, a review occurs:

- on application of the relevant person, someone on the person's behalf (an interested person), the Chief Psychiatrist or the Director of Forensic Disability, or
- on the initiation of the Tribunal.

The Tribunal must give written notice of the hearing to relevant persons, at least seven days before the hearing, namely:

s.487

- the person subject to the review
- an applicant (where relevant)
- the Attorney-General
- if an authorised mental health service is responsible for the person, the administrator of the service and the Chief Psychiatrist, and
- if the Forensic Disability Service is responsible for the person, the administrator of the service and the Director of Forensic Disability under the *Forensic Disability Act 2011*.

On the hearing of the review, the Tribunal must decide whether the person is fit for trial.

s.488

If, on the last review in the first year or any subsequent review, the Tribunal decides the person is unfit for trial, the Tribunal must also decide whether the person is likely to be fit for trial in a reasonable time.

14.7.2 Procedures if found unfit for trial

If the Tribunal decides a person is unfit for trial, the Director of Public Prosecutions must, within 28 days, decide whether to discontinue the proceeding against the person for the relevant offence, and give the Tribunal written notice of the decision.

MHA 2016,
s.490

Proceedings against the person for the relevant offence are automatically discontinued at the end of the following periods:

s.491

- for a proceeding for an offence for which the person is liable to life imprisonment, seven years from the day the finding of unfitness was made, or
- otherwise, three years from the day the finding of unfitness was made.

If proceedings against the person for the relevant offence are discontinued by the Director of Public Prosecutions under the previous sections, the person cannot be prosecuted again for the relevant offence.

MHA 2016,
s.492

Where this occurs, the Director of Public Prosecutions must, within seven days, give written notice of the discontinuance of the proceeding to:

- the person
- the registrar of the relevant court
- the prosecuting authority for the relevant offence (if it is not the Director of Public Prosecutions)
- the Tribunal
- the Chief Psychiatrist or the Director of Forensic Disability, and
- the Attorney-General.

Also, where this occurs, the forensic order or treatment support order for the person continues in force.

The above provisions do not prevent proceedings against the person for the relevant offence being discontinued at any time, for example, if new evidence indicates that the person did not commit the alleged offence. In this instance, the order ends (see section 8.10.1 of this Guide).

s.493

14.7.3 Procedures if found fit for trial

If the Tribunal decides a person is fit for trial, the Director of Public Prosecutions must, within seven days, give written notice of the decision to:

MHA 2016,
s.496 & s.497

- the registrar of the relevant court, and
- the prosecuting authority for the relevant offence (if it is not the Director of Public Prosecutions).

The registrar must then arrange for the proceedings to be continued.

14.8 Review of detention of minors in high security units

The review of a minor's detention in a high security unit must occur when a minor is transferred as a classified patient under Chapter 2 or transferred under Chapter 11, part 5 of the Act.

MHA 2016,
s.498 & s.499

The Tribunal must review the detention within seven days of being notified of the transfer, and at subsequent intervals of three months.

A review must also occur:

- on application of the minor or someone on the person's behalf (an interested person), or
- on the initiation of the Tribunal.

s.498

The Tribunal must give written notice of the hearing to relevant persons, at least seven days before the hearing, namely:

- the minor
- an applicant (where relevant)
- the Chief Psychiatrist, and
- the administrator of the high security unit.

On a review of the minor's detention in the high security unit, the Tribunal must decide whether:

MHA 2016,
s.501

- the minor should continue to be detained in the high security unit, or
- the minor should be transferred to another authorised mental health service.

14.9 Application for examination authorities

The following persons may apply to the Tribunal for an examination authority for another person:

MHA 2016,
s.502

- the administrator of an authorised mental health service or a person authorised in writing by the administrator, or
- a person who has received advice from a doctor or authorised mental health practitioner about the 'clinical matters' for the person the subject of the application.

Clinical matters means:

- general information about the treatment criteria, their application to the person, and whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness
- whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements for making an examination authority
- options for the treatment and care of the person, and
- how the person might be encouraged to seek a voluntary examination and care.

The approved form for the application must include a statement by a doctor or authorised mental health practitioner about whether the behaviour of the person, or other relevant factors, could reasonably be considered to satisfy the requirements for making an examination authority for the person.

The Tribunal must give the applicant written notice of the hearing of the application at least three days before the hearing, or a shorter period agreed by the applicant.

s.503

The Tribunal may issue an examination authority for the person only if the Tribunal considers: s.504

- the person has, or may have, a mental illness
- the person does not, or may not, have capacity to consent to be treated for the mental illness
- reasonable attempts have been made to encourage the person to be examined voluntarily for the person's mental illness or it is not practicable to attempt to encourage the person to be examined voluntarily for the person's mental illness, and
- there is, or may be, an imminent risk, because of the person's mental illness, of:
 - serious harm to the person or someone else, or
 - the person suffering serious mental or physical deterioration.

An examination authority must be in the approved form.

An examination authority is in force for seven days after the day it is issued. s.505

See section 5.5 of this Guide for the powers of a doctor or authorised mental health practitioner under an examination authority.

14.10 Application for approval of regulated treatment

See definitions in section 11.2 of this Guide.

14.10.1 Electroconvulsive therapy

A doctor may apply to the Tribunal for approval to perform electroconvulsive therapy on a person if: MHA 2016,
s.507

- the person is an adult and is unable to give informed consent to the therapy
- the person is subject to a treatment authority, forensic order or treatment support order, or
- the person is a minor.

The Tribunal must give written notice of the hearing to the person the subject of the application, the applicant and the relevant administrator. s.508

If the hearing involves emergency therapy, the notice must be given at least three days before the hearing or a shorter period agreed by the person (or an interested person). Otherwise, the notice must be given at least seven days before the hearing or a shorter period agreed by the person (or an interested person).

For adults the Tribunal may give an approval for electroconvulsive therapy only if: s.509

- they are satisfied that an adult subject to treatment authority, forensic order or treatment support order has given informed consent to the therapy; or
- for adults who are able to give informed consent to the therapy (including adults who are subject to a treatment authority, forensic order or treatment support orders) they are satisfied that:
 - the therapy has clinical merit and is appropriate in the person's circumstances
 - evidence supports the effectiveness the therapy for the adult's particular illness
 - if the adult has previously received the therapy- the effectiveness of the therapy for the adult.

To the greatest extent possible the Tribunal must consider any views, wishes or preferences an adult has expressed about receiving the therapy.

For minors the Tribunal may only give approval if satisfied:

- the therapy has clinical merit and is appropriate in the minor's circumstances
- evidence supports the effectiveness the therapy for the minor's particular illness and the minor's particular age
- if the minor has previously received the therapy- the effectiveness of the therapy for the minor, and
- performance of the therapy is in the minor's best interests.

To the greatest extent possible the Tribunal must consider any views, wishes or preferences the minor or their parent/s has expressed about receiving the therapy.

14.10.2 Non-ablative neurosurgical procedures

A doctor may apply to the Tribunal for approval to perform a non-ablative neurosurgical procedure on a person if the person has given informed consent to the therapy (see section 11.12.2 of this Guide).

MHA 2016,
s.510

The Tribunal must give written notice of the hearing to the person the subject of the application, the applicant and the relevant administrator at least seven days before the hearing.

s.511

The Tribunal may give an approval for the procedure only if satisfied:

MHA 2016,
s.512

- the applicant has given the person the explanation of the benefits and risks of the procedure
- the person has given informed consent to the procedure
- the procedure has clinical merit and is appropriate in the circumstances
- alternatives to the procedure that could reasonably be expected to produce a sufficient and lasting benefit for the person have previously been provided to the person without a sufficient and lasting benefit, and
- the procedure is to be performed by an appropriately qualified person.

14.11 Applications for approval to transfer particular persons into and out of Queensland

14.11.1 Definitions

Interstate forensic order means an order made under an equivalent law of another State that provides for similar matters to a forensic order (mental health) or forensic order (disability).

MHA 2016,
s.513 & s.521

14.11.2 Transfers into Queensland

A person subject to an interstate forensic order, or an interested person for the person, may apply to the Tribunal to approve the transfer of the person from an interstate mental health service to an authorised mental health service or the Forensic Disability Service.

MHA 2016,
s.514

The application must:

s.515

- state the reasons why the transfer is appropriate in the circumstances, for example to allow a patient to be closer to family or support persons, and
- include a written statement from the Chief Psychiatrist or the Director of Forensic Disability providing advice about whether the service a person is seeking transfer to could provide appropriate treatment and care for the person and whether the arrangements for transfer of the person adequately protect community safety.

The Tribunal must give 14 days written notice of the hearing to:

s.516

- the person
- the applicant (where relevant)
- for an authorised mental health service, the relevant administrator and the Chief Psychiatrist
- for the Forensic Disability Service, the administrator and the Director of Forensic Disability, and
- the Attorney-General.

When deciding the application, the Tribunal must, to the greatest extent possible, consider the views, wishes and preference of the person seeking transfer into Queensland.

MHA 2016,
s.517

The Tribunal may approve the transfer if satisfied:

- the transfer is appropriate in the persons specific circumstances, for example it will allow them to be closer to family or support persons
- appropriate treatment and care is available for the person at the relevant service
- a forensic order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property, and
- the transfer arrangements for the person adequately protect community safety.

If the Tribunal approves the transfer, they may make any conditions for the transfer which they consider appropriate.

s.518

If the Tribunal approves the transfer, the Tribunal must make a forensic order (mental health) or forensic order (disability) for the person.

The forensic order takes effect when the person arrives in Queensland.

Particular sections of Chapter 5 of the Act apply to the making of the forensic order.

An approval of a transfer takes effect when the Tribunal makes a decision to approve the transfer or, if the Tribunal has placed conditions on the approval, when those conditions are satisfied.

s.519

14.11.3 Transfers out of Queensland

A person subject to a forensic order or treatment support order, or an interested person for the person, may apply to the Tribunal to approve the transfer of the person from an authorised mental health service or the Forensic Disability Service to an interstate mental health service or to another country.

MHA 2016,
s.522

The application must state:

s.523

- the reasons why the transfer is appropriate in the persons specific circumstances, for example it will allow them to be closer to family or support persons,
- include a written statement from the Chief Psychiatrist or Director of Forensic Disability providing advice about whether appropriate treatment and care is available for the person at the interstate service or country they are seeking transfer, whether the arrangements for transfer of the person adequately protect community safety, and for interstate transfers whether transfer may be permitted under interstate law.

An application may not be made for a classified patient, or a patient subject to a forensic order or treatment support order because of a finding of temporary unfitness.

The Tribunal must give 14 days written notice of the hearing to:

MHA 2016,
s.524

- the person
- the applicant (where relevant)
- for an authorised mental health service, the administrator of the service and the Chief Psychiatrist
- for the Forensic Disability Service, the administrator of the service and the Director of Forensic Disability, and
- the Attorney-General.

When deciding the application, the Tribunal must, to the greatest extent possible, consider the views, wishes and preference of the person seeking transfer out of Queensland.

The Tribunal may approve the transfer if satisfied:

s.525

- the transfer is appropriate in the persons specific circumstances, for example it will allow them to be closer to family or support persons
- appropriate treatment and care is available for the person at the interstate service or country
- the transfer arrangement for the person adequately protect community safety, and
- if for interstate transfer applications, transfer is permitted under the law of the receiving jurisdiction.

If the Tribunal approves the transfer they may make any conditions for the transfer which they consider appropriate.

An approval of a transfer takes effect when the Tribunal makes a decision to approve the transfer or, if the Tribunal has placed condition on the approval, when those conditions are satisfied.

s.526

A forensic order or treatment support order to which a person is subject when the person is transferred to an interstate mental health service has effect only if the person returns to Queensland.

s.528

Also, the order ends:

- on the end of any non-revocation period for the order, if the person has been out of Queensland for a continuous period of three years, or
- otherwise, if the person is out of Queensland for a continuous period of three years.

14.12 Administration and procedures of tribunal

14.12.1 Consultation of tribunals for hearings

The Act outlines how Tribunals are constituted for each type of hearing.

MHA 2016,
s.716 – s.720

For a review of a treatment authority, forensic order or treatment support order, the Tribunal is constituted by between three and five members of which:

- at least one must be a lawyer
- at least one must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, another doctor, and
- at least one person who is not a lawyer or doctor.

The Act also outlines who is to preside at each type of hearing.

14.12.2 Examinations, confidentiality orders and reports

The Tribunal may order a person who was subject to a review or application to submit to an examination by an examining practitioner.

MHA 2016,
s.721

The examining practitioner must report to the Tribunal on the matters requested by the Tribunal.

The Tribunal may make confidentiality orders to prohibit or restrict the disclosure of information or documents to the person the subject of the proceedings if it would cause serious harm to the health of the person or put the safety of someone at risk.

s.722

Provisions of the Act apply to the preparation of clinical reports for reviews of treatment authorities, forensic orders, treatment support orders, a person's fitness for trial, or the detention of a minor in a high security unit.

s.723

The Tribunal must ensure the treating practitioner for the person provides a report on the relevant circumstances of the person and other matters relevant to a decision the Tribunal may make on the review. For a review of a forensic orders or treatment support order, relevant circumstances includes the nature of the relevant unlawful act and the period of time that has passed since the act happened.

At least seven days before the hearing of the review, the treating practitioner must give a copy of the report to the Tribunal and the person the subject of the review. However, the treating practitioner is not required to comply with this if the treating practitioner intends to apply to the Tribunal for a confidentiality order in relation to the report.

14.12.3 Applications

All applications to the Tribunal are to be made in the approved form.

MHA 2016,
s.725

The President may dismiss an application if it is frivolous or vexatious.

Hearings on the applications are to be heard within the following times:

s.726

- for an application for an examination authority or for approval to perform electroconvulsive therapy in an emergency, as soon as practicable after the application is made
- for another application for electroconvulsive therapy, within 14 days after the application is made, and
- for any other application, within 28 days after the application is made.

s.727

14.12.4 Adjournment if patient absent

Provisions of the Act apply where a person subject to a scheduled review becomes a patient required to return and cannot be located.

MHA 2016,
s.728 – s.731

The administrator must give the Tribunal written notice of the absence.

On receiving the notice, the Tribunal may adjourn the hearing.

If the hearing is adjourned a hearing must be held within 21 days of the person's return.

14.12.5 Representation and support

A person who is entitled to be given notice of the hearing of a proceeding has a right to appear in person at the hearing.

MHA 2016,
s.736

Also, the Chief Psychiatrist may, with the leave of the Tribunal, appear in person at the hearing of a proceeding, for example, for a review of a treatment authority.

A person may be represented at the hearing of the proceeding by a nominated support person, a lawyer or other person.

s.739

Also, the person may be accompanied at the hearing by a nominated support person, family member, carer or other support person. With the Tribunal's leave, more than one person may support the person.

A person who represents the person at the hearing of a proceeding must:

- to the extent the person is able to express the person's views, wishes and preferences, represent the person's views, wishes and preferences, and
- to the extent the person is unable to express the person's views, wishes and preferences, represent the person's best interests.

If a person is not represented by a lawyer or another person at a hearing, the Tribunal may appoint a lawyer or other person to represent the person if it would be in the person's best interests at no cost to the person.

s.740

Also, the Tribunal must appoint a lawyer to represent the person at no cost to the person if:

- the person is a minor
- for a review of a person's fitness for trial
- for an application for approval to perform electroconvulsive therapy
- for a hearing where the Attorney-General is to be represented, and
- for another type of hearing prescribed by regulation.

An adult with capacity may, in writing, waive the right to be represented.

14.12.6 Procedural matters

In conducting a proceeding, the Tribunal:

MHA 2016,
s.733

- must observe the rules of natural justice
- must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matters
- is not bound by the rules of evidence
- may inform itself on a matter in a way it considers appropriate, and
- must ensure, to the extent practicable, all relevant material is disclosed to the Tribunal to enable it to decide the proceeding with all relevant facts.

If a party to a proceeding intends to rely on a document, other than a victim impact statement, the party must give a copy of the document to each other party to the proceeding at least three days before the hearing. However, this does not apply if the party intends to apply to the Tribunal for a confidentiality order for the document. In these circumstances, the document must be given to any lawyer or other person who is representing the person.

MHA 2016,
s.738

A hearing must not be open to the public unless the Tribunal directs that the hearing, or part of the hearing, be open to the public. The Tribunal must not direct a hearing be open to the public if the person the subject of the hearing is a minor. Also, the Tribunal may direct a hearing, or part of a hearing, be open to the public only if:

s.741

- the person, or a lawyer or other representative of the person, has agreed, and
- it will not result in serious harm to the person's health or risk the safety of anyone else.

An observer may attend a hearing with the approval of the president.

The Act deals with the preparation and production of victim impact statements at Tribunal hearings (See section 9.4 of this Guide).

The Tribunal may, by written notice, require a person to attend to give evidence or produce a document or thing that is relevant to the hearing. The Tribunal may require the evidence to be given on oath or allow a person to give information by tendering a written statement verified by oath.

s.744

The Tribunal must allow a party to the proceeding to call or give evidence.

s.745

The Tribunal may conduct all or a part of a proceeding by remote conferencing. s.746

For the hearing of a review of a treatment authority, the Tribunal may conduct all or a part of the proceeding entirely on the basis of documents if the person subject to the treatment authority does not wish to attend or be represented by another person at a hearing.

The Tribunal may hear a proceeding in relation to an involuntary patient in the absence of the patient if the patient is absent because of the patient's own free will or the patient is unfit to appear. s.747

The President may refer a question of law in a proceeding before the Tribunal to the Mental Health Court. Where this occurs, the Mental Health Court may decide the question and make ancillary orders and directions. The Tribunal must not make a decision about the matter until it receives the Mental Health Court's decision on the question. s.753

Each party to a proceeding is to bear the party's own costs of the proceeding. s.754

14.12.7 Decisions of Tribunal

The Tribunal must, within seven days of a proceeding, give written notice of the decision to each person who was entitled to be given notice of the hearing. MHA 2016,
s.755

Also, if a proceeding is for a review of a person's fitness for trial, the Tribunal must give the Director of Public Prosecutions written notice of its decision.

The notice must state that the person may ask the Tribunal for written reasons for its decision.

The Tribunal must, on request of a person who has received a decision, give the person written reasons for the decision within 21 days of the request. This does not apply if it contravenes a confidentiality order or a restriction on the disclosure of a victim impact statement. MHA 2016,
s.756

If a person (other than an administrator) who applied for an examination authority requests a statement of reasons, the reasons cannot include confidential information about the person who is the subject of the application.

The Tribunal may publish its decisions in a proceeding and any reasons for the decision, for example, if the Tribunal is satisfied the decision and any reasons for the decision may be used as a precedent. The publication of the decision or reasons for the decision must not identify any person and must not contravene a confidentiality order or a restriction on the disclosure of a victim impact statement. s.758

14.12.8 Missing persons

Provisions of the Act apply if a person subject to a forensic order or treatment support order is a patient required to return, or a person to whom the *Forensic Disability Act 2011* (section 113) applies, for a period of more than three years. (Section 113 of the *Forensic Disability Act 2011* deals with returning persons to the Forensic Disability Service). MHA 2016,
s.759

The President may revoke the order if the person is unlikely to return to Queensland or the person is presumed to have died.

This does not apply if the order is a forensic order during any non-revocation period for the order.

The Tribunal must, within seven days of the decision, give written notice of the revocation to the relevant administrator.

14.12.9 Annual report

The President must prepare and give to the Minister a report on the operations of the Tribunal each financial year. The Minister must table the report in the Parliament within 14 days after the report is received.

MHA 2016,
s.774

15. Appeals

15.1 Overview

The Act provides for appeals to the Mental Health Review Tribunal, the Mental Health Court and the Court of Appeal against particular decisions made under the Act.

See Chapter 13 of the Act (Appeals).

15.2 Appeals to Mental Health Review Tribunal

A person may appeal to the Mental Health Review Tribunal against the following:

MHA 2016,
s.531 & s.532

- an order by the Chief Psychiatrist under Chapter 10, part 5 about a forensic patient or patients where there is a serious risk to persons or public safety, or an extension of this order
- a decision by the Chief Psychiatrist to revoke an information notice, or
- a decision of an administrator to refuse to allow a person to visit a patient in an authorised mental health service.

A person who is given, or is entitled to be given, a notice of the relevant decision may appeal.

s.533

For persons on a forensic order (disability) for which the Forensic Disability Service is responsible, decisions about information notices are made by the Director of Forensic Disability. These decisions are appealable in the same way as decisions by the Chief Psychiatrist.

s.532 & s.327

The parties to the appeal are the appellant and the decision-maker (mainly, the Chief Psychiatrist, Director of Forensic Disability or the relevant administrator).

s.532

An appeal must be made within 28 days of the person being given the notice of the decision or otherwise becomes aware of the decision. This period may be extended by the tribunal. An appeal is to be made by giving the Tribunal a notice of appeal in the approved form.

s.534

The Tribunal may dismiss an appeal if it is frivolous or vexatious.

s.534A

The Tribunal must give the parties to the appeal notice of the hearing.

s.535

The Tribunal may stay the decision pending the appeal.

s.536

In deciding the appeal, the Tribunal may:

s.537

- confirm the decision
- set aside the decision and substitute another decision, or
- set aside the decision and return the matter to the initial decision-maker with appropriate directions.

15.3 Appeals to Mental Health Court

The Act states the decisions of the Mental Health Review Tribunal that may be appealed to the Mental Health Court, for example, a decision of the Tribunal on a review of a treatment authority, forensic order or treatment support order.

MHA 2016,
Schedule 2

The Act states who may appeal.

Each person entitled to appeal is a party to the appeal.

MHA 2016,
Schedule 2

If the Chief Psychiatrist or the Director of Forensic Disability is not an appellant, either may elect to be a party.

An appeal must be made within 60 days of the decision. This period may be extended by the Court.

MHA 2016,
s.541

An appeal is to be made by filing a notice of appeal in the court registry in the approved form.

The Court may dismiss an appeal if it is frivolous or vexatious.

s.542

The Court must give the parties to the appeal notice of the hearing.

s.543

A notice must also be given to the administrator of an authorised mental health service or the Forensic Disability Service, where relevant.

In deciding the appeal, the Court may:

s.546

- confirm the decision
- set aside the decision and substitute another decision, or
- set aside the decision and return the matter to the Tribunal with appropriate directions.

Provisions of the Act apply where, on appeal against a Tribunal decision that a person is fit for trial, the Court decides the person is unfit for trial. In these circumstances, the Court may make a forensic order or a treatment support order for the person. Particular provisions of Chapter 5 of the Act are applied for this purpose.

s.547

15.4 Appeals to Court of Appeal

An appeal against a decision of the Mental Health Court made on a reference to the Court may be made by the person the subject of the proceeding, the Attorney-General, the Chief Psychiatrist or the Director of Forensic Disability.

MHA 2016,
s.549

An appeal must be made within 28 days of the person being given the notice of the decision or otherwise becomes aware of the decision. This period may be extended by the Court. An appeal is to be made by filing a notice of appeal in the registrar of the Court of Appeal in the approved form.

s.550

In deciding the appeal, the Court of Appeal may:

s.551

- confirm the decision
- set aside the decision and substitute another decision, or
- set aside the decision and return the matter to the Mental Health Court with appropriate directions.

16. Suspension of criminal proceedings, offences and other legal matters

16.1 Overview

The Act provides for the suspension of legal proceedings in particular circumstances, general offences, and particular legal matters.

See Chapter 15 of the Act (Suspension of Criminal Proceedings, Offences and Other Legal Matters).

16.2 Suspension of proceedings

Criminal proceedings against a person are suspended if any of the following happen:

MHA 2016,
s.616

- a person charged with an offence, other than a Commonwealth offence, becomes a classified patient
- the Chief Psychiatrist gives a direction for a psychiatrist report to be prepared in relation to a serious offence, or
- a matter is referred to the Mental Health Court.

If more than one of these events happens in relation to a proceeding against a person, the proceeding is suspended on the earliest of the events.

In the first two circumstances, the Chief Psychiatrist must give written notice of the suspension to the chief executive (justice). In the case of references to the Mental Health Court, the court registrar gives notice of the suspension with the notice of the reference. The chief executive (justice) must, in turn, give a copy of the notice to:

s.617

- the registrar of the relevant court
- the prosecuting authority, and
- the chief executive (youth justice), if the person is a child within the meaning of the *Youth Justice Act 1992* (for references to the Court, the notice is provided by the Court Registrar).

The suspension of the proceeding ends if all of the following are satisfied:

s.618

- the person is not, or is no longer, a classified patient
- the Chief Psychiatrist decides not to make a reference to the Mental Health Court once a psychiatrist report has been prepared the request for a psychiatrist report is involved, and
- if a matter has been referred to the Mental Health Court, the Court has made a decision on the reference or the reference has been withdrawn.

As soon as practicable after the ending of the suspension of a proceeding, the Chief Psychiatrist must give each of the following written notice of the end of the suspension:

s.619

- the person
- the person's lawyer
- the chief executive (justice)
- the administrator of an authorised mental health service, where relevant, and
- the chief executive (justice).

The chief executive (justice) must, in turn, give a copy of the notice to:

- the registrar of the relevant court
- the prosecuting authority, and
- the chief executive (youth justice), if the person is a child within the meaning of the *Youth Justice Act 1992*.

The suspension of a proceeding against a person for an offence does not prevent:

- a court making an order granting, enlarging, varying or revoking bail
- a court remanding the person in custody in relation to the offence
- a court adjourning the proceeding for the offence
- the prosecution of the person for the offence being discontinued, or
- the presentation of an indictment under the Criminal Code.

16.3 Offences relating to patients

A person responsible for assessing, examining, providing treatment and care, or detaining a person under the Act must not ill-treat the person.

MHA 2016,
s.621

A person responsible for transporting a patient, or accompanying particular patients while the patient is receiving limited community treatment or on a temporary absence, must not wilfully allow the patient to abscond.

s.621

A person must not induce or help a patient of an authorised mental health service or public sector health service facility to unlawfully absent themselves from the service or facility.

s.623

A person must not knowingly harbour a patient who is unlawfully absent.

A person employed in an authorised mental health service or public sector health service facility must not wilfully allow a patient to unlawfully absent themselves.

16.4 Detention and use of reasonable force

A person who may be detained in an authorised mental health service may be detained by the administrator with the help and using the force that is necessary and reasonable in the circumstances.

MHA 2016,
s.629

A person who may be detained in public sector health service facility may be detained by the person in charge of the facility with the help and using the force that is necessary and reasonable in the circumstances.

s.630

An examination or assessment of an involuntary patient under the Act may be made without the consent of the person or anyone else. The examination or assessment may be undertaken in an authorised mental health service or public sector health service facility using the force that is necessary and reasonable in the circumstances.

s.631

The treatment and care of particular involuntary patients may be provided without the consent of the patient or anyone else. This applies to an involuntary patient subject to a treatment authority, forensic order or treatment support order, or a person who is absent without permission from interstate and is detained in an authorised mental health service. The treatment may be provided in an authorised mental health service or public sector health service facility using the force that is necessary and reasonable in the circumstances.

MHA 2016,
s.632

17. Confidentiality

17.1 Overview

The duty of confidentiality in relation personal health information in public sector health service facilities, including public sector mental health services, is located in Part 7 of the *Hospital and Health Boards Act 2011*.

The *Mental Health Act 2016* contains provisions that allow the disclosure of confidential information in particular circumstances.

The Act also establishes confidentiality obligations for a limited number of matters.

See Chapter 17 of the Act (Confidentiality).

17.2 Definitions

Designated persons are persons, such as health service employees, who have a duty of confidentiality under the *Hospital and Health Boards Act 2011* (see section 139 of that Act).

Patient required to return—see section 18.2 of this Guide.

Personal information means:

- personal information under the *Information Privacy Act 2009*
- confidential information under the *Hospital and Health Boards Act 2011*.

MHA 2016,
s.776

Relevant persons include a designated person and other specific persons who perform functions under the Act and to who duties of confidentiality apply (see section 776 for further detail of specific persons captured).

17.3 Disclosure of information and duties of confidentiality

A relevant person performing a function under the Act may use or disclose personal information in performing a function under the Act.

MHA 2016,
s.778

A relevant person may disclose personal information to facilitate another relevant person performing their functions under the Act.

A relevant person may disclose personal information when required or permitted by law.

An employee of the department, a Hospital and Health Service or another government entity may disclose personal information to assist in the identification of persons who may have been of unsound mind at the time of an alleged offence or may be unfit for trial.

s.780

An employee of the department, a Hospital and Health Service or another government entity may disclose personal information to offer support services to a person who is, or may be, a victim; or to assist in the identification of a person who is a victim.

s.781

A designated person may disclose personal information to assist in the preparation of a private psychiatrist report for a patient.

s.782

The Chief Psychiatrist may disclose particular personal information about a classified patient to a relevant victim, namely:

- the fact that the patient is a classified patient in an authorised mental health service
- the fact, and the date, of a transfer of the patient to another authorised mental health service
- the fact that the patient has become a patient required to return, if the Chief Psychiatrist considers the information is relevant to the safety and welfare of the person, and
- the fact that, and the reasons why, the patient has stopped being a classified patient.

The Chief Psychiatrist may enter into arrangements with a victim support service for the service to give the information to the person.

The person must give a written undertaking to preserve the confidentiality of the information.

The Chief Psychiatrist, the Director of Forensic Disability, administrators and other persons responsible for the care of a person subject to a forensic order (disability) may disclose personal information about the person for the person's care or for the person's transfer between services.

s.784

A designated person may disclose personal information about a patient to a lawyer if the disclosure is to enable the lawyer to provide legal services to the patient, or the State, for a proceeding in the Mental Health Court, the Tribunal or another court. If the lawyer is a representative of the State, the lawyer may use or disclose personal information to a victim to the extent necessary for the performance of the lawyer's functions under the Act or another Act.

s.785

An administrator may disclose a photograph of a 'patient required to return' to help locate the person.

The registrar of the Mental Health Court may disclose confidential information to a person undertaking research if the registrar is satisfied the research is genuine and the president of the Mental Health Court approves the disclosure. The person must give a written undertaking to preserve the confidentiality of the information.

s.786

The executive officer of the Tribunal may disclose confidential information to a person undertaking research if the executive officer is satisfied the research is genuine and the President of the Tribunal approves the disclosure. The person must give a written undertaking to preserve the confidentiality of the information.

If requested by the executive officer of the Tribunal, or an employee of the department or a Hospital and Health Service, a Queensland Civil and Administrative Tribunal (QCAT) official may disclose:

s.796

- whether a personal guardian or an administrator for a financial matter has been appointed for an individual, and
- if a personal guardian or administrator has been appointed, the name and contact details of the personal guardian or administrator.

A QCAT official is a QCAT member, the principal registrar of QCAT, a registrar or another member of the administrative staff of the QCAT registry, or an adjudicator or assessor appointed under the QCAT Act.

17.4 Additional confidentiality obligations

A person must not publish (see section 9.2 of this Guide) a report of a proceeding in the Mental Health Court or the Court of Appeal related to a reference before the end of the 'prescribed day' without the leave of the Court.

MHA 2016,
s.789

The Act outlines the prescribed day for different scenarios.

A person must not publish a report of a proceeding of the Tribunal, the Mental Health Court on appeal from a Tribunal decision, or a Mental Health Court proceeding related to a review of detention, without the leave of the Court.

s.790

A person must not publish information that identifies, or is likely to identify, a minor who is or has been a party to a proceeding in the Tribunal, Mental Health Court or Court of Appeal.

s.791

A person must not publish information that identifies, or is likely to identify, a person, other than a minor, who is or has been a party to a proceeding of the Tribunal, the Mental Health Court on appeal from a Tribunal decision, or a Mental Health Court proceeding related to a review of detention, without the leave of the Court.

The above provisions do not prevent the disclosure of a date or time of a hearing to be held in the Mental Health Court.

s.792

Information disclosed in a hearing of the Mental Health Court may be disclosed unless the Act specifically prevents the disclosure.

s.793

18. Other matters

18.1 Transfer of Patients

18.1.1 Definitions

Transfer considerations mean:

- the person's mental state and psychiatric history
- the person's treatment and care needs
- if relevant, security requirements for the person, and
- whether the transfer is appropriate in the circumstances, for example to allow the person to be in closer proximity to family or support persons.

MHA 2016,
s.350

18.1.2 Transfers

The administrators of two authorised mental health services may agree to transfer an involuntary patient or a classified patient (voluntary) between the services.

MHA 2016,
s.351

However, the Chief Psychiatrist must approve the transfer in writing if:

- the person is subject to a forensic order
- the person is subject to a judicial order
- the person is subject to a treatment authority, is not a classified patient, and the transfer is to a high security unit, or
- the person is a minor, and the transfer is to a high security unit.

In deciding whether to agree, to or approve, a transfer, the administrators and the Chief Psychiatrist must have regard to the transfer considerations for the person and to the greatest extent practicable, the views wishes and preferences of the person..

If a person transferred is a classified patient and the Chief Psychiatrist is not required to approve the transfer, the administrator of the first authorised mental health service must give written notice of the transfer to the Chief Psychiatrist within seven days.

The Chief Psychiatrist may direct the transfer of an involuntary patient or a classified patient (voluntary) between authorised mental health services.

s.352

In deciding whether to direct a transfer, the Chief Psychiatrist must have regard to the transfer considerations for the person and to the greatest extent practicable, the views, wishes and preferences of the person.

The Chief Psychiatrist and the Director of Forensic Disability may agree to transfer the responsibility for a person on a forensic order (disability) from an authorised mental health service to the Forensic Disability Service, or vice versa.

s.353

In deciding whether to agree to a transfer, the Chief Psychiatrist and the Director of Forensic Disability must have regard to the transfer considerations for the person, the person's intellectual disability, and to the greatest extent practicable, the views, wishes and preferences of the person.

An administrator of an authorised mental health service may agree with an interstate mental health service to transfer a patient subject to a treatment authority to the interstate service.

s.354

This does not apply if the patient is also a classified patient or subject to a forensic order (disability).

In deciding whether to agree to the transfer, the administrator must be satisfied:

- appropriate treatment and care is available for the person at the interstate mental health service,
- the transfer is otherwise appropriate in the circumstances.

An administrator of an authorised mental health service may agree with an interstate mental health service to transfer a person who is subject to an order equivalent to a treatment authority to the authorised mental health service.

MHA 2016,
s.355

In deciding whether to agree to the transfer, the administrator must be satisfied:

- appropriate treatment and care is available for the person at the service

- an authorised doctor is likely to consider that the treatment criteria apply to the person and there is no less restrictive way for the person to receive treatment and care for the person's mental illness, and
- the transfer is otherwise appropriate in the circumstances, for example to allow a person to be in closer proximity to their family or support person.

On the person's admission to the service, an authorised doctor must make an assessment of the person to decide whether the treatment criteria apply to the person and whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

The person may be detained for assessment in the service for a period of not more than six hours.

- If the authorised doctor makes a treatment authority for the person, the authority is taken to be a treatment authority made under Chapter 2, part 4 of the Act.

Where the responsibility for a person is transferred from an authorised mental health service or the Forensic Disability Service, to another entity, the relevant administrator of the first service must give written notice of the transfer to the Tribunal within seven days.

s.358

18.2 Transport of persons

18.2.1 Definitions

Authorised person—see section 4.6 of this Guide.

Inpatient hospital means a hospital at which a person may be discharged on a day other than the day on which the person was admitted to the hospital.

MHA 2016,
s.370

18.2.2 Transport to, from and within authorised mental health services

The administrator of an authorised mental health service, health practitioner, or a person approved by the administrator or health practitioner, may transport an involuntary patient or classified patient (voluntary) from one place in the service to another place in the service.

The Act provides examples of this, namely:

- a patient may be transported to a different inpatient unit within the service, or
- a patient may be transported to another place in the service for an examination or diagnostic test.

An authorised person may transport an involuntary patient or classified patient (voluntary) to or from an authorised mental health service, public sector health service facility, place of custody, court or a place in the community for the purposes of this Act.

MHA 2016,
s.361

Various sections of the Act provide for specific circumstances where persons may be transported. However, not all circumstances are specifically stated in the Act. This section extends these authorities by providing a general power to transport persons if the transport is within the purposes of the Act.

Provisions of the Act apply if:

s.362

- a person is transported from a place in the community to an authorised mental health service under an examination authority or recommendation for assessment, or
- a person is transported from a place in the community to an authorised mental health service under an emergency examination authority (under the *Public Health Act 2005*) and a recommendation for assessment is made for the person.

At the end of the person's detention in the service, the administrator of the service must take reasonable steps to ensure the person is returned to a place reasonably requested by the person.

18.2.3 Transport of absent persons

Provisions of the Act apply to transporting 'absent persons', namely:

MHA 2016,
s.363

- a person who absconds while being lawfully detained under the Act or in a person's charge (see section 16.3 of this Guide)
- a person subject to a treatment authority, forensic order or treatment support order who is being treated in the community and does not attend at an authorised mental health service or public sector health service facility as required under the authority or order

a person for whom a treatment authority, forensic order, treatment support order or judicial order is made requiring the person to be detained in an authorised mental health service and the person is not in an authorised mental health service when the authority or order is made

- a person subject to a treatment authority, forensic order or treatment support order, where the category of the authority or order is changed to inpatient
- a person subject to a forensic order where the Chief Psychiatrist suspends limited community treatment or orders the category of the forensic order be changed to inpatient
- a person on an approved temporary absence from a service or receiving limited community treatment, who does not return to the service at the end of the absence or treatment, or where the approval of the absence or treatment is revoked
- a person who does not attend at an authorised mental health service as directed for the review of the making of a treatment authority or for an examination for a psychiatrist report (see sections 5.8.2 and 7.5 of this Guide)
- a person subject to an examination order who does not attend at an authorised mental health service or public sector health service facility as directed under the order, and
- a person who does not attend for an examination as directed by the Tribunal (see section 14.12.2 of this Guide).

For these persons, an administrator of an authorised mental health service or person in charge of a public sector health service facility, may:

MHA 2016,
s.364 & s.366

- authorise an authorised person, other than a police officer, to return the person (the authorised person may request a police officer to assist in returning the person), or
- request a police officer to return the person.

The authorisation or request must be in the approved form and state:

- the risk the person presents to himself or herself, the authorised person, police officer and others, and
- for a request to a police officer, state the reasons why the administrator or person in charge considers it necessary for a police officer to transport the person.
- Before taking this action, the administrator or person in charge must make reasonable efforts to contact the person and encourage the person to come to the service or facility. However, this does not apply if it may risk the person harming himself, herself or others.

The authorisation or request is in force for three days after the day the person absconds if:

s.365

- the person was under a recommendation or assessment or during an assessment period
- the person was under an examination authority, or

the person was being detained while the recommendation for assessment was being prepared.

- Where a person transported under an authorisation or request was subject to a recommendation for assessment, the assessment period for the person starts again when the person is transported back to a service or facility.

s.367

18.2.4 Patients who are absent without permission from interstate

The Act empowers an authorised person in Queensland to apprehend a person who is absent without permission from an interstate mental health service for whom a warrant, or other legal document requiring their apprehension, has been issued under the corresponding law of the other State.

MHA 2016,
s.368

s.369

If the person is apprehended, the person may be transported by an authorised person, including persons authorised under corresponding law, to an interstate mental health service or an authorised mental health service. The person may be detained in an authorised mental health service for the period reasonably necessary to enable the administrator of the service to make arrangements for the person's return to an interstate mental health service.

18.2.5 Interstate transport for examination or assessment

Provisions of the Act apply to a person in Queensland who:

- appears to have a mental illness and may be detained and transported to an authorised mental health service or public sector health service facility under the *Public Health Act 2005* (emergency examination authority provisions), or
- is subject to a recommendation for assessment.

If permitted under an equivalent law in another State, the person may be transported to an interstate mental health service by an authorised person or a person who is authorised to transport the person under the other State's law.

Provisions of the Act apply to a person outside of Queensland who may be transported to an interstate mental health service under an equivalent law in another State for:

MHA 2016,
s.370 & s.371

- emergency involuntary examination or treatment and care relating to a mental illness, or
- an involuntary assessment of whether the person should be involuntarily treated for a mental illness.

In these circumstances, the person may be transported to an authorised mental health service or a public sector health service facility for emergency examination, treatment and care.

However, if the public sector health service facility is not an inpatient hospital, the person may be transported to the facility only with the approval of the person in charge of the facility.

The person may be transported by an authorised person or a person who, under an equivalent law in another State, is authorised to transport the person to an interstate mental health service.

A document under a law of another State that recommends the assessment of a person is taken to be a recommendation for assessment under this Act.

If the person is transported by an interstate authorised person for an emergency examination, an emergency examination authority must be made for the person, which is taken to have been made under the *Public Health Act 2005*.

18.2.6 Transport powers

For the purpose of transporting a person under the Act, an authorised person may detain the person. An authorised person may transport and detain the person with the help and force that is necessary and reasonable in the circumstances.

MHA 2016,
s.373

The power to transport a person includes the power to administer medication to the person. This does not apply to a classified patient (voluntary). Medication may be administered to the person only if a doctor is satisfied there is no other reasonably practicable way to protect the person or others from physical harm. Medication must be administered by a doctor or by a registered nurse under the instruction of a doctor.

s.374

The power of an authorised person to transport a person includes the power to use mechanical restraint on the person if the person is an involuntary patient. However, the mechanical restraint may be used only if:

s.375

- the Chief Psychiatrist approves its use
- there is no other reasonably practicable way to protect the person or others from physical harm
- the device used is an approved device
- the use of mechanical restraint on the person is with no more force than is necessary and reasonable in the circumstances, and
- the person is observed continuously while restrained.

The Chief Psychiatrist may approve the use of mechanical restraint on a person if satisfied there is no other reasonably practicable way to protect the person or others from physical harm.

Where a person needs to be transported for an examination, the carrying out of a diagnostic test, or providing treatment and care, a Chief Psychiatrist approval to transport the person can include the use of the mechanical restraint during the examination, test, or treatment and care, if necessary.

For the purposes of transporting a person, an authorised person may enter a place if the occupier of the place consents to the entry or it is a public place while it is open to the public.

MHA 2016,
s.376

The Act notes section 21 of the *Police Powers and Responsibilities Act 2000*. This section includes the power for police to enter a place to detain a person under another Act.

An authorised person may apply to a magistrate for a warrant to apprehend a person. A warrant gives an authorised person the authority to enter a place to locate the person for the purpose of transporting the person to an authorised mental health service or a public sector health service facility.

MHA 2016,
Chapt 11, pt.
6, div. 6

18.3 Security

18.3.1 Definitions

Authorised security officer—see section 4.8 of this Guide.

General search means a search:

- to reveal the contents of the person's outer garments, general clothes or hand luggage without touching the person or the luggage, and

in which the person may be required to open his or her hands or mouth for visual inspection or shake his or her hair vigorously.

MHA 2016,
s.384

Harmful thing means anything:

- that may be used to threaten the security or good order of an authorised mental health service or public sector health service facility or threaten a person's health or safety, or
- if used by a patient in an authorised mental health service or public sector health service facility, is likely to adversely affect the patient's treatment or care.
- The Act provides examples of harmful things, namely, a dangerous drug, alcohol, medication and provocative or offensive documents.

Dictionary

Personal search means a search in which light pressure is momentarily applied to the person over the person's general clothes without direct contact being made with the person's genital or anal area or, for a female, the person's breasts.

s.384

Scanning search means a search of the person by electronic or other means that does not require the person to remove the person's general clothes or to be touched by another person.

s.384

The Act provides examples of a scanning search, namely:

- using a portable electronic apparatus or another portable apparatus that can be passed over the person, or
- using an electronic apparatus through which the person is required to pass.

Search requiring the removal of clothing means a search in which the person removes all garments during the course of the search, but in which direct contact is not made with the person.

s.384

18.3.2 Postal and other articles

A person must not impede the delivery of a postal article to a patient of an authorised mental health service or the sending of a postal article by a patient.

MHA 2016,
s.385 & s.386

This does not apply if the addressee of the postal article:

- is the subject of a non-contact condition of a forensic order or treatment support order to which the patient is subject, or
- has given written notice to the administrator of the service asking that postal articles addressed by the patient to the addressee be withheld.

Also, an administrator or an appropriately qualified person authorised by the administrator may open or search anything received at the service for a patient. The administrator may exercise this power only if the patient is present or has been given the opportunity to be present. However, this does not apply if the patient obstructs the administrator.

For these provisions, patient means:

- an involuntary patient, and
- a person receiving treatment and care for a mental illness in an authorised mental health service, other than as an involuntary patient, including a person receiving treatment and care under an advance health directive or with the consent of a personal guardian or attorney.

18.3.3 Searches of involuntary patients and classified patients (voluntary)

Provisions of the Act apply if a doctor or health practitioner believes an involuntary patient or classified patient (voluntary) may have possession of a harmful thing.

MHA 2016,
s.387 & s.388

The doctor or health practitioner may:

- carry out a general search, scanning search or personal search of the patient
- with the approval of an administrator or person in charge of the public sector health service facility, carry out a search requiring the removal of clothing, or
- carry out a search of the patient's possessions.

A search may be carried out without the patient's consent.

A doctor or health practitioner may carry out a search with the help, and using the force, that is necessary and reasonable in the circumstances.

Before carrying out a search, the doctor or health practitioner must tell the patient the reasons for the search and how it is to be carried out.

18.3.4 Searches on admission of involuntary to high security units and other approved services

Provisions of the Act apply to an involuntary patient admitted to or entering into a high security unit or another authorised mental health service approved by the Chief Psychiatrist for the purpose of these provisions.

MHA 2016,
s.389 & 390

An authorised security officer may:

- carry out a general search, scanning search or personal search of the patient
- with the approval of an administrator or person in charge of the public sector health service facility, carry out a search requiring the removal of clothing, or
- carry out a search of the patient's possessions.

A search may be carried out without the patient's consent.

An authorised security officer may carry out a search with the help, and using the force, that is necessary and reasonable in the circumstances.

- Before carrying out a search, the authorised security officer must tell the patient the reasons for the search and how it is to be carried out.

18.3.5 Searches of visitors to high security units and other approved services

Provisions of the Act apply to visitors to a high security unit or another authorised mental health service approved by the Chief Psychiatrist for the purpose of these provisions.

MHA 2016,
s.391 – s.393

An authorised security officer may ask the visitor to submit to a general search, scanning search or personal search, or submit the visitor's possessions to a search.

The authorised security officer must tell the visitor in general terms of the officer's powers in relation to the search, how the search is to be carried out, and the visitor's rights.

If the visitor does not agree to a request, the authorised security officer may refuse the visitor permission to enter the service or, if the person is in the service, direct the person to immediately leave the service.

s.394 – s.396

If the visitor does not want the authorised security officer to search anything in the visitor's possession, the visitor may leave the thing with the officer until the visitor leaves the service.

Also, the authorised security officer may ask the visitor to leave a thing the officer believes is a harmful thing with the officer until the visitor leaves the service. If the visitor refuses to comply with this request, the officer may refuse the visitor permission to enter the service or, if the person is in the service, direct the person to immediately leave the service.

18.3.6 Requirements for searches and seizures

The Act outlines the requirements for personal searches and searches requiring the removal of clothing.

MHA 2016,
s.399 & s.400

For personal searches, and searches requiring the removal of clothing, this includes a requirement for the person undertaking the search to be the same gender as the person, and for the search to be carried out in a part of the building that ensures the person's privacy. For searches requiring the removal of clothing, at least two persons must undertake the search and must be the same gender as the person being searched.

Records are to be kept of searches requiring the removal of clothing and any items seized during a search.

s.402

A person undertaking a search may seize anything connected with the commission of an offence or a harmful thing.

MHA 2016,
s.403 – s.405

18.3.7 Exclusion of visitors

An administrator may refuse to allow a person to visit a patient of the service if the administrator is satisfied the proposed visit will adversely affect the patient's treatment and care.

MHA 2016,
s.408

However, the administrator cannot refuse entry to:

- a person performing a function under an Act, for example, a community visitor under the *Public Guardian Act 2014*, or
- a legal representative or health practitioner requested by the patient to visit.

A person may appeal the decision to the Tribunal.

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