Representatives and Support Persons

Chief Civil Psychiatrist and Chief Forensic Psychiatrist Clinical Guideline 3

Preamble

Family members, carers, appointed guardians, friends, advocates and others involved in the care and support of persons with a mental illness play a critical role. Care and support provided by family members and others is often what enables a person to remain well in the community; conversely carers and family members often take on what is reported to be akin to a case management-type role when the person for whom they are caring is significantly unwell.

Many support persons and representatives of persons with a mental illness report feeling frustrated when the knowledge that they hold about the person for whom they are a representative or support person is overlooked, and either not gathered or not used, or both. Many support persons and representatives report feeling that the extent of their caring role is not acknowledged. Other support persons and representatives report feeling unsupported in standing up for the rights and interests of persons with a mental illness, and their own rights. These experiences can be exacerbated at times of extreme stress and distress.

Family members, carers, appointed guardians, friends, advocates and others involved in the care and support of persons with mental illness often have extensive information about the person for whom they are caring or supporting, and deep and significant experience of the person's illness. This may include information about what upsets the person and why, the side effects of medications that the person may be taking and the person's emotional and other support needs when they are unwell. It may also include information about the person's financial management and housing arrangements, and lifestyle preferences and support systems.

This information and experience can be of vital importance in the assessment and treatment of persons with serious mental illness; and there is strong support for the view that active consumer and carer participation in decision making can lead to better treatment and care outcomes and significant reduction in stress for consumers, leading to consequent reduction in stress for carers and family members.

Family members, carers, appointed guardians, friends, advocates and others involved in the care and support of persons with mental illness also have distinct needs including the need for information. This includes information about the person's condition, medication, appointments and their progress. It also includes information about the rights that support persons and representatives have under the Act, and the supports that are available to enable those rights to be exercised.

Consumer and carer participation is identified as a priority in national policies such as the *National Carer Strategy*, *National Standards for Mental Health Services, National Mental Health Strategy,* and the four *National Mental Health Plans.* It is also identified as a priority for Tasmania through the development of Tasmania's *Consumer and Carer Participation Framework,* the impetus for which was a recommendation from the *Bridging the Gap Report 2004*, and more recently the launch of the *Tasmanian Carer Policy 2013* and *Tasmanian Carer Action Plan 2013 – 2018*.

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Legislative Basis

Mental Health Act 2013 – sections 3, 10, 15, 23, 53, 54, 60, 62, 77, 78, 81, 82, 97, 105, 107, 130, 131, 134, 135, 137, 147, 160, 161, 163, 174, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 192A, 193, 195, 224A, and Schedule 1, Schedule 2 Part 2 Clause 3, Schedule 4 Part 1 Clause 1, Schedule 4 Part 2 Clause 2, Schedule 4 Part 2 Clause 4, Schedule 4 Part 2 Clause 7, Schedule 4 Part 2 Clause 11 and Schedule 4 Part 6 Clause 1.

Purpose

This Clinical Guideline is intended to provide practical assistance to controlling authorities, persons in charge of community mental health premises, medical practitioners, nurses, Mental Health Officers and staff members of approved facilities and community mental health teams in relation to the rights that support persons and representatives of patients and prospective patients have under the *Mental Health Act 2013*.

The Order is designed to ensure that support persons and representatives of persons with serious mental illness – including family members, carers, appointed guardians, legal representatives and advocates – are included in decision making processes affecting the patient for whom they are a support person or representative to the maximum extent possible, consistent with the patient's wishes.

Failure by an individual to comply with this Clinical Guideline may result in professional or occupational disciplinary action being instituted, particularly if the failure leads to unfavourable patient outcomes that might have been avoided if the Guideline had been followed; or if there is a history of failure by the individual to comply with this Guideline, or with similar Guidelines in place at the relevant time.

Guideline

I, Professor Kenneth Clifford Kirkby, being and as the Chief Forensic Psychiatrist, pursuant to sections 151 and 153 of the *Mental Health Act 2013* and section 22 of the *Acts Interpretation Act 1931* hereby:

1. Revoke all previous directions (clinical guideline) issued under section 152 of the *Mental Health Act 2013* with respect to representatives and support persons effect from 11.59 pm on 30 June 2017; and

2. Issue the following direction (clinical guideline) to controlling authorities (and delegates) and authorised persons with respect to representatives and support persons under the *Mental Health Act 2013*, and related matters, with effect from 12.00 am on 1 July 2017.

What Rights do Support Persons and Representatives Have?

Support persons and representatives have a range of rights. These include:

- The right to be recognised by health service providers as a representative or support person of a person with a mental illness, and to be acknowledged and treated with respect in this capacity. This

applies regardless of how difficult the circumstances are, or whether the consumer, carer or support person is perceived to be uncooperative or difficult.

- The right to have permissions assigned to them by documents such as enduring guardianships and other agreements or advance expressions of the patient's wishes, acknowledged, and to be involved in decision making processes.

Support persons and representatives also have rights under the Act.

Specifically, the Act requires all persons exercising responsibilities under the Act to have regard to a series of service delivery principles including:

- Recognising the difficulty, importance and value of the role played by families, and support persons, of persons with mental illness. This includes recognising the extent of this involvement and the difficulty of the caring role, including the emotional, physical, mental and financial impact of caring for a person with a mental illness.
- Involving persons receiving services, and where appropriate their families and support persons, in decision-making, unless this is contrary to the person's wishes or not otherwise consistent with the patient's health or safety or the health or safety of others. This includes identifying the existence of any enduring guardianships or other advance expressions of the patient's wishes about the involvement of support persons and representatives in decision making processes. It also extends to providing consumers, support persons and representatives with information about how to find out more about enduring guardianships and other ways of expressing wishes about the involvement of support persons and representatives in the decision making process.
- Recognising families, and support persons, of persons with mental illness as partners, with mental health service providers, in the provision of their treatment and care to the extent that this is appropriate and consistent with the wishes of the patient and his or her representatives and support persons.
- Respecting the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others.

The Act also provides support persons and representatives of persons receiving or potentially receiving assessment and treatment under the Act with a series of specific rights and abilities, including:

- The ability to be nominated by a patient to represent the patient's interests under and for the purposes of the Act
- The ability to be given information of a confidential or personal nature about a patient where this has been consented to by the patient or, regardless of the patient's consent, if the treating medical practitioner considers this to be necessary for the patient's treatment or care. Information may also

be given to a support person or representative if the person making the disclosure reasonably believes it to be necessary so as to prevent or lessen a serious threat to the life, health or safety of the patient or other person, or to lessen or prevent a serious threat to public health or safety

- The ability to apply to a medical practitioner for an Assessment Order
- The ability to be consulted with in the development of treatment plans that are prepared for involuntary patients in appropriate circumstances
- The right to have contact with, and to correspond privately with, an involuntary patient for whom the person is a representative or support person
- The right to apply for leave for an involuntary patient from an approved hospital for personal reasons, in relevant circumstances
- The right to apply for leave for a forensic patient from a secure mental health unit for personal reasons, in relevant circumstances
- The right for a representative to object to a police officer visiting with a forensic patient in a secure mental health unit
- The right to be present during a police visit if this is requested by a forensic patient in a secure mental health unit
- The ability to be notified of certain patient admissions, transfers and discharges subject to the patient's views about the notification being given and to the desirability of the notification being made with regard to the patient's health or safety or the safety of other persons and/or any Tribunal direction for the notification to be given
- The ability to be notified of certain patient leaves of absence and unlawful absences from approved facilities subject to the patient's views about the notification being given
- The right to be given information in a language or form that the support person understands, through the assistance of an interpreter or alternative or supplementary communication system if necessary
- The ability to ask the Principal Official Visitor to visit premises in or from which a patient is being provided with services under the Act
- The ability to make a complaint, concerning a patient, to an Official Visitor
- The ability to express a wish, on behalf of a patient, to see or complain to an Official Visitor to a person discharging responsibilities under the Act
- The right to ask a person who is purporting to exercise, discharge or perform a responsibility as a custodian or escort for proof of identity

- The ability to institute or intervene in Tribunal proceedings concerning a patient for which the person is a representative
- The right, if the support person or representative is a party to Tribunal proceedings, to attend the hearings held in those proceedings and to either appear personally or be represented by an Australian legal practitioner, advocate or other person

Parents of child patients who are required to be given a notice or other documentation under the Act additionally have the right to receive a copy of any notice or document that is given to the child, at the same time, subject to any objection from the child to this occurring.

Enabling Support Persons and Representatives to Exercise their Rights

This section of the Guideline sets out a number of ways in which support persons and representatives can be assisted to exercise their rights and abilities under the Act.

Identifying Support Persons and Representatives

Wherever practicable, before making decisions about a patient's assessment or treatment, staff members working within approved facilities and in community mental health teams should seek information from patients and prospective patients about the names and contact details of any support persons or representatives involved or potentially involved in the patient's future care. Patients and prospective patients should also be asked for details of any enduring guardianships or other advance expressions of their wishes, about the involvement of support persons and/or representatives in their care.

Patients and prospective patients should be advised of the ability to nominate a person to represent the patient's interests under and for the purposes of the Act, and about legal representation or advocacy services available within Tasmania. Patients and prospective patients should also be provided with a reasonable opportunity to make contact with such legal representation and/or advocacy services should this be requested by the patient and/or by a support person or representative of the patient, and at other times as may be considered necessary and/or appropriate.

This process should be followed both at the time that the patient is first assessed with respect to a mental illness and at regular intervals thereafter.

Identifying Patient Wishes in relation to Support Persons and Representatives

The patient's wishes about the involvement of support persons and representatives in decision making processes, and about the provision of confidential or sensitive information to support persons and representatives should be gauged as early as possible in the assessment and treatment process.

This information should be prominently recorded in the patient's clinical notes.

Similarly, any changes to the identity of a patient's support persons or representatives and/or of any changes to the patient's wishes about the provision of information to his or her support persons or representatives should be recorded in the patient's clinical notes as and when necessary.

Including Support Persons and Representatives in Decision Making Processes

Wherever practicable, before taking any significant action, including assessing a person under the Act, staff members working within approved facilities and in community mental health teams should seek to include support persons and representatives of patients and prospective patients in decision making processes affecting individual patients subject to any objection from the patient to this occurring.

Particular consideration should be given to including – or excluding – support persons and representatives in decisions about whether or not a person has decision making capacity.

While the presence of a support person or representative may assist some prospective or potential patients to exercise decision making capacity in relation to assessment or treatment decisions, there are other occasions when the presence of a support person or representative or of a particular support person or representative may compromise the person's ability to make a free and informed choice.

Support persons and representatives should not be used to provide interpreter services. Rather, only independent and qualified interpreters should be used.

Receiving Information from Support Persons and Representatives

Support persons and representatives often have the majority of day-to-day contact with patients for whom they are a support or representative. They are often likely to be called upon to take over care when the patient is discharged or released. This makes them a critical source of information about the patient and generates a need for them to be provided with information, which is necessary for the ongoing treatment and care of the patient.

Staff members working within approved facilities and in community mental health teams should therefore prioritise communication with support persons and representatives of persons with a mental illness so that information which will or which may inform assessment and treatment decisions about individual patients and prospective patients can be obtained.

It should be remembered that while contact with support persons and representatives that is initiated by the treating team should be consistent with the patient's wishes, information about the patient may be received from support persons and representatives despite any objection from the patient or prospective patient to this occurring.

Staff members should take care to ensure that sensitive and/or confidential information about individual patients or prospective patients is disclosed according to the patient's wishes and only where this is consistent with the Act. Consideration should be given to matters including the patient's treatment and care needs following discharge from hospital and the extent to which the patient's support persons and/or representatives may require information to undertake caring and support person responsibilities.

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Providing Patient Information to Support Persons and Representatives

Staff members working within approved facilities and in community mental health teams should provide patient and other information to persons who are, to the knowledge of the relevant staff member, a support person and/or representative of the patient or prospective patient:

- whenever this is required by the Act or Chief Civil Psychiatrist Standing Orders
- whenever this is permitted by the Act unless this is contrary to any objection from the patient
- whenever this is permitted by the Act and despite any objection from the patient if the information is of a general nature and does not extend to confidential or sensitive information
- whenever this is permitted by the Act and despite any objection by the patient if the patient's treating medical practitioner considers the disclosure to be necessary for the patient's treatment and care.

In identifying whether or not a person is a support person or representative of a patient or prospective patient staff members should refer to the patient or prospective patient's clinical notes in the first instance. Consideration should also be given to the person's ability to make an informed decision about the provision of information to others given their mental state.

The identity of a patient's representatives and support persons and the patient's wishes about the provision of information to representatives and support persons should be regularly reviewed and the patient's clinical record should be updated accordingly.

Supporting Support Persons and Representatives

Mental illness affects support persons and representatives of persons with mental illness and can cause big changes to how people in caring and support roles live their lives. Family members and carers of persons with mental illness can find it difficult to take "time out" and to talk about how they are feeling. This difficulty can be exacerbated if and when the person being cared for becomes extremely unwell.

Staff members can help support persons and representatives to cope effectively by:

- communicating clearly in an honest, open and understanding manner
- including support persons and representatives as valued members of the care team and respecting the significant role that support persons and representatives have
- providing information to support persons and representatives about support and respite services that are available, and if necessary, referring support persons and representatives to services which may assist them in their caring role. A range of services which may be of assistance are listed in the *Consumer, Family and Carer Support Guide*, which is available online at www.dhhs.tas.gov.au/mentalhealth
- in a crisis situation, providing a calm, safe environment, not crowding, rushing or unnecessarily touching the consumer, support person or representative person and, if necessary, seeking help from

the Mental Health Services Helpline on 1800 332 388 or from Ambulance Tasmania or Tasmania Police on 000.

Children of parents with a mental illness have particular needs. Staff members should reassure children of parents with a mental illness that they are not alone, that they did not cause their parent's mental illness, and that their parents can recover. Children of parents with a mental illness should be given information about the general nature of their parent's illness and be encouraged to ask for help about how to write a plan for what they should do if their parent becomes unwell. For many young carers the caring role can require the assumption of adult responsibilities and interfere with schooling and sporting and social activities. This impact should be considered in any decision to refer a young carer to support services.

Support Person and Representative Obligations

In addition to the rights set out in this document, support persons and representatives have a range of obligations, including to:

- advise staff if and when they cease to be a patient's support person or representative
- advise staff of any change to their contact details
- work with staff to achieve assessment and treatment outcomes
- be polite, respect boundaries, and follow reasonable instructions about behaviour and conduct within mental health services facilities that are given by staff
- respect a patient's wishes about matters such as whether or not information about the patient should be disclosed to the support person or representative
- provide members of the treating team with information about patients for whom they are a support person or representative that is accurate, impartial, and that is not deliberately misleading at all times
- respect a patient's decision to give or withhold informed consent to assessment or treatment.

Guidance for Controlling Authorities and Persons in Charge of Premises

Controlling authorities of approved facilities and persons in charge of community mental health premises should consider the requirements of the *Mental Health Act 2013* when developing policies and protocols around support person and representative engagement in the development and provision of assessment, treatment and care services to patients and prospective patients and when establishing and/or reviewing information management protocols and processes.

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Controlling authorities and persons in charge of premises should also ensure that staff members who are required, or potentially required, to exercise functions and powers under the Act are educated and trained in the requirements of the Act as they relate to the rights of support persons and representatives under the Act including in how to access interpreter services and alternative or supplementary communication systems.

Controlling authorities and persons in charge of premises should ensure that documentation which is produced specifically for and/or which is provided to support persons and representatives is in a language or form that is capable of being readily understood by a wide range of support persons and representatives.

Controlling authorities and persons in charge of premises should include the extent to which staff know how to apply the framework established by the Act and are aware of this Guideline, relevant Chief Civil Psychiatrist Standing Orders and any local policies and procedures associated with support person and representative engagement within the scope of quality assurance and review activities. Findings from activities conducted should be used to inform the development of training programs for staff.

Guidance for Clinical Staff

Staff members working within approved facilities and in community mental health teams should ensure that they have a sound knowledge of the *Mental Health Act 2013*, this Guideline, relevant Chief Civil Psychiatrist Standing Orders and of any local policies and procedures relating to the rights of support persons and representatives under the Act which may be in place from time to time.

Staff members who are directly involved in the provision of patient care should ensure that they receive specific training in how to appropriately communicate and engage with support persons and representatives, including in how to access translation services and alternative and supplementary communication systems.

At the completion of training staff should be able to demonstrate an understanding of the Act as it applies to the rights of support persons and representatives of patients and prospective patients.

Professor Kenneth Clifford Kirkby

Chief Civil Psychiatrist/Chief Forensic Psychiatrist

Date: 1 July 2017

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Appendix 1: Relevant Legislative Provisions

3. Interpretation

child *means a person who has not attained the age of 18 years*

Chief Civil Psychiatrist *means the person for the time being holding or acting in the office referred to in section 143 of the Act. The Chief Civil Psychiatrist has responsibility for ensuring that the objects of the Act are met in respect of patients other than forensic patients or persons who are subject to supervision orders, and for the running of approved facilities other than secure mental health units.*

involuntary patient *means a person who is subject to an assessment order or treatment order*

forensic patient *means a person admitted to a secure mental health unit under section 68 of the Act and not discharged from the secure mental health unit*

guardian *has the same meaning as in the Guardianship and Administration Act 1995, that is, a person named as a guardian in a guardianship order or as an enduring guardian in an instrument of appointment as such.*

parent*, of a child, means a person having, for the child, all of the responsibilities which, by law, a parent has in relation to his or her children*

patient *means, according to the context, a voluntary inpatient, involuntary patient or forensic patient and, in relation to in special psychiatric treatment, includes a voluntary patient*

representative*, of a patient or prospective patient, means –*

(a) the patient's guardian; or

(b) the patient's Australian lawyer; or

(c) if the patient is a child and raises no objection, a parent of the patient; or

(d) any other person nominated by the patient to represent his or her interests

statement of rights *means a written statement that sets out and succinctly explains, in plain language, what rights a patient or prospective patient has in the particular circumstances under this Act in which he or she is required to be given such a statement*

support person*, of a patient or prospective patient, means a person who provides the patient with ongoing care or support*

voluntary inpatient*, of an approved facility, means a person who*

(a) has been admitted to the facility voluntarily to receive treatment for a mental illness; and

(b) is receiving that treatment on the basis of informed consent

voluntary patient *means a person who is not an involuntary patient or a forensic patient*

10. Identifying representatives of patients, &c.

(1) Where this Act requires a notice or other document to be given to a representative or support person of a patient, it means that the document is to be given to someone who is, to the knowledge of the person who has to comply with the requirement, such a representative or support person.

(2) For the purposes of subsection (1), the requisite standard of knowledge is knowledge that is already to hand or readily discoverable on reasonable inquiry, not knowledge that might only be discoverable after arduous or prolonged inquiry.

15. Mental health service delivery principles

All persons exercising responsibilities under this Act are to have regard to the mental health service delivery principles set out in Schedule 1.

23. Application for assessment order

(1) Any of the following persons may apply to a medical practitioner for an assessment order:

(a) another medical practitioner;

(b) a nurse;

(c) an MHO;

(d) a police officer;

*(e) a guardian, parent or support person of the person (the **prospective patient**) in respect of whom the application is made;*

(f) an ambulance officer;

(g) a person prescribed by the regulations.

(2) However, the application should only be made if –

(a) the applicant is satisfied from a personal knowledge of the prospective patient that the prospective patient has or might have a mental illness; and

(b) the applicant is further satisfied that a reasonable attempt to have the prospective patient assessed, with informed consent, has failed or that it would be futile or inappropriate to make such an attempt.

53. Preparation of treatment plan

(1) A patient's treatment plan may be prepared by any medical practitioner involved in the patient's treatment or care.

(2) In preparing a treatment plan, a medical practitioner –

(a) is to consult the patient; and

(b) may, after consulting the patient, consult such other persons as the medical practitioner thinks fit in the circumstances.

(3) A medical practitioner who prepares a treatment plan is to –

(a) give a copy of the treatment plan to –

(i) the patient; and

(ii) the CCP; and

(b) place a copy of the treatment plan on the patient's clinical record.

54. Variation of treatment plan

(1) A patient's treatment plan may be varied at any time by any medical practitioner involved in the patient's treatment or care.

(2) The treatment plan for a patient subject to a treatment order may only be varied under subsection (1) if the treatment plan, as so varied, is in accordance with, and is not more restrictive of the patient's rights, privileges and freedom of action than, the treatment order.

(3) In varying a treatment plan, a medical practitioner –

(a) is to consult the patient; and

(b) may, after consulting the patient, consult such other persons as the medical practitioner thinks fit in the circumstances.

(4) A medical practitioner who varies a treatment plan is to –

(a) ensure that the variation (and the reason for the variation) is fully documented; and

(b) give a copy of the documentation to the CCP; and

(c) place a copy of the documentation on the patient's clinical record; and

(d) give notice of the variation (and the reason for the variation) to the patient.

(5) The notice to the patient may contain such further particulars as the medical practitioner thinks fit in the circumstances.

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60. Leave of absence from approved hospital

(1) An approved medical practitioner may grant an involuntary patient leave of absence from an approved hospital ("leave").

(2) The leave may be granted for clinical or personal reasons.

(3) Leave for personal reasons may be granted only on the application of -

(a) the patient; or

(b) a person who, in the opinion of the approved medical practitioner, has a genuine interest in the patient's welfare.

(3A) Leave must not be granted for a continuous period of more than 14 days.

(4) The patient may ask any staff member of the approved hospital for help in making the request and the staff member is to –

(a) render that help to the best of his or her ability; or

(b) arrange for another staff member of the approved hospital to render that help.

(5) The leave is to be granted by means of an instrument in writing (the "leave pass").

(6) The leave may be granted on such conditions as the approved medical practitioner considers necessary or desirable for the patient's health or safety or the safety of other persons.

(7) Without limiting the generality of subsection (6), the patient may be required to be under escort during the leave or any portion thereof (in which case the custody and escort provisions apply).

(8) The approved medical practitioner is to ensure that the conditions are specified in the leave pass.

(9) Depending on when the leave is to be taken, the approved medical practitioner is to –

(a) give a copy of the leave pass to the patient in good time (together with a statement of rights in a CCP approved form); and

(b) give a copy of the leave pass in good time to -

(i) the controlling authority of the relevant approved hospital; and

(ii) if applicable, the patient's escort; and

(iii) the Tribunal; and

(iv) the CCP; and

(c) place a copy of the leave pass on the patient's clinical record.

(10) Any approved medical practitioner may at any time, by notice to the patient -

(a) extend the leave (but not so as to let the total period of leave exceed a continuous period of 14 days); or

(b) vary the conditions of the leave; or

(c) cancel the leave.

(11) To avoid doubt -

(a) a power under subsection (10)(a) may be exercised more than once (but not so as to let the total period of leave exceed a continuous period of 14 days); and

(b) the power under subsection (10)(b) may be exercised more than once; and

(c) a notice under subsection (10) may be expressed to take immediate or deferred effect.

(12) On issuing a notice under subsection (10), an approved medical practitioner is to -

(a) give a copy of the notice to -

(i) the controlling authority of the relevant approved hospital; and

(ii) if applicable, the patient's escort; and

(iii) the Tribunal; and

(iv) the CCP; and

(b) place a copy of the leave pass on the patient's clinical record.

(13) An approved medical practitioner who refuses an application for leave under this section is to -

(a) give notice of the refusal, with reasons, to the applicant (together with a statement of rights in a CCP approved form); and

(b) if the applicant was someone other than the patient, give notice of the refusal, with reasons, to the patient (together with a statement of rights in a CCP approved form); and

(c) place a copy of the notice of refusal, with reasons, on the patient's clinical record.

Note 1: A leave of absence under this section is reviewable by the Tribunal – see Division 2 of part 3 of Chapter 3. The power of review extends to every facet of such leave including refusal, cancellation and variation.

Note 2: The CCP has power to intervene in such circumstances – see section 147.

62. Rights of involuntary patients

Every involuntary patient has the following rights:

(a) the right to have the restrictions on, and interference with, his or her dignity, rights and freedoms kept to a minimum consistent with his or her health or safety and the safety of other persons;

(b) the right to have his or her decision-making capacity promoted, and his or her wishes respected, to the maximum extent consistent with his or her health or safety and the safety of other persons;

(c) the right, while in an approved hospital, to have access to current information about local, national and world events;

(d) the right to be given clear, accurate and timely information about –

(i) his or her rights as an involuntary patient; and

(ii) the rules and conditions governing his or her conduct in the hospital; and

(iii) his or her diagnosis and treatment;

(e) the right, while in an approved hospital, to apply for leave of absence in accordance with this Act;

(f) the right to have contact with, and to correspond privately with, his or her representatives and support persons and with Official Visitors;

(g) the right, while in an approved hospital, to be provided with general health care;

(h) the right, while in an approved hospital, to wear his or her own clothing (where appropriate to the treatment setting);

(i) the right, while in an approved hospital, not to be unreasonably deprived of any necessary physical aids;

(j) the right, while in an approved hospital, to be detained in a manner befitting his or her assessment, treatment or care requirements;

(k) the right, while in an approved hospital, to practise a religion of the patient's choice, to join with other patients in practising that religion and to possess such articles as are reasonably necessary for the practice of that religion (to such extent as is consistent with his or her health or safety, the safety of other persons and the management, good order and security of the hospital);

(l) the right, while in an approved hospital –

(i) to practise customs in accordance with the patient's cultural beliefs or cultural background; and

(ii) to join with other patients in practising those customs; and

(iii) to possess articles that are reasonably necessary for the practice of those customs –

to the extent that the practice of those customs is not contrary to any law and is consistent with the health and safety of the patient and other patients and the management, good order and security of the hospital;

(m) the right, while in an approved hospital, to ask for and be given such reasonable help from hospital staff as will enable the patient to enjoy these rights.

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77. Definitions for this Division

In this Division –

"interested person" means –

(a) the CFP; and

(b) the controlling authority of the SMHU; and

(c) the person who applied for the leave (if not the patient); and

(d) if applicable, the patient's intended escort; and

(e) the Director (Corrective Services); and

(f) the Commissioner of Police; and

(g) the Secretary(Corrections);

"responsible authority" means –

(a) the Tribunal; or

(b) the CFP; or

(c) the controlling authority of the SMHU; or

(d) the Secretary; or

(e) the treating medical practitioner; or

(f) an approved medical practitioner.

78. When leave of absence for forensic patients subject to restriction orders may be granted

(1) The Tribunal may grant a forensic patient who is subject to a restriction order leave of absence in Tasmania ("leave"), unless the restriction order expressly provides to the contrary.

(2) The leave may be granted for clinical or personal reasons.

(3) Leave for clinical reasons may be granted only on the application of the CFP.

(4) Leave for personal reasons may be granted only on the application of –

(a) the patient; or

(b) the CFP; or

(c) by leave of the Tribunal, a person who, in the opinion of the CFP, has a genuine interest in the person's welfare.

(5) The patient may ask any SMHU staff member for help in making the request and the SMHU staff member is to –

(a) render that help to the best of his or her ability; or

(b) arrange for another SMHU staff member to render that help.

(6) The application is to be in accordance with section 195.

(7) Once the application has been made, the following provisions apply:

(a) the Tribunal is to notify the Secretary (Corrections) of the application;

(b) the Secretary (Corrections) is to check the Eligible Persons Register to determine whether there are any eligible persons in relation to the patient;

(c) if there are such eligible persons, the Secretary (Corrections) is to make a reasonable attempt to notify each of them of the application and of their right to make written submissions in respect of it within 10 days after the eligible person is notified;

(d) the Tribunal is to notify any other person who, in the Tribunal's opinion, should be notified of the application and of that person's right to make written submission in respect of it within 10 days after being notified of the application.

(8) The Tribunal is to consider any submissions received pursuant to subsection (7) before granting or refusing to grant the leave.

(9) The leave –

(a) may be granted in person (by any member of the Tribunal), in writing or by any other available means of communication; and

(b) may be granted for a particular purpose or for a particular period, or both; and

(c) is to be granted on such conditions as the Tribunal considers necessary or desirable for the patient's health or safety or the safety of other persons.

(10) Without limiting the generality of subsection (9)(c), the patient may be required to be under escort during the leave or any portion thereof (in which case the custody and escort provisions apply).

(11) If the leave is granted for a particular purpose without a particular period being specified, the CFP may determine the period of leave.

(12) If subsection (11) applies, the CFP is to –

(a) make an appropriate record of the matter; and

(b) give a copy of the record to the Tribunal, the patient and each interested person; and

(c) place a copy of the record on the patient's clinical record.

(13) Whether the leave is granted or refused, the Tribunal is to –

(a) make an appropriate record of the matter (including, if applicable, the terms and conditions of the leave); and

(b) give to the patient a copy of the record together with a statement of rights in a form approved by the President of the Tribunal; and

(c) give a copy of the record to each interested person.

(14) Nothing in this section applies to the attendance of the patient in court.

81. Definitions for this Division

In this Division –

"interested person" means –

(a) the controlling authority of the SMHU; and

(b) the person who applied for the leave (if not the patient); and

(c) if applicable, the patient's intended escort; and

(d) the Tribunal; and

(e) the Commissioner of Police; and

(f) if applicable, the Secretary (Corrections); and

(g) if applicable, the Director; and

(h) if applicable, the Secretary (Youth Justice);

"responsible authority" means –

(a) the CFP; or

(b) the controlling authority of the SMHU; or

(c) the treating medical practitioner; or

(d) an approved medical practitioner.

82. When leave of absence for forensic patients not subject to restriction orders may be granted

(1) The CFP may grant a forensic patient who is not subject to a restriction order leave of absence in Tasmania ("leave").

Note The application of this provision to an involuntary patient who is taken to be a forensic patient is modified by section 67.

(2) The leave may be granted for clinical or personal reasons.

(3) Leave for clinical reasons may be granted only on the application of the treating medical practitioner.

(4) Leave for personal reasons may be granted only on the application of –

(a) the patient; or

(b) a person who, in the opinion of the CFP, has a genuine interest in the person's welfare.

(5) The forensic patient may ask any SMHU staff member for help in making the request and the SMHU staff member is to –

(a) render that help to the best of his or her ability; or

(b) arrange for another SMHU staff member to render that help.

(6) The application may be made by any person, in writing or by any other available means of communication.

(7) Once the application has been made, the following provisions apply:

(a) the CFP is to notify the Secretary (Corrections) of the application;

(b) the Secretary (Corrections) is to check the Eligible Persons Register to determine whether there are any eligible persons in relation to the patient;

(c) if there are such eligible persons, the Secretary (Corrections) is to make a reasonable attempt to notify each of them of the application and of their right to make written submissions in respect of it within 10 days after the eligible person is notified;

(d) if the patient is a prisoner or detainee under the Corrections Act 1997, the CFP is to notify the Director of the application and of the Director's right to make written submissions in respect of it within 10 days after being notified of the application;

(e) if the patient is a youth detainee, the CFP is to –

(i) notify the Secretary (Youth Justice) of the application and of that Secretary's right to make written submissions in respect of it within 10 days after being notified of the application; and

(ii) ask, specifically, whether the Secretary (Youth Justice) consents to it;

(f) the CFP is to notify any other person who, in the CFP's opinion, should be notified of the application and of that person's right to make written submissions in respect of it within 10 days after being notified of the application.

(8) The CFP is to consider any submissions received pursuant to subsection (7) before granting or refusing to grant the leave.

(9) Also, if the patient is a youth detainee, the leave may be granted only with the consent of the Secretary (Youth Justice).

(10) The leave –

(a) may be granted in person, in writing or by any other available means of communication; and

(b) may be granted for a particular purpose or for a particular period, or both; and

(c) is to be granted on such conditions as the CFP considers necessary or desirable for the patient's health or safety or the safety of other persons.

(11) Without limiting the generality of subsection (10)(c), the patient may be required to be under escort during the leave or any portion thereof (in which case the custody and escort provisions apply).

(12) If the leave is granted for a particular purpose without a particular period being specified, the treating medical practitioner may determine the period of leave.

(13) If subsection (12) applies, the treating medical practitioner is to –

(a) make an appropriate record of the matter; and

(b) give a copy of the record to the patient and each interested person; and

(c) place a copy of the record on the patient's clinical record.

(14) Whether the leave is granted or refused, the CFP is to –

(a) make an appropriate record of the matter (including, if applicable, the terms and conditions of the leave); and

(b) give a copy of the record to the patient and each interested person.

(15) Nothing in this section applies to the attendance of the patient in court.

97. Patient visiting rights

(1) A forensic patient has –

(a) the right to receive visitors; and

(b) the right to refuse to receive visitors.

(2) However, the rights conferred by subsection (1) may be exercised only in accordance with this Act.

Note 1 The exercise of visiting rights under this Division is, for non-police visits, reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

Note 2 The CFP has power to intervene in respect of the exercise of such rights in circumstances where the CFP is not the relevant decision-maker – see section 147.

105. Police visits

(1) A responsible authority may allow a police officer to visit a forensic patient in an SMHU if satisfied that –

(a) it is for the purposes of a police investigation; and

(b) the patient, or any representative of the patient, after being informed of the patient's rights under this section, has no objection.

(2) The visit is to be on such conditions as to time, duration, termination, supervision, setting, secrecy or otherwise as the responsible authority determines and it is the duty of the police officer to comply with those conditions.

(3) The responsible authority, by any available means, may vary the conditions at any time.

(4) The patient has the following rights in respect of the visit:

(a) to confer, on request, with an Australian lawyer before it takes place, either in person or by telephone or video link;

(b) to have, on request, a representative, medical practitioner, SMHU staff member or support person present;

(c) to refuse to answer any question that may be put to the patient;

(d) to end the visit at any time.

(5) The visitation of a forensic patient in an SMHU under and in accordance with this section is –

(a) lawful notwithstanding the operation of any other law; and

(b) not reviewable by the Tribunal.

(6) Nothing in this section is to be taken as preventing or restricting police officers from –

(a) exercising ordinary investigative, enforcement or other powers as regards unlawful conduct by forensic patients or other persons in any SMHU; or

(b) exercising, in respect of forensic patients, powers under the Forensic Procedures Act 2000; or

(c) doing, in respect of any forensic patient or SMHU, anything else that may be authorised by or under other laws or by any court.

(7) In this section –

***responsible authority** means –*

(a) the controlling authority of the SMHU; or

(b) the CFP.

107. Patient correspondence rights

(1) A forensic patient in an SMHU has, and may exercise subject to and in accordance with this section –

(a) the right to send or refuse to send mail; and

(b) the right to receive mail or refuse to receive mail.

(2) However, the rights conferred by subsection (1) may be exercised only at reasonable times and intervals determined by a responsible official.

(3) A responsible official may refuse to allow the patient to send or receive mail to or from a person other than a privileged correspondent if –

(a) the responsible official reasonably considers that there are proper grounds to do so; or

(b) in the case of outgoing mail, the responsible official is aware that the addressee does not wish to receive mail from the patient; or

(c) in the case of incoming mail, the responsible official reasonably considers the mail to be promotional, funds touting or any other form of junk mail.

(4) A responsible official may refuse to allow the patient to send or receive mail to or from a privileged correspondent if –

(a) in the case of outgoing mail, the responsible official is aware that the privileged correspondent does not wish to receive mail from the patient; or

(b) in the case of incoming mail, the responsible official is aware that the patient does not wish to receive mail from the privileged correspondent.

(5) A responsible official may require that any mail sent to or received by the patient, other than mail sent to or by a privileged correspondent, be opened and read by an authorised person.

(6) If the patient wishes to send or receive mail for which a charge or fee is payable by the sender or recipient, a responsible official may require the patient to do so at his or her own expense.

(7) The application of this section to mail extends to email but only if the relevant SMHU has that facility.

(8) In this section – "mail" includes any part of the mail.

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Note 1 The exercise of correspondence rights under this Division is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

Note 2 The CFP has power to intervene in respect of the exercise of such rights if the CFP is not the relevant decision-maker – see section 147.

130. Notification of certain admissions, transfers and discharges

(1) This section applies if –

(a) a person is, or is going to be, admitted as a patient to an approved hospital or SMHU; or

(b) a patient is, or is going to be, transferred from an approved hospital to –

(i) another approved hospital; or

(ii) an SMHU; or

(c) a patient is, or is going to be, transferred from an SMHU to –

(i) another SMHU; or

(ii) a secure institution; or

(iii) an approved hospital; or

(iv) a health service within the meaning of the Health Complaints Act 1995; or

(v) premises where a health service within the meaning of the Health Complaints Act 1995 is provided; or

(d) a patient is, or is going to be, discharged from an approved hospital, an SMHU, a secure institution, a health service within the meaning of the Health Complaints Act 1995 or a place from which such a service is provided.

(2) Subject to subsection 3, the controlling authority is to make a reasonable attempt to notify at least one interested person of the admission, transfer or discharge or, as the case may be, impending admission, transfer or discharge.

(3) However, the notification is not to be given over any objection by the patient unless –

(a) an approved medical practitioner advises the controlling authority that the notification would be desirable having regard to –

(i) the patient's health or safety; or

(ii) the safety of other persons; or

(b) the Tribunal directs the controlling authority to do so.

(4) In the case of an impending admission, transfer or discharge, the notification is to be given as far in advance as practicable.

(5) In this section –

***interested person** means –*

(a) a representative of the patient; or

(b) a support person of the patient; or

(c) any other person who the controlling authority reasonably regards as having a proper interest in the patient's welfare;

***patient** means, as the context requires, an involuntary patient or forensic patient, and includes a prospective patient.*

131. Notification of certain leave and unlawful absences

(1) This section applies if a patient –

(a) is about to take leave of absence from an approved hospital or SHMU; or

(b) has contravened a condition of a leave of absence from an approved hospital or SMHU; or

(c) has absconded from an approved hospital or SMHU.

(2) In a case to which subsection 1(a) applies where the patient raises no objection, the controlling authority is to make a reasonable attempt to notify (as far in advance as practicable) at least one interested person of the impending leave of absence.

(3) In a case to which subsection 1(b) or (c) applies, the controlling authority is to make a reasonable attempt to notify at least one interested person of the unlawful absence or contravention.

(4) However, the controlling authority need not comply with this section regarding any matter if the controlling authority has, under another provision of this Act, already given notice of the same matter to someone who is an interested person within the meaning of this section.

(5) In this section –

***abscond** means being absent without leave of absence or overstaying a leave of absence;*

***interested person** means –*

(a) a representative of the patient; or

(b) a support person of the patient; or

(c) any other person who the controlling authority reasonably regards as having a proper interest in the patient's welfare;

***patient** means, as the context requires, an involuntary patient or forensic patient.*

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134. Disclosure of confidential, &c., information about patients

(1) A person who obtains information of a confidential or personal nature about a patient in discharging any responsibilities under this Act must not disclose the information except as authorised or required under subsection (2).

Penalty: Fine not exceeding 50 penalty units or imprisonment for a term not exceeding 6 months.

(2) The information may be disclosed if –

(a) the disclosure is authorised or required by law or any court; or

(b) the disclosure is made for or in connection with the reporting or lawful investigation of a crime or unlawful act (whether actual or prospective); or

(c) where the patient is capable of consenting to the disclosure, the patient so consents; or

(d) despite or regardless of whether the patient consents to the disclosure, the treating medical practitioner considers it necessary for the patient's treatment and care; or

(e) where the patient has been dead for less than 25 years at the relevant time, the patient's next-of-kin consents to the disclosure; or

(f) the disclosure is directly related to the purpose for which the information was obtained and the person making the disclosure reasonably believes that the patient would want or expect the information to be disclosed for that purpose; or

(g) the person making the disclosure reasonably believes it to be necessary so as to prevent or lessen a serious threat to the life, health or safety of the patient or other person; or

(h) the person making the disclosure reasonably believes it to be necessary so as to prevent or lessen a serious threat to public health or safety; or

(i) the disclosure is authorised by the Tribunal; or

(j) the person making the disclosure reasonably believes it to be necessary in connection with the administration of this Act.

135. Translation, interpreters, &c.

All persons exercising responsibilities under this Act are, as far as may be reasonably practicable in the circumstances, to ensure that any information required to be given to a patient or to a representative or support person of a patient is, if necessary through the assistance of an interpreter or an alternative or augmentative communication system, given or relayed in a language or form that the patient or, as the case may be, the representative or support person understands.

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137. Parents of child patients to be given same information as patients

(1) A person who is required to give a patient a notice or other document under this Act must, if the patient is a child and the patient does not object, also give a copy of the notice or document to a parent of the patient at the same time.

(2) To avoid doubt, for subsection 1 the giving of the notice or document to one parent is sufficient.

147. Power of direct intervention

(1) A Chief Psychiatrist has, in prescribed matters within his or her jurisdiction, the power to intervene directly with regard to the assessment, treatment and care of any patient.

Note The exercise of a Chief Psychiatrist's power of intervention is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

(2) The power of intervention is exercisable –

(a) on the Chief Psychiatrist's own motion; or

(b) at the request of the patient; or

(c) at the request of any person who, in the opinion of the Chief Psychiatrist, has a proper interest in the patient's health, safety or welfare.

(3) However, the power of intervention is only exercisable if the Chief Psychiatrist –

(a) has made inquiries into the relevant prescribed matter; and

(b) is satisfied from those inquiries that intervention is essential to the patient's health, safety or welfare.

(4) The power of intervention is exercisable by giving any person responsible for the treatment and care of the patient, as regards the relevant prescribed matter, a notice to do one or more of the following:

(a) discontinue or alter a particular practice, procedure or treatment in respect of the patient;

(b) observe or carry out a particular practice, procedure or treatment in respect of the patient.

(5) The Chief Psychiatrist, by the same or a different notice, may also do either or both of the following:

(a) issue consequential directions for the future assessment, treatment or care of the patient;

(b) direct that any decision triggering or relating to the intervention be referred, by a specified person, to the Tribunal for review within a specified time.

Note For the review of such decisions by the Tribunal – see Division 2 of Part 3 of Chapter 3.

(6) Nothing in this section is to be taken as authorising a Chief Psychiatrist to issue directions that are repugnant to –

(a) any provision of this Act; or

(b) a provision of any other Act; or

(c) an order, determination or direction of the Tribunal or any court.

(7) A failure by an individual to comply with a direction contained in a notice issued by a Chief Psychiatrist under this section is not an offence but does constitute proper grounds for instituting professional or, as the case may be, occupational disciplinary action against that individual.

(8) In this section –

*"**prescribed matters**" means the following:*

(a) the use of seclusion;

(b) the use of restraint;

(c) the use of force;

(d) the granting, refusal and control of leaves of absence;

(e) the giving or withholding of patient information;

(f) the granting, denial and control of visiting, correspondence and telephone rights;

(g) assessment and treatment generally;

(h) matters prescribed by the regulations.

160. Visits

(1) The Principal Official Visitor must arrange for each approved facility to be visited by an Official Visitor at least once a month.

(2) The Principal Official Visitor must arrange for an Official Visitor to visit premises in or from which a patient is being provided with services under this Act if requested to do so by –

(a) the patient; or

(b) a representative or support person of the patient; or

(c) a person who, in the opinion of the Principal Official Visitor, has a genuine interest in the patient's welfare; or

(d) the Minister for Health.

(3) The Principal Official Visitor is not obliged to comply with subsection 2(a) in respect of any premises if –

(a) those premises have been visited by an Official Visitor in the month immediately preceding the making of the relevant request; or

(b) the Principal Official Visitor considers the relevant request to be frivolous or vexatious.

(4) A visit under this section may be made with or without notice.

(5) A visit to an SMHU under this section is subject to statutory or other reasonable requirements relating to the management, good order and discipline of the SMHU.

161. Complaints

(1) Any patient is entitled to make a complaint to an Official Visitor.

(2) An Official Visitor may also accept a complaint, concerning any patient, from –

(a) a support person, or representative, of the patient; or

(b) a person who, in the opinion of the Official Visitor, has a genuine interest in the patient's welfare.

(3) A complaint may be made by any available means acceptable to the Official Visitor concerned.

163. Obligation of officials to assist Official Visitors, &c.

(1) All persons discharging responsibilities under this Act must give patients such reasonable help as they may require in making complaints under this Part.

(2) Specifically, if a patient expresses to a person discharging responsibilities under this Act a wish to see or complain to an Official Visitor, the person must inform an Official Visitor of that wish within 24 hours.

(3) Additionally, if a person discharging responsibilities under this Act knows that a patient has expressed a wish to see or complain to an Official Visitor, the person must, to the maximum extent of the person's lawful and physical capacity to do so –

(a) grant Official Visitors access to those parts of premises in which the patient is being accommodated or being assessed or treated; and

(b) facilitate private and direct communication between Official Visitors and the patient (consistently with the patient's wishes); and

(c) grant Official Visitors access to records relating to the patient's assessment, treatment and care, including clinical records (unless the patient has asked that Official Visitors not be granted that access); and

(d) grant Official Visitors access to other relevant records or registers required to be kept under this Act; and

(e) answer questions about the assessment, treatment and care of the patient to the best of the person's knowledge and in a full and frank manner (unless the patient has asked that Official Visitors not be provided with that information); and

(f) give Official Visitors such other reasonable assistance as they may require.

(4) To avoid doubt, nothing in this section is to be taken as compelling any patient to –

(a) see, speak to or complain to an Official Visitor against the patient's will; or

(b) grant an Official Visitor access to any record concerning the patient.

(5) In this section –

***wish**, of a patient, includes a wish expressed by a representative or support person of the patient on his or her behalf.*

174. Appeals from determinations

(1) A person who is a party to any proceedings of the Tribunal may appeal to the Supreme Court from any determination made in those proceedings.

(2) A person may appeal to the Supreme Court if the person is aggrieved by any determination of the Tribunal made otherwise than in proceedings.

(3) An appeal may be brought –

(a) on a question of law, as of right; or

(b) on any other question, only with the leave of the Supreme Court.

180. Review of assessment order

The following provisions govern the review of the making of an assessment order:

(a) the Tribunal may review the making of the order at any time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(b) the Tribunal may review the making of the order even if it is no longer in effect;

(c) the Tribunal may also review the making of any other assessment order, concerning the same patient, at the same time;

(d) on review, the Tribunal may affirm the order or, if it is still in effect, discharge the order;

(e) the Tribunal is to –

(i) give a copy of its determination to the patient (together with a statement of rights in a form approved by the President of the Tribunal); and

(ii) give a copy of its determination to the CCP; and

(iii) if the order is still in effect and requires the patient's admission to an approved facility, give a copy of the determination to the controlling authority.

181. Review of treatment order

(1) The following provisions govern the review of a treatment order:

(a) the Tribunal must review the order within 60 days after it is made if it is still in effect;

(b) the Tribunal must further review the order within 180 days after it is made if it is still in effect;

(c) after the further review referred to in paragraph (b), the Tribunal must further review the order at intervals not exceeding 180 days for so long as it remains in effect;

(d) the Tribunal must review the order within 3 days after being notified of the patient's admission to an approved hospital pursuant to section 42(3) if the admission is pursuant to section 42(2)(b);

(e) the Tribunal may review the order at any other time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(f) a review is to be conducted by a division of 3 members but need not involve a hearing;

(g) on review, the Tribunal may affirm, vary or discharge the order.

(2) The Tribunal may vary a treatment order at any time –

(a) on its own motion; or

(b) on the application of any approved medical practitioner; or

(c) on the application of any person with the necessary standing.

(2A) The Tribunal may vary a treatment order whether or not it has conducted a review under this section.

(3) Within 24 hours of varying a treatment order, the Tribunal is to –

(a) give a copy of its determination to the patient (together with a statement of rights in a form approved by the President of the Tribunal); and

(b) give a copy of its determination to –

(i) if the order has required or will require the patient's admission to an approved hospital, the controlling authority of that approved hospital; and

(ii) if the patient is also a forensic patient, the CFP and the controlling authority of the relevant SMHU; and

(iii) in any other case, the CCP.

(4) The Tribunal is not to vary a treatment order so as to require a patient who is a child to be admitted to and, if necessary, detained in an approved hospital unless it is satisfied that the approved hospital –

(a) has adequate facilities and staff for the appropriate treatment and care of the patient; and

(b) is, in the circumstances, the most appropriate place available to detain the patient.

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182. Review of involuntary admission to SMHU

The following provisions govern the review of the admission (or any extension of the admission) of an involuntary patient to an SMHU:

(a) the Tribunal must review the admission (or extension) within 3 days after being notified of the admission (or extension);

(b) the Tribunal may review the admission (or extension) at any other time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(c) on review, the Tribunal may –

(i) affirm the admission (or extension); or

(ii) affirm the admission (or extension) but direct that it be shortened; or

(iii) direct that the patient be transferred to an approved hospital or, if the Tribunal considers that the patient is well enough to be released directly into the community, another place.

183. Review of refusal to return forensic patient to external custodian

The following provisions govern the review of a CFP refusal under section 70:

(a) the Tribunal may review the refusal –

(i) on its own motion at any time; or

(ii) on the application of any person with the necessary standing;

(b) if paragraph (a)(ii) applies, the review is to be done within 7 days after the application is made;

(c) on review, the Tribunal may –

(i) affirm the refusal; or

(ii) set aside the refusal;

(d) if the refusal is set aside, section 70(8) applies to the patient as if the CFP had agreed to the patient's request on the day the CFP was notified of the Tribunal's determination.

184. Review of status of voluntary inpatient

The following provisions govern the review of the status of a voluntary inpatient:

(a) the Tribunal must review the patient's status once he or she has been a voluntary inpatient for 6 continuous months;

(b) the review must be commenced within 30 days after the 6-month period expires;

(c) after the review, the Tribunal must review the patient's status at intervals not exceeding 6 months for as long as he or she remains a voluntary inpatient;

(d) the Tribunal may review the patient's status at any other time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(e) on review, the Tribunal may do either or both of the following:

(i) affirm the patient's status;

(ii) direct the controlling authority of the approved facility where the patient is being accommodated to arrange for an approved medical practitioner to apply for a treatment order in respect of the patient.

185. Review of admission to SMHU of prisoner or youth detainee

The following provisions govern the review of the admission of a forensic patient to an SMHU pursuant to section 68(1)(i) and (j):

(a) the Tribunal must review the admission within 7 days after being notified of the admission;

(b) the Tribunal may review the admission at any other time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(c) on review, the Tribunal may –

(i) affirm the admission; or

(ii) recommend that consideration be given to returning the patient to prison or a detention centre; or

(iii) direct that the patient be discharged from the SMHU and returned to prison or a detention centre.

186. Review of urgent circumstances treatment

(1) The following provisions govern the review of urgent circumstances treatment:

(a) the Tribunal may do the review at any time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(b) the Tribunal may do the review even if the treatment has ceased;

(c) on review, the Tribunal may –

(i) in the case of an involuntary patient not subject to a treatment order, recommend that the patient be examined against the treatment criteria to see whether or not a treatment order needs to be made; or

(ii) in the case of an involuntary patient subject to a treatment order, recommend that the patient be examined to determine whether an application needs to be made to have the treatment order varied; or

(iii) in the case of a forensic patient, recommend that an approved medical practitioner seek the Tribunal's authorisation of treatment in respect of the patient; or

(iv) set aside an authorisation under section 55 or section 87;

(d) on review, the Tribunal may also do either or both of the following:

(i) seek additional information from the relevant Chief Psychiatrist or approved medical practitioner (for example, a report about the efficacy of the treatment);

(ii) recommend that the relevant Chief Psychiatrist exercise any of his or her powers under this Act consequent on or in connection with the treatment.

(2) The Tribunal's power under subsection (1)(a)(i) applies not only to specific instances of urgent circumstances treatment but also to any group of such treatments jointly, whether of the same patient or different patients.

(3) The provisions of paragraphs (c) and (d) of subsection (1) apply, with any necessary modification, to a review of the kind referred to in subsection (2).

187. Review of seclusion and restraint

The following provisions govern the review of any instance of seclusion or restraint:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) the Tribunal may do the review even if the period of seclusion or restraint has ended;

(d) on review, the Tribunal may –

(i) affirm the use of the seclusion or restraint; or

(ii) direct that the seclusion or restraint be terminated or suspended forthwith or by a specified time (if it is ongoing); or

(iii) declare that the patient should not have been subjected to the seclusion or restraint, either at all or in the way it was.

188. Review of force

The following provisions govern the review of the application of force to a forensic patient:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) the Tribunal may do the review even if the application of force has ended;

(d) on review, the Tribunal may –

(i) affirm the application of force; or

(ii) declare that force should not have been applied to the patient, either at all or in the way it was.

189. Review of withholding of information from patient

The following provisions govern the review of the withholding by persons of information from a patient:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) on review, the Tribunal may –

(i) affirm the decision to withhold the information; or

(ii) set aside the decision to withhold the information;

(d) if the decision is set aside, the Tribunal may –

(i) substitute its own decision for the one set aside; or

(ii) remit the matter to the decision-maker, with or without directions, for redetermination.

190. Review of involuntary patient or forensic patient transfer within Tasmania

The following provisions govern the review of the transfer within Tasmania of an involuntary patient or a forensic patient:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) on review, the Tribunal may –

(i) affirm the decision to transfer the patient; or

(ii) set aside the decision to transfer the patient;

(d) if the decision is set aside, the Tribunal may –

(i) substitute its own decision for the one set aside; or

(ii) remit the matter to the decision-maker, with or without directions, for redetermination.

191. Review of determination relating to leave of absence

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The following provisions govern the review of the grant, refusal or variation of a leave of absence ("leave") to an involuntary patient, or to a forensic patient who is not subject to a restriction order:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) the review may be done whether or not the leave is prospective or, if applicable, has commenced or concluded or been varied;

(d) on review, the Tribunal may –

(i) affirm the decision to grant, refuse or vary the leave; or

(ii) set aside the decision to grant, refuse or vary the leave;

(e) if the relevant decision is set aside, the Tribunal may –

(i) substitute its own decision for the one set aside; or

(ii) remit the matter to the decision-maker, with or without directions, for redetermination;

(f) nothing in this section is to be taken as authorising the Tribunal, on review, to –

(i) grant an involuntary patient leave for a continuous period of more than 14 days; or

(ii) direct that an involuntary patient be granted leave for a continuous period of more than 14 days.

192. Review of exercise of visiting, telephone or correspondence right

The following provisions govern the review of a decision concerning a forensic patient's visiting, telephone or correspondence rights:

(a) the Tribunal may do the review on its own motion at any time;

(b) the Tribunal must do the review on the application of any person with the necessary standing;

(c) the review may be done whether or not the relevant rights have been exercised;

(d) on review, the Tribunal may –

(i) affirm the relevant decision; or

(ii) set aside the relevant decision;

(e) if the relevant decision is set aside, the Tribunal may –

(i) substitute its own decision for the one set aside; or

(ii) remit the matter to the decision-maker, with or without directions, for redetermination.

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192A. Tribunal to review forensic patient's treatment authorisation

(1) The following provisions apply to the review of the authorisation of treatment for a forensic patient:

(a) the Tribunal must review the authorisation within 60 days after it is made, if it is still in effect;

(b) the Tribunal must further review the authorisation within 180 days after it is made, if it is still in effect;

(c) after the further review referred to in paragraph (b), the Tribunal must further review the authorisation at intervals not exceeding 180 days for so long as it remains in effect;

(d) the Tribunal may review the authorisation at any other time –

(i) on its own motion; or

(ii) on the application of any person with the necessary standing;

(e) the review is to be conducted by a division of 3 members but need not involve a hearing;

(f) on review, the Tribunal may affirm, vary or discharge the authorisation.

(2) Within 24 hours of reviewing an authorisation, the Tribunal is to –

(a) give a copy of its determination to the patient (together with a statement of rights in a form approved by the President of the Tribunal); and

(b) give a copy of its determination to –

(i) the controlling authority of the relevant SMHU; and

(ii) the CFP.

193. Other reviews

The following provisions govern the review of any decision (or matter) for which express provision is not otherwise made in this Division:

(a) the Tribunal may do the review –

(i) on its own motion at any time; or

(ii) on the application of any person with the necessary standing;

(b) on review, the Tribunal may –

(i) affirm the relevant decision; or

(ii) set aside the relevant decision or action taken;

(c) if the relevant decision is set aside, the Tribunal may –

(i) substitute its own decision for the one set aside; or

(ii) remit the matter to the decision-maker, with or without directions, for redetermination.

195. Form of applications for review, &c.

(1) An application to the Tribunal (whether for a review or any other matter) is to –

(a) be in a form approved by the President of the Tribunal; and

(b) provide for any matter required by the regulations; and

(c) be accompanied by any material required by the regulations.

(2) The Registrar may help any person make an application.

(3) The controlling authority of an approved facility is to ensure that –

(a) patients in the approved facility are given reasonable help in making applications; and

(b) without limiting this, Australian lawyers, advocates, translators or other persons on whose skills a patient in the approved facility may need to rely in that regard are afforded reasonable access to the patient.

(4) An application may be withdrawn at any time.

224A. Correction of orders, &c., where validity affected

(1) An error in an order, determination, direction or other document made by the Tribunal under this Act that affects the validity of the order, determination, direction or other document may be corrected at any time by the Tribunal –

(a) on its own motion; or

(b) on the application of an approved medical practitioner; or

(c) on the application of any person with the necessary standing.

(2) When correcting an order, determination, direction or other document, the Tribunal –

(a) is to consist of 3 members; and

(b) need not conduct a hearing.

(3) Within 24 hours after correcting an order, determination, direction or other document under this section, the Tribunal must –

(a) give a copy of the corrected document to the patient (together with a statement of rights in a form approved by the President); and

(b) give a copy of the corrected document to –

(i) if the patient has been, is or will be admitted to, or detained in, an approved hospital, the controlling authority of that approved hospital; or

(ii) if the patient is a forensic patient, the CFP and the controlling authority of the relevant SMHU; or

(iii) in any other case, the CCP.

Schedule 1

1. The mental health service delivery principles are as follows:

(a) to respect, observe and promote the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;

(b) to interfere with or restrict the rights of persons with mental illness in the least restrictive way and to the least extent consistent with the protection of those persons, the protection of the public and the proper delivery of the relevant service;

(c) to provide a service that is comprehensive, accessible, inclusive, equitable and free from stigma;

(d) to be sensitive and responsive to individual needs (whether as to culture, language, age, religion, gender or other factors);

(e) to emphasise and value promotion, prevention and early detection and intervention;

(f) to seek to bring about the best therapeutic outcomes and promote patient recovery;

(g) to provide services that are consistent with patient treatment plans;

(h) to recognise the difficulty, importance and value of the role played by families, and support persons, of persons with mental illness;

(i) to recognise, observe and promote the rights, welfare and safety of the children and other dependants of persons with mental illness;

(j) to promote the ability of persons with mental illness to make their own choices;

(k) to involve persons receiving services, and where appropriate their families and support persons, in decision-making;

(l) to recognise families, and support persons, of persons with mental illness as partners, with mental health service providers, in the provision of their treatment and care to the extent that this is appropriate and consistent with their own wishes;

(m) to respect the wishes of persons receiving services, and the wishes of their families and support persons, to the maximum extent consistent with the health and safety of those persons and the safety of others;

(n) to promote and enable persons with mental illness to live, work and participate in their own community;

(o) to operate so as to raise community awareness and understanding of mental illness and to foster community-wide respect for the inherent rights, liberty, dignity, autonomy and self-respect of persons with mental illness;

(p) to be accountable;

(q) to recognise and be responsive to national and international clinical, technical and human rights trends, developments and advances.

SCHEDULE 2 - Custody and escort provisions

PART 2 - Powers and Duties

3. Proof of identity

(1) This clause applies if a person is purporting to exercise, discharge or perform a responsibility as a custodian or escort.

(2) Any affected party may ask the person to produce proof of identity.

(3) Subject to subclause 4, it is the person's duty to comply with the request.

(4) For the purposes of subclause 3, it is sufficient if the person –

(a) in the case of an MHO, produces his or her MHO identity card; or

(b) in the case of an authorised person, produces his or her identity card, if issued, or instrument of authorisation; or

(c) in the case of a police officer or ambulance officer who is not in uniform, produces his or her MHO identity card, if issued, or –

(i) in the case of a police officer, his or her warrant card; or

(ii) in the case of an ambulance officer, his or her ambulance officer identification card; or

(d) in the case of a police officer or ambulance officer who is in uniform, states that he or she is acting as authorised custodian or escort under this Act.

(5) A failure to comply with subclause 3 does not, of itself, invalidate the subsequent exercise, discharge or performance of the relevant responsibility.

(6) The CFP or controlling authority of an SMHU may issue an authorised person with an identity card for use in connection with escort duties.

(7) In this clause –

affected party *means any of the following:*

(a) the patient;

(b) a representative or support person of the patient;

(c) the owner or occupier of any premises that the person purporting to act as custodian or escort is, in that capacity, seeking to enter;

(d) the controlling authority of an approved facility from which the person purporting to act as custodian or escort is, in that capacity, seeking to remove the patient;

(e) a Chief Psychiatrist.

SCHEDULE 4 - Proceedings of Tribunal

PART 1 – Interpretation

In this Schedule –

"party", to any proceedings, means any or all of the following:

(a) the person who applied to commence the proceedings;

(b) the person in respect of whom an order is sought;

(c) if an order is sought in respect of a child, a parent of the child;

(d) the patient's representative, including a support person;

(e) the controlling authority of the facility in which the patient is or has been accommodated;

(f) the relevant Chief Psychiatrist;

(g) the Secretary;

(h) the Director of Corrective Services or the Secretary (Youth Justice), as appropriate;

(i) the Public Guardian or Deputy Public Guardian;

(j) any other person that the Tribunal determines has a proper interest in the proceedings;

"patient", in relation to any proceedings, means the person to whom the proceedings relate;

"proceedings" means proceedings before the Tribunal;

"Tribunal" includes a division of the Tribunal.

PART 2 - General procedures

2. Persons with standing

The following persons have standing to institute or intervene in proceedings:

(a) the patient;

(b) the patient's representatives;

(c) if the patient is or has been in an approved facility, the controlling authority of the approved facility;

(d) if the patient is not a forensic patient, the CCP;

(e) if the patient is a forensic patient, the CFP and, if the patient is also an involuntary patient, the CCP;

(f) the treating medical practitioner;

(g) by leave of the Tribunal, any other person who it considers to have a proper interest.

4. Notice

(1) The Tribunal is to ensure that a party to any proceedings is given reasonable notice of each hearing held in the course of those proceedings.

(2) The Tribunal may notify such other persons of the hearing as it thinks fit in the circumstances.

7. Representation

(1) A party to any proceedings is entitled to attend the hearings held in those proceedings.

(2) However, the Tribunal may exclude any person from any proceedings if it reasonably considers that the person's presence may be detrimental to his or her health, safety or welfare or that of another person who is present.

(3) A party to any proceedings may appear personally in the proceedings or be represented by an Australian legal practitioner, advocate or other person.

(4) The Tribunal is to make arrangements for the representation of a patient, if it considers that the patient is, or may be, personally incapable of making such arrangements and is not, or may not be, receiving useful assistance elsewhere in that regard.

(5) The Tribunal may, if it considers there is a need to do so, make arrangements for the representation of any other party to proceedings.

(6) For the purposes of subclauses (4) and (5), either or both of the following may occur:

(a) the Tribunal may adjourn the proceedings to make the necessary arrangements;

(b) the Registrar may make the necessary arrangements on the Tribunal's behalf.

11. Publication of proceedings

(1) The President of the Tribunal may publish a record of any of its proceedings (including its determinations in those proceedings) particularly if it considers that the proceedings are of significance in terms of the operation of this Act, and, where it does so –

(a) is to suppress information that could reasonably be expected to disclose the identity of any patient or former patient; and

(b) may suppress any other information that could reasonably be expected to prejudicially identify any other person.

(2) The record so published is to be provided to every party to the proceedings.

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PART 6 – Miscellaneous

1. Statements of reasons

(1) A party to any proceedings may, during the prescribed period, apply to the Tribunal for a written statement of its reasons for making any determination in or in respect of those proceedings.

(2) The Tribunal is to comply with the request within 21 clear days after receiving it.

(3) The statement of reasons is to be provided to every party to the proceedings.

(4) In this clause –

"prescribed period" means the 30-day period immediately after the day on which the relevant proceedings were finally determined.