Chief Psychiatrists

TASMANIA'S MENTAL HEALTH ACT

Mental Health, Alcohol and Drug Directorate
Department of Health and Human Services

Chief Psychiatrist Approved

Tasmanian Government

Outline

- Overview
- The Chief Psychiatrists
- Independence
- Functions and powers
- Direct intervention
- Clinical Guidelines
- Standing Orders
- Relationship to the Mental Health Tribunal and Principal Official Visitor
- Reporting
- Useful resources
- Questions?

Overview

- The *Mental Health Act 2013* regulates the involuntary assessment and treatment of people with mental illness
- The Act provides for Assessment Orders and Treatment Orders; regulates seclusion, restraint and patient leave; establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist; and enables Official Visitors to be appointed
- The Act also establishes the Mental Health Tribunal and provides the Tribunal with a range of powers and functions
- The Act is consumer centred and recognises that competent adults have the right to make their own decisions about assessment and treatment. It requires decisions which infringe a person's rights to be independently oversighted; and provides consumers with specific rights

Chief Psychiatrist Approved

The Chief Psychiatrists

- The Act provides for a Chief Civil Psychiatrist, and a Chief Forensic Psychiatrist
- Each Chief Psychiatrist has general responsibility, to the Minister for Health, for ensuring that the Act's objects are met for patients whose assessment and treatment is regulated by the Act
- The Chief Civil Psychiatrist is responsible for ensuring that the Act's objects are met for patients other than forensic patients or people subject to supervision orders; and for the running of approved facilities other than secure mental health units
- The Chief Forensic Psychiatrist is responsible for ensuring that the Act's objects are met for forensic patients and involuntary patients admitted to secure mental health units, and people who are subject to supervision orders; and for the running of secure mental health units

Chief Psychiatrist Approved

12. Objects of Act

The objects of the Act are as follows:

(a) To provide for the assessment and treatment of persons with mental illnesses;
(b) To provide for appropriate oversight and safeguards in relation to such assessment and treatment;
(c) To give everyone involved with such assessment and treatment clear direction as to their rights and responsibilities;
(d) To provide for such assessment and treatment to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare;
(e) To promote voluntary over involuntary assessment and treatment and the making of free and informed assessment and treatment choices;
(f) To provide for all incidental and ancillary matters.

143. Chief Civil Psychiatrist

(1) The Governor may appoint a person to be Chief Civil Psychiatrist.

(2) The appointee must be a psychiatrist with at least 5 years' experience in practicing psychiatry.

(3) The office of Chief Civil Psychiatrist may be held in conjunction with State Service

employment.

(4) The Chief Civil Psychiatrist has a general overall responsibility, under and to the Minister, for ensuring that the objects of this Act are met in respect of –

(a) patients other than –

(i) forensic patients; or

(ii) persons who are subject to supervision orders; and

(b) the running of approved facilities other than secure mental health units.

144. Chief Forensic Psychiatrist

(1) The Governor may appoint a person to be Chief Forensic Psychiatrist.

(2) The appointee must be a psychiatrist with at least 5 years' experience in practicing psychiatry.

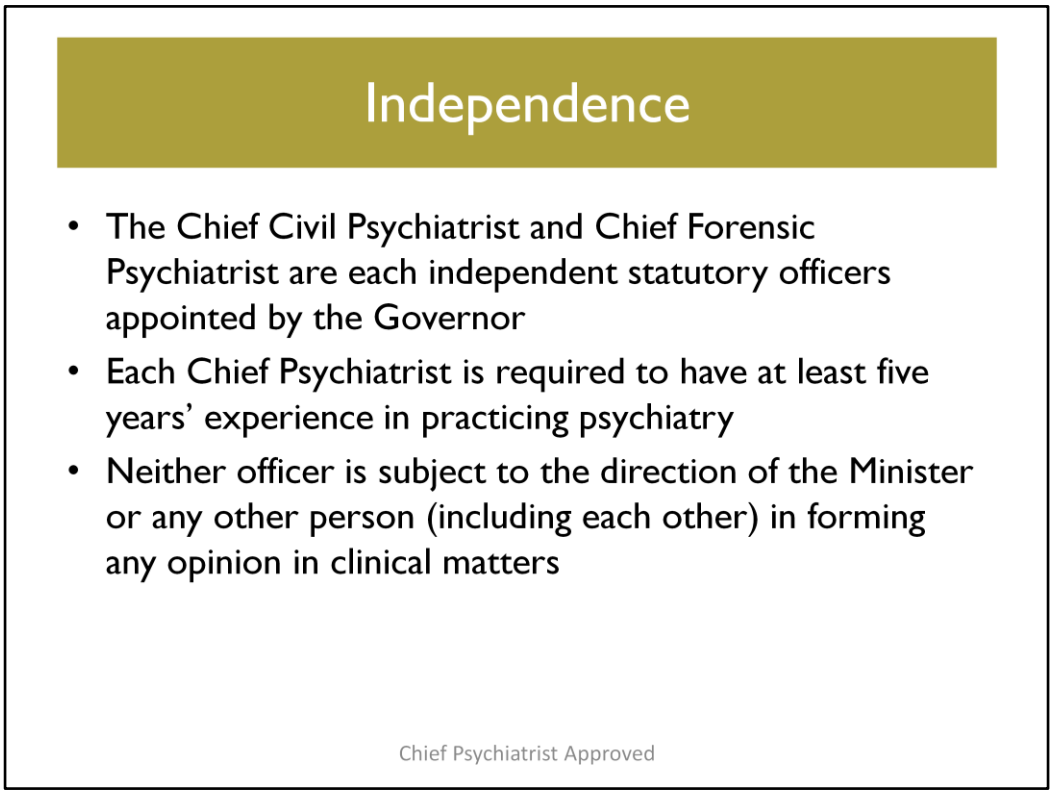
(3) The office of Chief Forensic Psychiatrist may be held in conjunction with State Service employment.

(4) The Chief Forensic Psychiatrist has a general overall responsibility, under and to the Minister, for ensuring that the objects of this Act are met in respect of –

(a) forensic patients and persons admitted to an SMHU under section 63; and

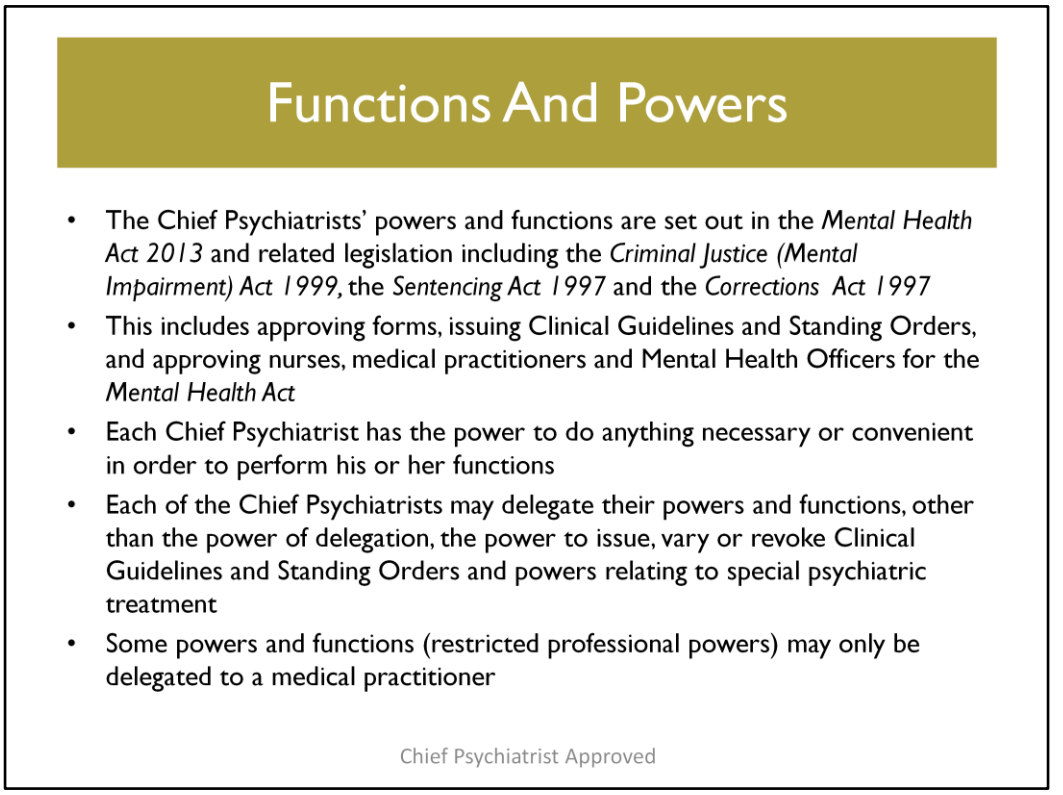
(b) persons who are subject to supervision orders; and

(c) the running of secure mental health units.



148. Independence

Notwithstanding the *State Service Act 2000*, in acting or forming any opinion in clinical matters a Chief Psychiatrist is not subject to the direction of the Minister, the other Chief Psychiatrist or any other person.



146. Functions and powers

(1) A Chief Psychiatrist has the functions given to that Chief Psychiatrist by this or any other Act.

(2) A Chief Psychiatrist has –

(a) power to do anything necessary or convenient to be done to perform his or her functions; and

(b) such other powers as are expressly or impliedly given to that Chief Psychiatrist by this or any other Act.

(3) Without limiting subsection (2) –

(a) either Chief Psychiatrist may approve forms for use under provisions of this Act within his or her jurisdiction or under provisions of other Acts in respect of which he or she may have responsibilities; and

(b) the Chief Forensic Psychiatrist may authorise a person or class of persons for the purposes of Part 4 of Chapter 2 or any provision of that Part.

149. Delegation

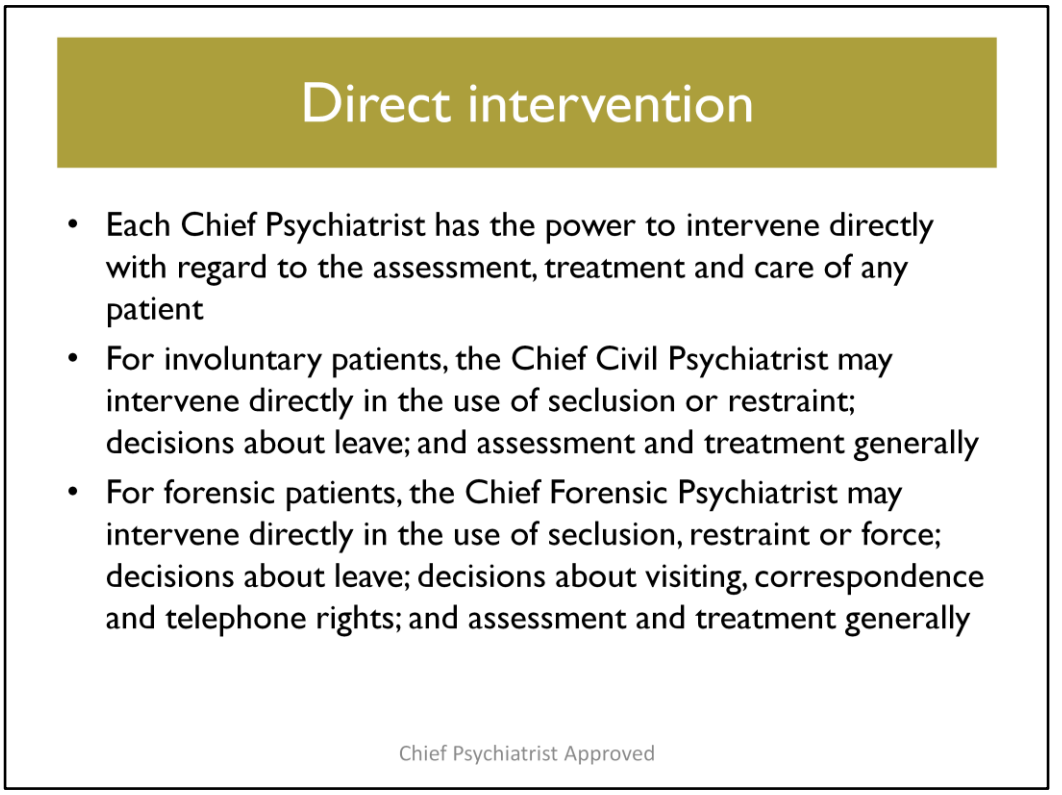
(1) A Chief Psychiatrist may delegate any of his or her powers or functions under this or any other Act other than –

(a) this power of delegation; and

(b) the power to issue, vary or revoke clinical guidelines and standing orders; and
(c) any powers or functions under Part 6 of Chapter 2.

(2) However, under subsection (1), a restricted professional power, or a function necessary or incidental to the exercise of a restricted professional power, must not be delegated to anyone other than a medical practitioner.

(3) In this section –
restricted professional power means a power to –
(a) authorise the giving of urgent circumstances treatment; or
(b) authorise seclusion or restraint, or an extension of a period of seclusion or restraint, under section 56 or 57 or section 94 or 95; or
(c) direct under section 59 or Division 3 of Part 4 of Chapter 2 the transfer of patients to secure institutions, approved hospitals, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a service is provided; or
(d) make a decision about admitting an involuntary patient to, or detaining an involuntary patient at, an SMHU under section 63 or 64; or
(e) make a decision about the transfer of a prisoner or a detainee to an SMHU pursuant to section 36A(2) or (3) of the *Corrections Act 1997* or section 134A(2) or (3) of the *Youth Justice Act 1997*; or
(f) make a decision under section 70 to return a person to the custody of a responsible authority; or
(g) make a decision under Division 5 or 6 of Part 4 of Chapter 2.



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.

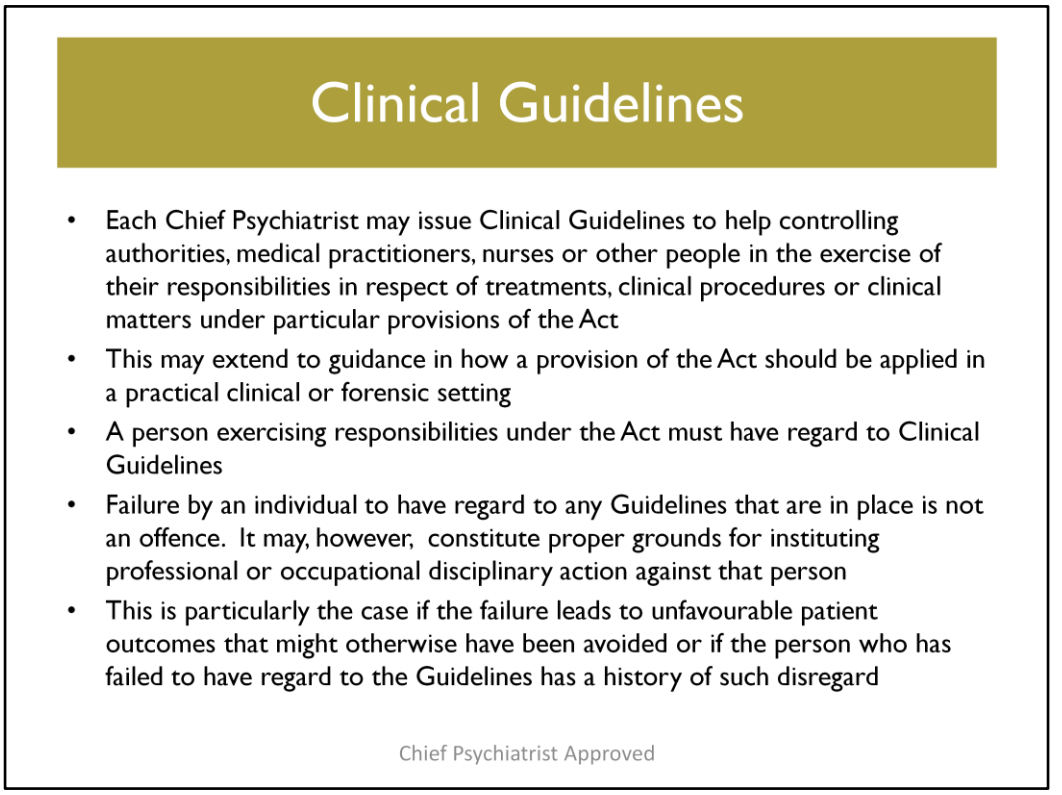
(7) A failure by an individual to comply with a direction contained in a notice issued by a Chief Psychiatrist under this section is not an offence but does constitute proper grounds for instituting professional or, as the case may be, occupational disciplinary action against that individual.

(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.

Direct intervention (cont.)

- The Chief Psychiatrists may directly intervene on his or her own motion, on the request of a patient, or on the request of any other person who the Chief Psychiatrist considers has a proper interest in the patient's health, safety or welfare
- However, the relevant Chief Psychiatrist must make inquiries into the matter and be satisfied that intervention is essential to the patient's health, safety or welfare before intervening
- The power may be exercised by giving any person responsible for the patient's treatment and care a notice to discontinue or alter, or observe or carry out, a particular practice, procedure or treatment
- The Chief Psychiatrist may also issue consequential directions for the patient's future assessment, treatment or care

Chief Psychiatrist Approved



151. Clinical guidelines

(1) A Chief Psychiatrist may issue guidelines (***clinical guidelines***) to help controlling authorities, medical practitioners, nurses or other persons in the exercise of their responsibilities in respect of any treatment, clinical procedure or other clinical matter under –

(a) provisions of this Act within that Chief Psychiatrist's jurisdiction; or

(b) provisions of other Acts in respect of which that Chief Psychiatrist may have responsibilities.

(2) Without limiting the generality of subsection (1), the clinical guidelines may indicate how a provision of this or another Act ought to be applied in a practical clinical or forensic setting.

(3) To avoid doubt, the specific mention of clinical guidelines in certain provisions of this or another Act does not preclude them from being issued and applied to other provisions of the same Act where they are not mentioned if the relevant Chief Psychiatrist considers there is a proper basis for doing so.

(4) A person exercising, under this or another Act, responsibilities in respect of a matter for which clinical guidelines have been issued is to have regard to those clinical guidelines.

(5) A failure by an individual to have regard to clinical guidelines is not an offence but may, particularly if it leads to unfavourable patient outcomes that might otherwise have been avoided or if there is a history of such disregard, constitute proper grounds for instituting professional or, as the case may be, occupational disciplinary action against that individual.

153. Matters common to clinical guidelines and standing orders

(1) Clinical guidelines and standing orders –

(a) are to be written in plain language with a minimum of technical and professional jargon; and

(b) are to be as brief as possible consistent with their intended application; and

(c) are to clearly state which legislative provisions they relate to; and

(d) are to follow a standard style and format; and

(e) may be made so as to apply differently according to such matters, limitations or restrictions, whether as to time, location, circumstance or otherwise, as are specified in them; and

(f) may confer responsibilities and discretionary responsibilities on persons (including the Chief Psychiatrist issuing them) and provide for the delegation of those responsibilities; and

(g) may not purport to impose fines or other penalties for any failure to comply with them; and

(h) may not contain provisions that are repugnant to the other provisions of this or any other Act; and

(i) may not purport to authorise anyone to disregard or act contrary to a judicial order or an order of a tribunal.

(2) In the event that the provisions of any clinical guidelines or standing orders are inconsistent with the provisions of any Act, the provisions of the Act always prevail.

(3) To avoid overlap, ambiguity or inconsistency, the CCP and CFP are to liaise with the Tribunal and each other when drafting any clinical guidelines or standing orders.

(4) Clinical guidelines and standing orders are to be published, in the manner the Chief Psychiatrist issuing them considers necessary or desirable having regard to their intended application.

(5) No fee is chargeable or payable for issuing, supplying or obtaining a copy of any clinical guidelines or standing orders.

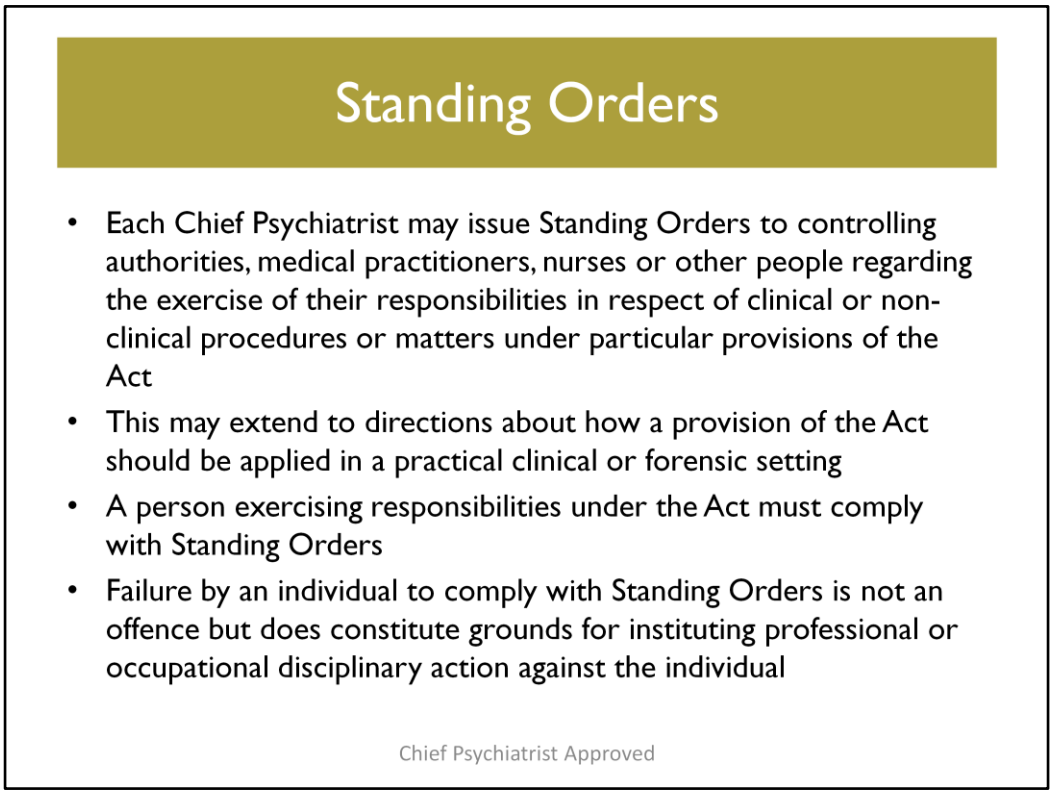
(6) A Chief Psychiatrist is to give the Tribunal a copy of any issued or draft clinical guidelines or standing orders on request.

(7) Clinical guidelines and standing orders are not –

(a) statutory rules; or

(b) instruments of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

(8) To avoid doubt, clinical guidelines and standing orders are instruments to which section 22 of the *Acts Interpretation Act 1931* applies



152. Standing orders

(1) A Chief Psychiatrist may issue directions (***standing orders***) to controlling authorities, medical practitioners, nurses or other persons regarding the exercise of their responsibilities in respect of any clinical or non-clinical procedure or matter under –

(a) provisions of this Act within that Chief Psychiatrist's jurisdiction; and
(b) provisions of other Acts in respect of which that Chief Psychiatrist may have responsibilities.
Note The CCP must, however, ensure that there are standing orders in relation to the restraint of involuntary patients – see section 57(5).

(2) Without limiting the generality of subsection (1), the standing orders may indicate how a provision of this or another Act ought to be applied in a practical clinical or forensic setting.

(3) To avoid doubt, the specific mention of standing orders in certain provisions of this or another Act does not preclude them from being issued and applied to other provisions where they are not mentioned if the relevant Chief Psychiatrist considers there are reasonable grounds to do so.

(4) A person exercising, under this or another Act, responsibilities in respect of a matter for which standing orders have been issued must comply with those standing

orders.

(5) A failure by an individual to comply with standing orders is not an offence but does constitute proper grounds for instituting professional or, as the case may be, occupational disciplinary action against that individual.

153. Matters common to clinical guidelines and standing orders

(1) Clinical guidelines and standing orders –

(a) are to be written in plain language with a minimum of technical and professional jargon; and

(b) are to be as brief as possible consistent with their intended application; and

(c) are to clearly state which legislative provisions they relate to; and

(d) are to follow a standard style and format; and

(e) may be made so as to apply differently according to such matters, limitations or restrictions, whether as to time, location, circumstance or otherwise, as are specified in them; and

(f) may confer responsibilities and discretionary responsibilities on persons (including the Chief Psychiatrist issuing them) and provide for the delegation of those responsibilities; and

(g) may not purport to impose fines or other penalties for any failure to comply with them; and

(h) may not contain provisions that are repugnant to the other provisions of this or any other Act; and

(i) may not purport to authorise anyone to disregard or act contrary to a judicial order or an order of a tribunal.

(2) In the event that the provisions of any clinical guidelines or standing orders are inconsistent with the provisions of any Act, the provisions of the Act always prevail.

(3) To avoid overlap, ambiguity or inconsistency, the CCP and CFP are to liaise with the Tribunal and each other when drafting any clinical guidelines or standing orders.

(4) Clinical guidelines and standing orders are to be published, in the manner the Chief Psychiatrist issuing them considers necessary or desirable having regard to their intended application.

(5) No fee is chargeable or payable for issuing, supplying or obtaining a copy of any clinical guidelines or standing orders.

(6) A Chief Psychiatrist is to give the Tribunal a copy of any issued or draft clinical guidelines or standing orders on request.

(7) Clinical guidelines and standing orders are not –

(a) statutory rules; or

(b) instruments of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.

(8) To avoid doubt, clinical guidelines and standing orders are instruments to which section 22 of the *Acts Interpretation Act 1931* applies

Relationship to the Mental Health Tribunal, Official Visitors

- The Chief Psychiatrists, the Mental Health Tribunal and the Principal Official Visitor each have an oversight function under the Act
- The Mental Health Tribunal's role is – broadly speaking – to make decisions about involuntary treatment and to review other actions or decisions which may infringe a person's rights
- The Principal Official Visitor's role is – broadly speaking – to visit facilities and to receive and investigate complaints from people whose assessment, treatment and care is regulated by the Act
- The Act anticipates matters being referred between each body/person to enable the most appropriate action to be taken

Chief Psychiatrist Approved

156. Functions of Principal Official Visitor

(1) The Principal Official Visitor has the following functions:

(a) to arrange for Official Visitors to visit approved facilities and any premises from which patients are provided with services under this Act;

(b) to receive complaints from (or concerning) patients, including complaints referred to the Principal Official Visitor by Official Visitors;

(c) to assess and conduct preliminary inquiries into complaints received from (or concerning) patients, including complaints referred to the Principal Official Visitor by Official Visitors;

(d) to refer suspected contraventions of this Act, or other matters that may require investigation, to the Health Complaints Commissioner or Ombudsman;

(e) to promote, amongst patients and administrators and in other relevant quarters, an awareness of Official Visitors and their role;

(f) to report on suspected contraventions of this Act or standing orders or clinical guidelines;

(g) to report on the extent to which the objects of this Act and the mental health service delivery principles are being met;

(h) to raise with the Minister for Health or relevant Chief Psychiatrist any matters of particular concern that come to the Principal Official Visitor's attention;

(i) to perform such other functions as are conferred on the Principal

Official Visitor under this or any other Act.

(2) Subject to this Part, the Principal Official Visitor may determine the manner in which Official Visitors are to perform their functions.

(3) For the purposes of subsection (2), the Principal Official Visitor may issue a code of conduct, and from time to time amend or replace that code.

(4) A code of conduct is not a statutory rule.

(5) Except to such extent as the provisions of section 157 otherwise indicate, the Principal Official Visitor may perform any function of an Official Visitor.

179. The Tribunal's review function

(1) The Tribunal is to review, in accordance with this Division –

(a) the making of assessment orders; and

(b) treatment orders (and their variation and discharge); and

(c) admissions of involuntary patients to SMHUs; and

(d) the status of voluntary inpatients; and

(e) the placement of any involuntary patient or forensic patient under seclusion or restraint; and

(ea) the authorisation of treatment for any forensic patient; and

(f) the application of force to any forensic patient; and

(g) the withholding, from any patient, of information by persons; and

(h) the transfer of any involuntary patient or forensic patient within Tasmania; and

(i) the granting, refusal, cancellation or variation of leave of absence for any involuntary patient or forensic patient who is not subject to a restriction order; and

(j) the exercise of visiting, correspondence or telephone rights by any forensic patient.

(2) The Tribunal is also required to review –

(a) as provided by section 36B of the *Corrections Act 1997*, admissions of prisoners to secure mental health units; and

(b) as provided by section 134B of the *Youth Justice Act 1997*, admissions of youth detainees to secure mental health units; and

(c) as provided by section 37 of the *Criminal Justice (Mental Impairment) Act 1999*, restriction orders or supervision orders made under that Act.

(3) The Tribunal may also review –

(a) CFP refusals, under section 70, to return forensic patients to the custody of the Director or the Secretary (Youth Justice); and

(b) the giving of urgent circumstances treatment to any involuntary or

forensic patient; and

(c) the exercise of a Chief Psychiatrist's power of direct intervention; and

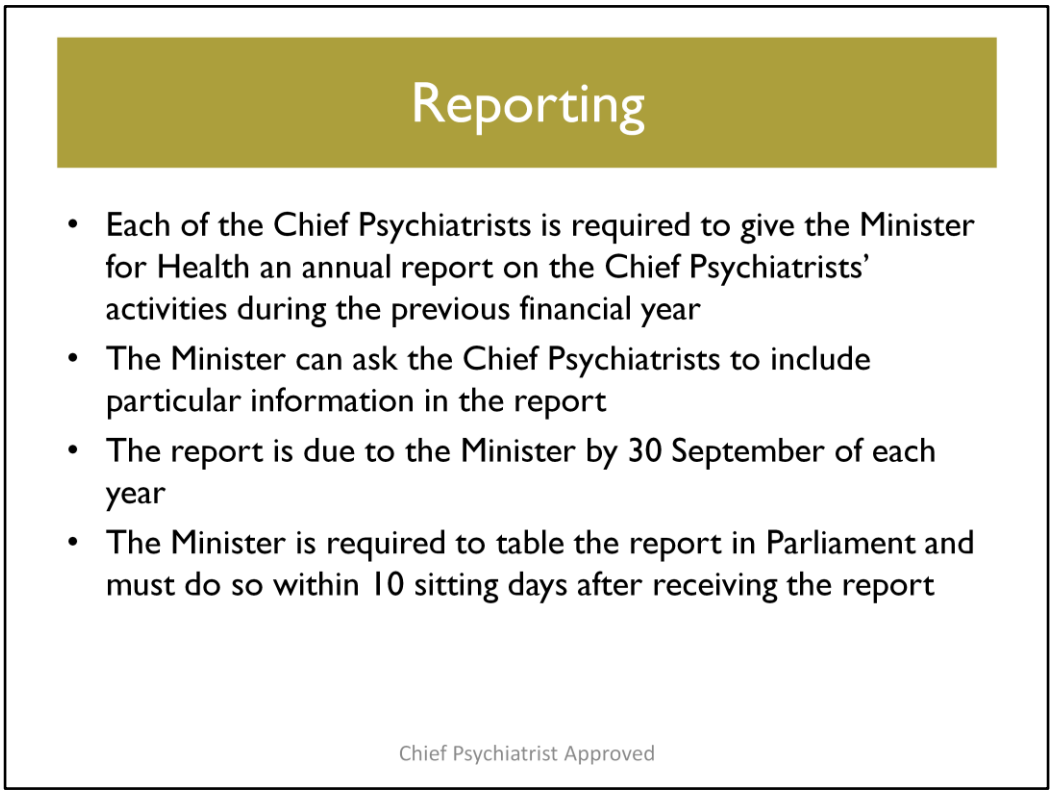
(d) any matter referred to it by, or at the direction or instigation of, a Chief Psychiatrist; and

(e) any matter prescribed by the regulations.

Relationship to the Mental Health Tribunal, Official Visitors (cont.)

- Consistent with this model, the Principal Official Visitor may:
  - Raise any matter of particular concern that comes to the Principal Official Visitor's attention with the relevant Chief Psychiatrist
  - Give a Chief Psychiatrist a private report on any matter related to the responsibilities or activities of Official Visitors
- The Mental Health Tribunal has, in turn, the power to:
  - Review any matter referred to it by a Chief Psychiatrist
  - Refer any matter concerning a review to a Chief Psychiatrist for possible intervention
  - Review the exercise, by a Chief Psychiatrist, of the power of direct intervention

Chief Psychiatrist Approved



150. Reporting

(1) A Chief Psychiatrist, before 30 September after each financial year, is to give the Minister a report on the Chief Psychiatrist's activities during that financial year.

(2) The Minister may direct the Chief Psychiatrist to prepare the report in a particular style or format or to include particular information in the report.

(3) The Minister is to cause a copy of the report to be laid before each House of Parliament within 10 sitting-days of that House after receiving the report.

Useful Resources

- The *Mental Health Act 2013* can be accessed at Tasmanian Legislation Online
- A range of useful information about the Act is available to read, download and print from the Mental Health Act website including:
  - Chief Psychiatrist Approved Forms
  - Flowcharts
  - Standing Orders and Clinical Guidelines
  - Online Training Packages and other Education Resources
  - A Clinician's Guide to the *Mental Health Act 2013*
  - Fact Sheets and other Information for Consumers
  - Statements of Rights

Questions

Any questions?

Chief Psychiatrist Approved