Forensic Provisions

TASMANIA'S MENTAL HEALTH ACT

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

Chief Psychiatrist Approved

Tasmanian Government

Outline

- Overview
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- Forensic patient transfers
- Notice to victims
- Forensic patient treatment
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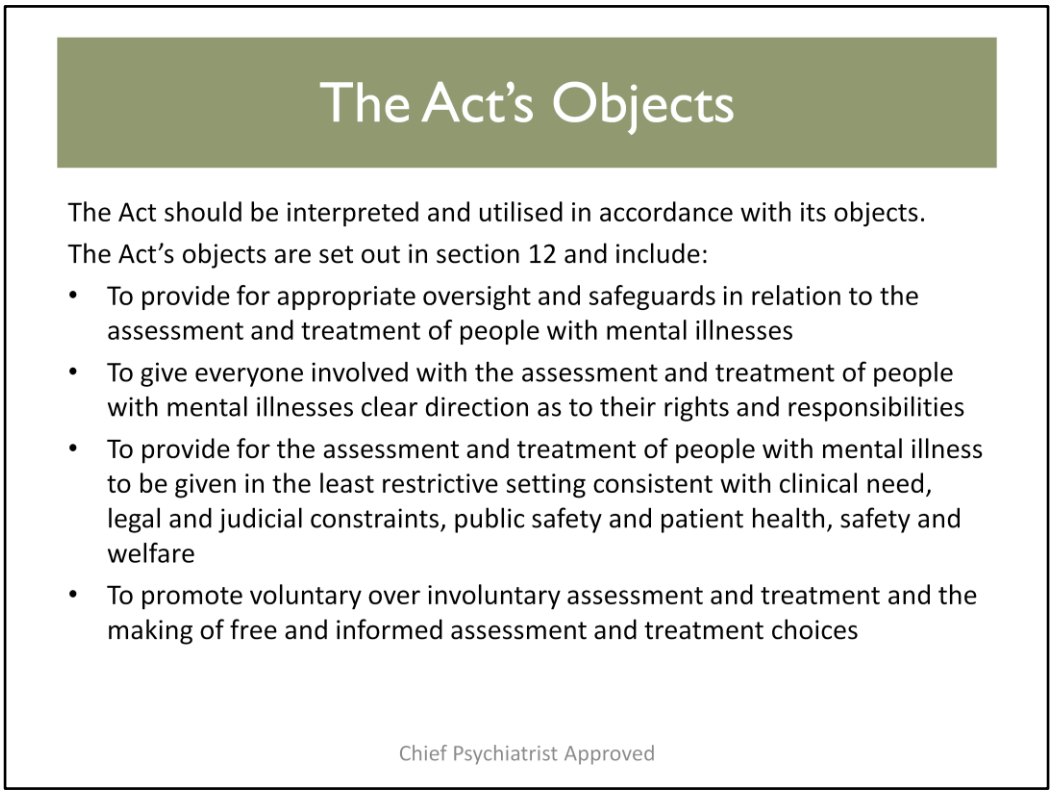
Overview

- The *Mental Health Act 2013* regulates the involuntary assessment and treatment of people with mental illness, and the management of forensic patients
- The Act provides for protective custody, Assessment Orders, Treatment Orders and urgent circumstances treatment; regulates seclusion and restraint; and establishes the statutory offices of Chief Civil Psychiatrist and Chief Forensic Psychiatrist
- The Act also establishes Official Visitors and 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



The Act's objects and principles should guide and influence any decisions made, or actions taken, under the Act; and every person exercising responsibilities under the Act is required to have regard to them.

This is important because the validity of any decisions made or actions taken under the legislation will be judged with reference to the extent to which they are consistent with the Act's objects and principles.

The Act's objects and principles reflect international human rights instruments and national service delivery priorities. This includes the United Nations *Convention on the Rights of Persons with a Disability*, the *Fourth National Mental Health Plan* and the *National Mental Health Standards*.

12. Objects of Act

The objects of this Act are as follows:

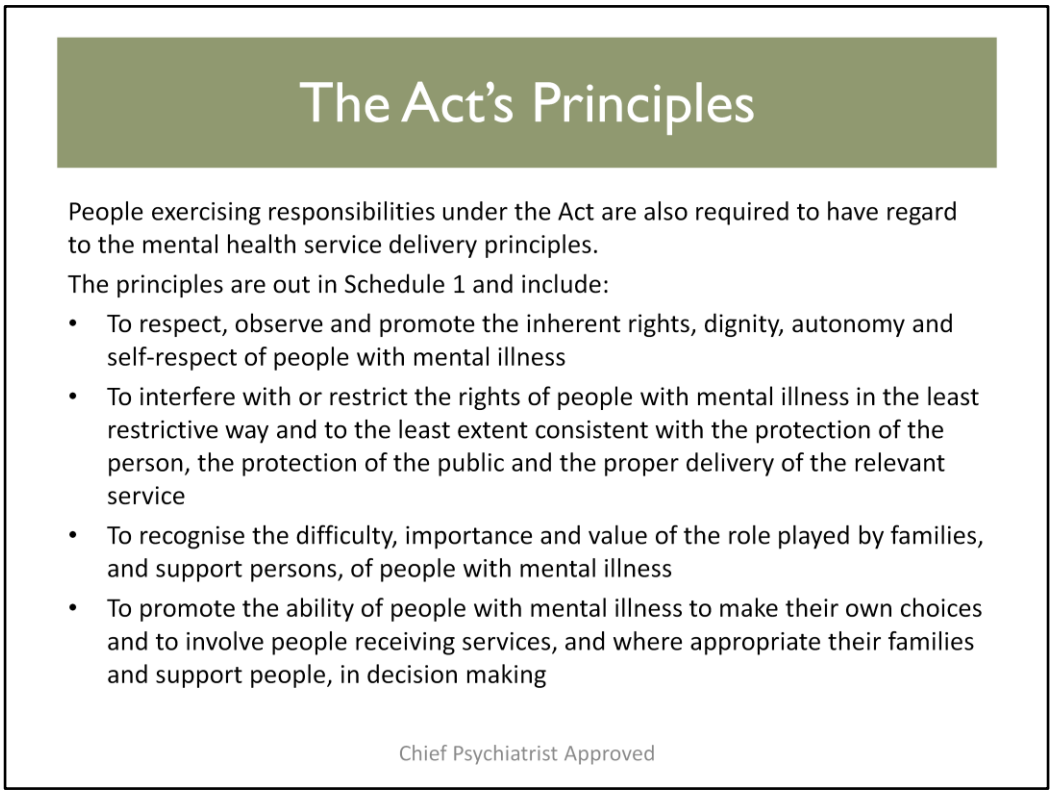
(a) to provide for the assessment and treatment of persons with mental illnesses;

(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.



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.

SCHEDULE 1 - Mental health service delivery principles

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.

Admission to a secure mental health unit part 1

- The Act establishes Tasmania's secure mental health unit the Wilfred Lopes Centre and provides for the Chief Forensic Psychiatrist
- The Act also provides for the management of forensic patients
- A forensic patient is defined in the Act as a person who has been admitted to a secure mental health unit under section 68 of the Act and who has not been discharged from the unit
- This includes:
  - People who have been ordered by a Court to be detained in a secure mental health unit rather than in prison while they are awaiting trial, during a trial or pending a sentencing decision (including people who are being detained for the purposes of assessment)

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68. Admission

(1) This section applies to a person who –

(a) is subject to a restriction order; or

(b) being subject to a supervision order, is apprehended under section 31 of the *Criminal Justice (Mental Impairment) Act 1999*; or

(c) is subject to an order under section 39(1)(b)(ii) of the *Criminal Justice (Mental Impairment) Act 1999*; or

(d) is subject to an order referred to in section 73 of the *Sentencing Act 1997* providing or allowing for the person's admission to and detention in an SMHU; or

(e) is subject to an order under section 47 of the *Justices Act 1959* committing the person to an SMHU; or

(f) is subject to an order under section 348 of the *Criminal Code* committing the person to an SMHU; or

(g) is subject to an order under section 105 of the *Youth Justice Act 1997* remanding the person to an SMHU; or

(h) is subject to any other order of a court under the *Criminal Justice (Mental Impairment) Act 1999*, *Criminal Code Act 1924*, *Justices Act 1959*, *Sentencing Act 1997* or *Youth Justice Act 1997* remanding or committing the person to or in, or otherwise requiring the person to be detained in, an SMHU; or

(i) if the person is a prisoner (but not a detainee under the *Youth Justice Act 1997*), the person's removal from a prison to an SMHU is directed

under section 36A(2) or (3) of the *Corrections Act 1997*; or
(j) if the person is a detainee under the *Youth Justice Act 1997*, the person's removal from a detention centre to an SMHU is directed under section 134A(2) or (3) of that Act.

(2) A person to whom this section applies may be admitted to an SMHU.

(3) A person who is admitted to an SMHU under subsection (2) is a forensic patient for the purposes of this Act.
Note The admission to an SMHU of a person referred to in subsection (1)(i) or (j) is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

Decisions about the making of restriction orders and other orders directing the detention of a person at the secure mental health unit are made by the Magistrates Court or the Supreme Court under the *Criminal Justice (Mental Impairment) Act 1999*, the *Sentencing Act 1997* or other Court-related legislation.

Decisions about the admission of prisoners and youth detainees to the secure mental health unit are made under the *Corrections Act 1997* and *Youth Justice Act 1997* respectively.

Admission to a secure mental health unit part 2

- People who have been placed on a restriction order by a Court
- People subject to a supervision order who have breached or who are considered likely to breach the order and who have been apprehended and admitted to a secure mental health unit on this basis
- Sentenced prisoners and remandees with a mental illness or disability who have been admitted to a secure mental health unit from prison
- Sentenced detainees with a mental illness or disability who have been admitted to a secure mental health unit from Ashley Youth Detention Centre

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Involuntary patient admission

- Involuntary patients – including patients subject to Assessment Orders - may be transferred to and detained in a secure mental health unit in certain, limited circumstances
- Involuntary patients who are subject to Treatment Orders may be treated on the basis of the Order while in the secure mental health unit and the Treatment Order has effect as if it provided for the patient's detention in the secure mental health unit
- Involuntary patients who are admitted to the secure mental health unit are to be treated, for the purposes of the Act, as if they are forensic patients who are not subject to restriction orders

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Decisions about the admission of involuntary patients to the secure mental health unit are made under the *Mental Health Act 2013*, as follows:

63. Admission

(1) An involuntary patient who is not a person to whom section 68(1) applies may be admitted to an SMHU if the admission is authorised by the CFP.
Note An involuntary patient who is a person to whom section 68(1) applies may be admitted to an SMHU under section 68.

(2) However, such authorisation may be given only if –

(a) the patient is being detained in an approved hospital; and
(b) the patient is not a prisoner or youth detainee; and
(c) the CCP has formally requested the CFP to give the authorisation; and
(d) the CFP is satisfied that –

(i) the patient is, by reason of mental illness, a danger to himself or herself or to others; and
(ii) that danger is or has become so serious as to make the patient's continued detention in the approved hospital untenable; and
(iii) in the circumstances, an SMHU is the only appropriate place where the patient can be safely detained; and
(iv) the particular SMHU has the resources to give the person appropriate treatment and care; and

(e) if the patient is a child, the CFP is further satisfied that –

(i) the patient can be detained separately from adults; and

(ii) the probable benefits of accommodating the patient in an SMHU outweigh the probable risks.

(3) A patient admitted to an SMHU under this section may still be treated under the authority of a subsisting treatment order and the treatment order has effect as if it provided for the patient's detention in theSMHU.

64. Admissions procedure, extensions and transfer

(1) On authorising the admission of an involuntary patient to an SMHU under section 63, the CFP is to –

(a) determine the period for which the patient may be detained in the SMHU (the ***period of detention***); and

(b) give notice of the admission, the reasons for the admission and the period of detention to the patient (together with a statement of rights, relating to the patient's rights under Part 4 and Part 5, in a CFP approved form); and

(c) give notice of the admission and the period of detention to –

(i) the controlling authority of the SMHU; and

(ii) the controlling authority of the approved hospital from which the patient is being transferred; and

(iii) the CCP; and

(iv) the Tribunal.

(2) The CFP may extend the period of detention and, to avoid doubt, may do so more than once.

(3) Before determining or extending the period of detention, the CFP is to consult the CCP.

(4) On extending the period of detention, the CFP is to –

(a) give notice of the extension, and the reasons for it, to the patient (together with a statement of rights in a CFP approved form); and

(b) give notice of the extension to –

(i) the controlling authority of the SMHU; and

(ii) the controlling authority of the approved hospital from which the patient was transferred; and

(iii) the CCP; and

(iv) the Tribunal.

(5) If at any time the CFP is satisfied that the patient no longer meets the requirements of admission, the CFP is to request the CCP to arrange for the patient to be transferred to an approved hospital.

(6) The transfer request is to be in a CFP approved form.

(7) The CCP is to –

(a) accede to the transfer request; and

(b) notify the CFP when the patient has been transferred.

(8) To effect the transfer, an authorised person may –

(a) take the patient under escort; and

(b) remove the patient from the SMHU; and

(c) take the patient to an approved hospital.

(9) For the purposes of subsection (8), the custody and escort provisions apply.
Note The admission of an involuntary patient to an SMHU under this Subdivision (and any extension of the period of detention) is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

65. Period of detention

Subject to any orders of the Tribunal, an involuntary patient admitted to an SMHU under section 63 may be detained there until –

(a) the end of the period of detention determined under section 64(1) (or as extended under section 64(2)); or

(b) if the CFP makes a request under section 64(5), the end of the 24-hour period after the request is made; or

(c) if the order is subject to an assessment order, the assessment order expires or is discharged; or

(d) If the patient is subject to a treatment order, the treatment order expires or is discharged –

whichever occurs first.

65A. Renewal of treatment order for patient in SMHU

In its application to an involuntary patient admitted to an SMHU under section 63, Division 2 of Part 3 of Chapter 2 is modified as follows:

(a) when renewing a Treatment Order under section 48, the Tribunal may specify a treatment setting other than an SMHU;

(b) section 48(3)(b) does not apply;

(c) the CFP is the person to whom notice under section 48(9)(b)(iii) is to be given.

66. Admitted involuntary patient to be treated as forensic patient for certain purposes

(1) The relevant provisions of this Act apply to a forensic patient who -

(a) is admitted to an SMHU under section 63; and

(b) who has not been discharged or transferred to an approved hospital

under section 64(5) –

as if he or she were a forensic patient who is not subject to a restriction order.

(2) For the purposes of subsection (1), the relevant provisions are -

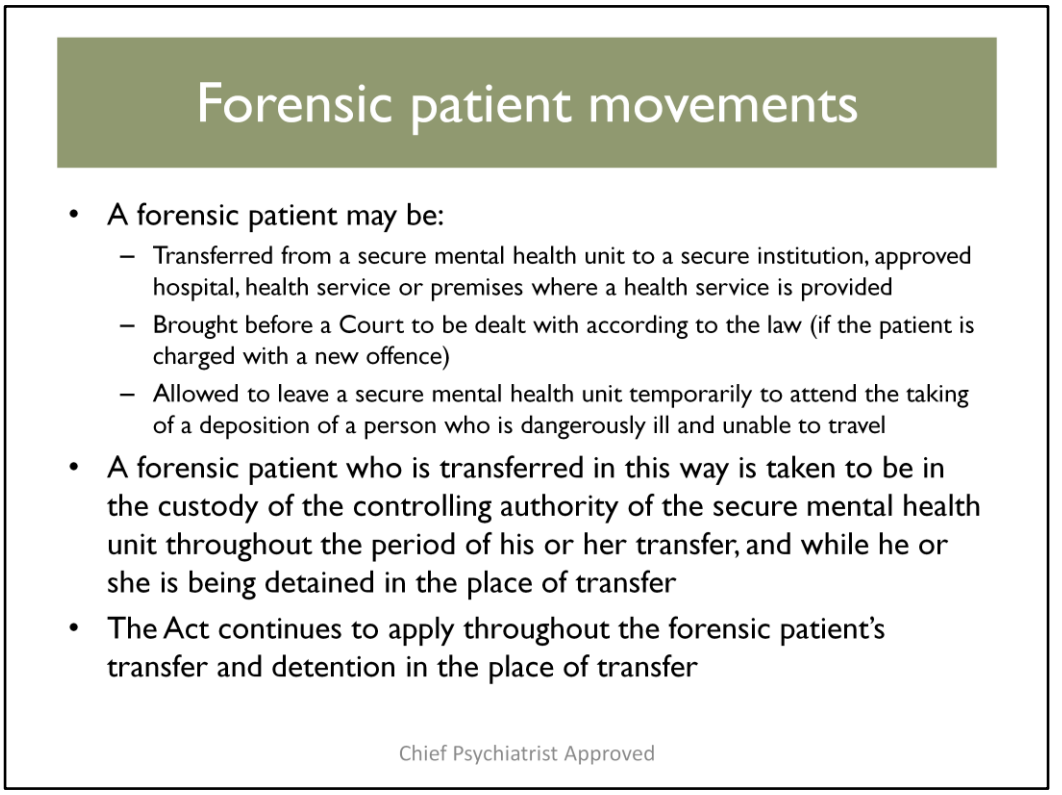
(a) the provisions of Part 4 (other than Division 1), as modified in accordance with section 67; and

(b) the provisions of Part 5, other than section 88, section 91, section 119 and section 120; and

(c) Sections 188, 190, 191 and 192; and

(d) Chapter 4.

(3) Divisions 4, 5, 6 and 7 do not apply to a person to whom subsection (1) applies.



There are no secure institutions in Tasmania.

141. Secure institutions

The Minister, by instrument in writing, may approve an institution, other than an approved facility, as a secure institution.

There are five approved hospitals in Tasmania. They are: Royal Hobart Hospital, Millbrook Rise Centre, Roy Fagan Centre, Launceston General Hospital and the North West Regional Hospital Burnie Campus

The Act defines "health service" with reference to the *Health Complaints Act 1995*, as follows:

Health Complaints Act 1995

3. Interpretation
In this Act, unless the contrary intention appears –
health service means –
(a) a service provided to a person for, or purportedly for, the benefit of human health –

(i) including services specified in Part 1 of Schedule 1; but
(ii) excluding services specified in Part 2 of Schedule 1; or

(b) an administrative service directly related to a health service specified in paragraph (a);

SCHEDULE 1 - Health Services

PART 1 - Services that are health services

1. A service provided at a hospital, health institution or nursing home.

2. A medical, dental, pharmaceutical, mental health, community health, environmental health or specialized health service or a service related to such a service.

3. A service provided for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction.

4. A laboratory service provided in support of a health service.

5. A laundry, dry cleaning, catering or other support service provided to a hospital, health institution, nursing home or premises for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction, if the service affects the care or treatment of a patient or a resident.

6. A social work, welfare, recreational or leisure service, if provided as part of a health service.

7. An ambulance service.

8. Any other service provided by a provider for, or purportedly for, the care or treatment of another person.

9. A service provided by an audiologist, audiometrist, optical dispenser, dietitian, prosthetist, dental prosthetist, psychotherapist, medical radiation science professional, podiatrist, therapeutic counsellor or any other service of a professional or technical nature provided for, or purportedly for, the care or treatment of another person or in support of a health service.

10. A service provided by a practitioner of massage, naturopathy or acupuncture or in another natural or alternative health care or diagnostic field.

11. The provision of information relating to the promotion or provision of health care or to health education.

11A. A service provided at a hospital or health institution for the temporary storage of human remains as defined in the *Burial and Cremation Act 2002*.

12. Any other service provided by a person registered by a registration board.

PART 2 - Services that are not Health Services

1. The provision of an opinion or the making of a decision for the purposes of a claim under the *Workers Rehabilitation and Compensation Act 1988*.

2. The provision of an opinion or the making of a decision for the purposes of, or in relation to, an application made to the Asbestos Compensation Commissioner, or the Asbestos Compensation Tribunal, under the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*.

73. Transfer of forensic patients to hospitals, &c.

(1) The CFP may direct that a forensic patient be removed from an SMHU and transferred to a secure institution, an approved hospital, a health service, within the meaning of the *Health Complaints Act 1995*, or premises where such a health

service is provided.

(2) Except in an emergency, the direction (the ***transfer direction***) is to be in a CFP approved form.

(3) In an emergency, the transfer direction may be given orally or by any other convenient means and, in such a case, the CFP may complete the transfer direction after the transfer takes place.

(4) The transfer direction (or, if applicable, emergency oral direction) is authority for an authorised person or police officer to –

(a) take the patient under escort; and

(b) remove the patient from the SMHU; and

(c) take the patient to the secure institution, approved hospital, health service or premises specified in the direction.

(5) For the purposes of subsection (4) –

(a) the CFP may request that the patient be taken under escort (in which case the CFP is to ensure that the escort is given a copy of the transfer direction); and

(b) the custody and escort provisions apply; and

(c) while the patient is being transferred and is in the secure institution, approved hospital, health service or premises pursuant to the transfer direction, the escort has, as regards the patient, for all purposes connected with the transfer, full authority to act in the name of the controlling authority of the SMHU and to discharge any responsibility of any authorised person under this Part.

(6) The CFP is to –

(a) give a copy of the transfer direction to the patient (together with a statement of rights in a CFP approved form); and

(b) give a copy of the transfer direction to –

(i) the controlling authority of the SMHU; and

(ii) the person in charge of the secure institution, approved hospital, health service or other place to which the patient is transferred; and

(iii) the treating medical practitioner; and

(iv) the Tribunal; and

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

Note The transfer of a forensic patient under this section is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

116. Bringing patients before courts

(1) If a forensic patient in the custody of the controlling authority of an SMHU is charged with a new offence, a judicial officer may order the controlling authority to bring the patient before the court specified in the order, or the judicial officer who is

then present, to be dealt with according to law.

(2) A judicial officer may order the controlling authority of an SMHU to bring a forensic patient in the custody of the controlling authority before the judicial officer to give evidence.

(3) In considering whether to make an order under subsection (1) or (2), and the terms of such an order, a judicial officer is to take into account the advice of the CFP or a medical practitioner as to the fitness of the patient and the impact that such an order is likely to have on the patient's health or safety.

(4) The controlling authority of an SMHU must comply with an order under subsection (1) or (2).

(5) For the purposes of subsection (4) –

(a) the controlling authority of the SMHU may arrange for an MHO, police officer or authorised person to be given a copy of the order and take the patient under escort; and

(b) the custody and escort provisions apply.

(6) Before making an order under subsection (2), a judicial officer may require an applicant to deposit sufficient money to pay all the expenses involved in –

(a) bringing the patient before the court; and

(b) maintaining the patient until he or she is returned to the SMHU.

(7) In this section –

new offence means –

(a) an offence other than the offence which was the cause of a person becoming a prisoner or a youth detainee; or

(b) an offence other than the offence which resulted in a person being detained in an SMHU under an order of a court; or

(c) in the case of an involuntary patient admitted to an SMHU, any offence.

117. Presence at taking of certain depositions

(1) The controlling authority of an SMHU, at the written request of a judicial officer, may allow a forensic patient to leave the SMHU temporarily to attend the taking of a deposition of a person who is dangerously ill and unable to travel.

(2) In considering whether to make a request under subsection (1), and the terms of the request, a judicial officer is to take into account the advice of the CFP or an approved medical practitioner as to the fitness of the patient and the impact that such a request is likely to have on the patient's health or safety.

(3) For the purposes of subsection (1), an authorised person or police officer may –

(a) take the patient under escort; and

(b) remove the patient from the SMHU; and
(c) take the patient to the place specified in the request for the taking of the deposition; and
(d) return the patient to the SMHU.

(4) For the purposes of subsection (3), the custody and escort provisions apply.

71. Custody

(1) This section applies to, and in relation to –
(a) a forensic patient who is admitted to an SMHU and has not been discharged or transferred to an approved hospital under section 64(5); and
(b) a forensic patient –
(i) who is admitted to an SMHU and who is subsequently transferred under this Act to a place of transfer (other than under section 64(5)); and
(ii) who has not been discharged from the SMHU or transferred to an approved hospital under section 64(5).

(2) A forensic patient to whom this section applies is taken to be in the custody of the controlling authority of the SMHU throughout the period of his or her detention in the SMHU or place of transfer unless –
(a) a court orders otherwise; or
(b) a provision of this Part expressly provides otherwise.

(3) Subsection (2) continues, despite section 74, to have effect during any period that the patient is away from the SMHU on a leave of absence or for any other purpose authorised by or under this Part.

(4) In this section –
place of transfer means –
(a) a secure institution; or
(b) an approved hospital; or
(c) a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided; or
(d) any other place to which a patient is transferred under this Act.

74. Application of Part to places other than SMHUs

(1) This section applies if a forensic patient in the custody of the controlling authority of an SMHU is being detained in a secure institution, an approved hospital, a health service within the meaning of the *Health Complaints Act 1995* or premises where such a health service is provided or another place.

(2) The provisions of this Part apply –
(a) in respect of the forensic patient as if he or she were in the SMHU; and

(b) in respect of the secure institution, approved hospital, health service, premises or other place as if it were the SMHU.

Forensic patient escort and transport

- A forensic patient may be placed under escort by an authorised person or police officer for the purposes of the patient's transfer to, from or between secure mental health units
- An authorised person or police officer who takes a forensic patient under escort may:
  - Enlist the assistance of any person
  - Use reasonable force against the patient if he or she resists being taken under escort, and against anyone else who may try to prevent the patient from being taken under escort
  - Transfer physical control of the patient to another authorised person or police officer

Chief Psychiatrist Approved

Decisions about who should take a forensic patient under escort (an authorised person or a police officer) are to be made in accordance with the **Memorandum of Understanding for the Delivery of Services to People with Mental Illness**.

109. Authorisation of persons

(1) The CFP or the controlling authority of an SMHU may authorise a person, or a member of a class of persons, for the purposes of –

(a) section 64; or
(b) any or all of the provisions of this Part; or
(c) any or all of the provisions of Part 4; or
(d) any or all of the provisions of Part 3 of Chapter 4; or
(e) any or all of the provisions of Schedule 2 –

as specified in the authorisation.

(2) A reference in a provision of this Act to an authorised person is a reference to a person who is authorised under subsection (1) for the purposes of that provision or the Part containing the provision.

SCHEDULE 2 - Custody and escort provisions

PART 2 - Powers and Duties

1. General powers, &c., of custodians and escorts

To take a patient into protective custody or under escort –

(a) the custodian or escort may enlist the assistance of any person, including, if necessary, a police officer; and

(b) the custodian or escort (and any assistant) may use reasonable force against the patient if he or she resists being taken into protective custody or under escort; and

(c) the custodian or escort (and any assistant) may use reasonable force against anyone who may try to prevent the patient from being taken into protective custody or under escort; and

(d) the custodian or escort (if necessary with any assistant) may, without warrant and doing as little damage as possible, enter any premises if the custodian or escort reasonably believes that the patient may be found on those premises; and

(e) the custodian or escort (or any assistant) may take possession of and safeguard any medication, physical aid or other thing that the custodian or escort reasonably believes is or may be necessary to the patient's health, safety or welfare; and

(f) the custodian or escort (or any assistant) may take possession of and safeguard any medication, prescription or other thing that the custodian or escort reasonably believes is or may be relevant to the patient's examination, assessment, treatment or care; and

(g) the custodian or escort may, as circumstances require, transfer physical control of the patient to another custodian or escort or to another police officer, MHO or authorised person (who then has, and may exercise, any powers of the transferring custodian or escort under this clause); and

(h) the custodian or escort is not required to be in close physical proximity to the patient during any examination or assessment.

PART 3 - Policy

1. Custody and escort policy

As far as practicable –

(a) patients should not be taken into protective custody if they can be properly examined and assessed against the assessment criteria or treatment criteria without being taken into protective custody; and

(b) patients should not be taken into or held in protective custody or taken or held under escort by force unless –

(i) persuasion or other non-forceful methods have been tried without success; or

(ii) the authorised custodian or escort reasonably believes that it would be futile or inappropriate to try such methods; and

(c) whenever practicable, the use of non-police custodians, escorts and assistants is to be preferred; and

(d) patients taken into protective custody or under escort should be transported with the least delay and discomfort as circumstances reasonably allow; and

(e) where a patient has been granted a leave of absence from an approved facility for a private purpose under escort, the authorised escort is not to unreasonably interfere with the enjoyment of that leave.

Forensic patient escort – search and seizure

- An authorised person or police officer may take possession of, and safeguard, any medication, physical aid or other thing that the authorised person or police officer reasonably believes is or may be necessary to the patient's health, safety or welfare or to the patient's examination, assessment, treatment or care, when escorting or transporting a patient under the Act
- An authorised person or police officer may also conduct a frisk search or ordinary search of a forensic patient who is being escorted, if the authorised person or police officer reasonably suspects that the patient may be carrying anything that could be a danger to the patient or others, or that could assist the patient to escape
- Items found during a search may be seized and returned to the patient at a later point, given to another person, or disposed of as may be appropriate in the circumstances

Chief Psychiatrist Approved

Decisions about who should take a forensic patient under escort (an authorised person or a police officer) are to be made in accordance with the **Memorandum of Understanding for the Delivery of Services to People with Mental Illness**.

SCHEDULE 2 - Custody and escort provisions

PART 1 - Preliminary

1. Interpretation
In this Schedule –

custodian or *escort*, of a patient, means a police officer, MHO or authorised person who, by or under this Act, is empowered or authorised to take the patient into protective custody or under escort;

frisk search, of a patient, means a search conducted speedily by any or any combination of the following means:

(a) running the hands over the patient's outer clothing;
(b) passing a metal detection device over or in close proximity to the patient's outer clothing;
(c) examining anything worn or carried by the patient that he or she appears to have removed or discarded voluntarily;
(d) passing a metal detection device over or in close proximity to anything

worn or carried by the patient that he or she appears to have removed or discarded voluntarily;

ordinary search, of a patient, means a search limited to –

(a) requiring, in the searcher's discretion, the patient to remove one or more of the following:

(i) any coat, jacket or like outer garment;

(ii) any hat;

(iii) any shoes, boots or like footwear;

(iv) any socks;

(v) any gloves or mittens;

(vi) any handbag, backpack or like carrying item; and

(b) requiring, in the searcher's discretion, the patient to empty all or any of his or her pockets; and

(c) examining the item or items so removed and the contents thereof and, if applicable, the contents of the pockets so emptied;

patient includes a prospective patient;

relevant advice or direction, includes advice or direction from –

(a) the Commissioner of Police or another commissioned police officer within the meaning of the *Police Service Act 2003*; or

(b) a Chief Psychiatrist; or

(c) a medical practitioner; or

(d) the Commissioner of Ambulance Services under the *Ambulance Service Act 1982*;

take, a patient into protective custody or under escort, includes holding the patient in protective custody or under escort.

PART 2 - Powers and Duties

2. Search power of custodians and escorts

(1) To take a patient into protective custody or under escort –

(a) the custodian or escort may conduct a frisk search or ordinary search of the patient if the custodian or escort reasonably suspects that the patient may be carrying anything that could –

(i) be a danger to the patient or another person; or

(ii) assist the patient to escape; and

(b) the custodian or escort may seize anything found in the frisk search or ordinary search if he or she reasonably believes it is a thing of the kind referred to in paragraph (a)(i) and (ii); and

(c) the custodian or escort may retain anything seized in the frisk search or ordinary search and, as the circumstances may require or indicate –

(i) safeguard the thing for later return to the patient or transfer to a

health professional or other person in connection with the patient's examination, assessment, treatment or care; or

(ii) dispose of thing as the custodian or escort thinks fit (after, if he or she adjudges it necessary or expedient to do so, obtaining any relevant advice or direction) including, if the thing is unlawful or dangerous and not required for evidentiary purposes, disposal by means of its destruction.

(2) Before conducting a frisk search or ordinary search pursuant to subclause (1), the custodian or escort is to inform the patient –

(a) why the search is to be conducted; and

(b) what the search will involve.

(3) A frisk search is, if practicable, to be conducted by a person of the same sex as the person being searched.

Forensic patient leave

- The Mental Health Tribunal may grant a forensic patient who is subject to a restriction order leave of absence from a secure mental health unit
- The Chief Forensic Psychiatrist may grant a forensic patient who is not subject to a restriction order, including an involuntary patient who has been admitted to a secure mental health unit under the Act, leave of absence from a secure mental health unit
- Leave may be granted:
  - For clinical reasons or personal reasons
  - For a particular purpose, or a particular period, or both
  - Unconditionally, or subject to conditions
- Leave that has been granted may be extended, varied or cancelled

Chief Psychiatrist Approved

67. Leave of absence for involuntary SMHU patient

In its application, by virtue of section 66, to an involuntary patient, Division 6 of Part 4 is modified as follows:

(a) The CCP is an interested person for the purposes of that Division;
(b) The Commissioner of Police, Secretary (Corrections), Director and Secretary (Youth Justice) are not interested persons for the purposes of that Division;
(c) Sections 82(7), (8) and (9) do not apply;
(d) Section 83(2) does not apply.

Note: Division 6 of Part 4 relates to leave of absence by forensic patients. Section 66 makes such provisions apply to involuntary patients. 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.

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 an MHT approved form; 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.

79. Extension, variation and cancellation of leave of absence

(1) If leave of absence (***leave***) is granted under section 78, the Tribunal, by notice to the patient, may at any time –

(a) extend the leave; or

(b) vary the conditions of the leave.

(2) An extension of leave or variation of the conditions of leave may be granted under subsection (1) only –

(a) if the leave is for clinical reasons, on the application of the CFP; or
(b) if the leave is for personal reasons, on the application of –
(i) the patient; or
(ii) the CFP; or
(iii) by leave of the Tribunal, a person who, in the opinion of the CFP, has a genuine interest in the patient's welfare.

(3) An application for extension of leave must be lodged at least 20 days before the leave expires.

(3A) Once an application for an extension or variation of conditions of leave 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 their 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 submissions in respect of it within 10 days, after being notified of the application.

(3B) The Tribunal is to consider any submissions received under subsection (3A) before extending or varying the conditions of leave.

(4) To avoid doubt –
(a) a power under subsection (1) may be exercised more than once; and
(b) a variation pursuant to subsection (1)(b) may be expressed to have immediate or deferred effect.

(5) On issuing a notice under subsection (1), the Tribunal is to give a copy of the notice to each interested person.

(6) An application for extension of leave or variation of the conditions of leave may be determined without a hearing.

(7) A responsible authority, by notice to the patient, may cancel the leave at any time if the responsible authority believes that its continuation would, or is likely to –
(a) seriously endanger the patient's health or safety; or
(b) place the safety of other persons at serious risk.

(8) On issuing a notice under subsection (7), the responsible authority is to –
(a) make an appropriate record of the cancellation; and
(b) give a copy of the record to each interested person; and

(c) give a copy of the record to the Tribunal (if the Tribunal is not the responsible authority); and
(d) place a copy of the record on the patient's clinical file.

(9) On the cancellation, an MHO or police officer may apprehend and return the patient under escort to the SMHU (for which purpose the custody and escort provisions apply).

(10) Where, under this section, a person is required to give a document to the patient (or to a person who has applied for leave of absence for and on behalf of the patient), the person is to ensure that the document is accompanied by a statement of rights in a CFP approved form.

(11) 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.

83. Extension, variation and cancellation of leave of absence

(1) If leave of absence (***leave***) is granted under section 82, the CFP, by notice to the patient, may at any time –
(a) extend the leave; or
(b) vary the conditions of the leave.

(2) If the patient is a youth detainee, the extension or variation requires the consent of the Secretary (Youth Justice).

(2A) In considering whether or not to extend, or vary the conditions of, leave, the following provisions apply:
(a) the CFP is to notify the Secretary (Corrections) that an extension or variation of the leave is under consideration;
(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 consideration and of their right to make written submissions in respect of it within 10 days after the eligible person is notified;
(d) The CFP is to notify any other person who, in the CFP's opinion, should be notified of the consideration and of that person's right to make written

submissions in respect of within 10 days after being notified of the application.

(2B) In the case of an extension of leave, the CFP is to notify the Secretary (Corrections) under subsection (2A)(a) not less than 20 days before the leave is due to expire.

(2C) The CFP is to consider any submissions received under subsection (2A) before extending or varying the conditions of the leave.

(3) To avoid doubt –

(a) a power under subsection (1) may be exercised more than once; and

(b) a variation pursuant to subsection (1)(b) may be expressed to have immediate or deferred effect.

(4) On issuing a notice under subsection (1), the CFP is to –

(a) give a copy of the notice to each interested person; and

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

(5) A responsible authority, by notice to the patient, may cancel the leave at any time if the responsible authority believes that its continuation would, or is likely to –

(a) seriously endanger the patient's health or safety; or

(b) place the safety of other persons at serious risk.

(6) On issuing a notice under subsection (5), the responsible authority is to –

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

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

(c) give a copy of the record to the CFP (if the CFP is not the responsible authority); and

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

(7) On the cancellation, an MHO or police officer may apprehend and return the patient under escort to the SMHU (for which purpose the custody and escort provisions apply).

(8) Where, under this section, a person is required to give a document to the patient (or to a person who has applied for leave of absence for and on behalf of the patient), the person is to ensure that the document is accompanied by a statement of rights in a CFP approved form.

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

Forensic patient leave – eligible persons

- The Act provides eligible persons with the opportunity to make a submission in respect of a forensic patient's leave, including any extension or variation of leave that has been granted
- The Act also requires any eligible persons to be notified:
  - That the patient has been granted leave
  - Of the terms and conditions of any leave that has been granted
  - Of any extension, variation or cancellation of a forensic patient's leave
  - Of the forensic patient's final release or transfer to another secure mental health unit
- The controlling authority is required to notify the Secretary (Corrections) about the patient's leave or final release or transfer so that the Secretary (Corrections) can in turn notify any eligible persons

Chief Psychiatrist Approved

3. Interpretation

(1) In this Act, unless the contrary intention appears –
eligible person means a person registered in relation to a particular forensic patient in the Eligible Persons Register;
Eligible Persons Register means the register kept under section 87A of the *Corrections Act 1997*;

80. Victims to be notified of leave of absence of patient

(1) If a forensic patient has been granted under section 78 a leave of absence from an SMHU, the controlling authority of the SMHU must not allow the patient to actually take the leave of absence without first notifying the Secretary (Corrections) and ensuring that –

(a) the Secretary (Corrections) has notified each eligible person in relation to the patient of the grant of the leave and the terms and conditions of the leave; or

(b) circumstances have rendered it impossible, impracticable or inappropriate for the Secretary (Corrections) to give such notice in a particular case.

(2) Subsection (1) prevails over –

(a) section 78; and

(b) any order or direction of the Tribunal or the CFP; and
(c) any standing orders.

(3) If the Secretary (Corrections) is notified of an extension under section 79 of a forensic patient's leave of absence, any variation of the conditions of the patient's leave of absence or the cancellation of the patient's leave of absence, the Secretary (Corrections) is to make a reasonable attempt to give each eligible person in relation to the patient notice of the extension, variation or cancellation.

84. Victims to be notified of leave of absence of patient

(1) If a forensic patient (other than a person who is taken to be a forensic patient under section 66) has been granted under section 82 leave of absence from an SMHU, the controlling authority of the SMHU must not allow the patient to actually take the leave of absence without first checking with the Secretary (Corrections) that –

(a) the Secretary (Corrections) has notified each eligible person in relation to the patient of the grant of the leave and the terms and conditions of the leave; or
(b) circumstances have rendered it impossible, impracticable or inappropriate for the Secretary (Corrections) to give such notice in a particular case.

(2) Subsection (1) prevails over –

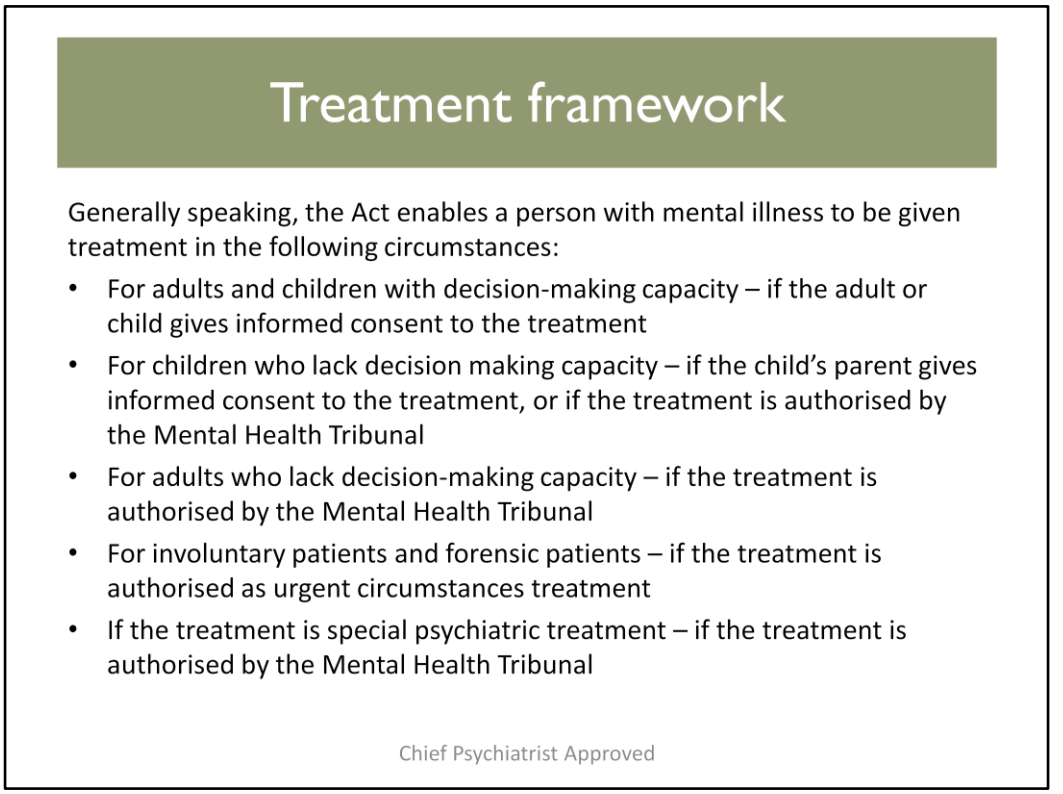
(a) section 82; and
(b) any order or direction of the Tribunal or the CFP; and
(c) any standing orders.

(3) If the Secretary (Corrections) is notified of an extension under section 83 of a forensic patient's leave of absence, any variation of the conditions of the patient's leave of absence or the cancellation of the patient's leave of absence, the Secretary (Corrections) is to make a reasonable attempt to give each eligible person in relation to the patient notice of the extension, variation or cancellation.

119. Notifying victims of final release, &c.

Before a forensic patient is finally released from an SMHU or transferred to another SMHU –

(a) the controlling authority is to notify the Secretary (Corrections) of the impending release or transfer; and
(b) the Secretary (Corrections) is to search the Eligible Persons Register; and
(c) the Secretary (Corrections) is to give each eligible person in relation to the forensic patient notice of the release or transfer, unless circumstances make it impossible or impracticable to give such notice in a particular case.



16. Circumstances in which treatment may be given

(1) The following policy governs the treatment of voluntary patients under this Act:

(a) a voluntary patient may be given treatment with informed consent, either as a hospital inpatient or in the community;

(b) a voluntary patient may be given special psychiatric treatment if –

(i) the treatment is authorised by the Tribunal under Part 6; and

(ii) where the treatment is psychosurgery or a treatment that requires informed consent under that Part, informed consent has been given for the treatment;

(c) a voluntary patient can never be given special psychiatric treatment except as provided by paragraph (b).

(2) The following policy governs the treatment of involuntary patients under this Act who are not forensic patients or involuntary patients to whom section 66 applies:

(a) an involuntary patient may be given treatment –

(i) with informed consent; or

(ii) if the treatment is authorised by a treatment order; or

(iii) if the treatment is urgent circumstances treatment, the treatment is authorised under section 55;

(b) an involuntary patient may be given special psychiatric treatment if –

(i) the special psychiatric treatment is authorised by the Tribunal under Part 6; and

(ii) where the treatment is psychosurgery or a treatment that requires informed consent under that Part, informed consent has been given for the treatment;

(c) an involuntary patient can never be given special psychiatric treatment except as provided by paragraph (b).

(3) The following policy governs the treatment under this Act of forensic patients or involuntary patients to whom section 66 applies:

(a) a forensic patient, or an involuntary patient to whom section 66 applies, may be given treatment –

(i) with informed consent; or

(ii) if the treatment is authorised by the Tribunal (or a member of the Tribunal) under Division 2 of Part 5; or

(iii) if the patient is also an involuntary patient, if the treatment is authorised by a treatment order; or

(iv) if the treatment is urgent circumstances treatment, if the treatment is authorised under section 87;

(b) a forensic patient, or an involuntary patient to whom section 66 applies, may be given special psychiatric treatment if –

(i) the special psychiatric treatment is authorised by the Tribunal under Part 6; and

(ii) if the treatment is psychosurgery or a treatment that requires informed consent under that Part, informed consent has been given for the treatment;

(c) a forensic patient, or an involuntary patient to whom section 66 applies, can never be given special psychiatric treatment except as provided by paragraph (b).

Treatment with informed consent

- Under the Act, a medical practitioner may regard a forensic patient's consent to treatment as being informed if the practitioner is satisfied that:
  - At the time of giving the consent, the patient has decision-making capacity, and
  - The patient has had a reasonable opportunity to make a considered decision about whether or not to give consent, and
  - The patient has given the consent freely by some positive means, not by mere acquiescence
- The tests for informed consent and decision making capacity are set out in sections 8 and 7 of the Act respectively

Chief Psychiatrist Approved

7. Capacity of adults and children to make decisions about their own assessment and treatment

(1) For the purposes of this Act, an adult is taken to have the capacity to make a decision about his or her own assessment or treatment (***decision-making capacity***) unless a person or body considering that capacity under this Act is satisfied that –

(a) he or she is unable to make the decision because of an impairment of, or disturbance in, the functioning of the mind or brain; and

(b) he or she is unable to –

(i) understand information relevant to the decision; or

(ii) retain information relevant to the decision; or

(iii) use or weigh information relevant to the decision; or

(iv) communicate the decision (whether by speech, gesture or other means).

(2) For the purposes of this Act, a child is taken to have the capacity to make a decision about his or her own assessment or treatment (***decision-making capacity***) only if a person or body considering that capacity under this Act is satisfied that –

(a) the child is sufficiently mature to make the d ecision; and

(b) notwithstanding any impairment of, or disturbance in, the functioning of the child's mind or brain, the child is able to –

(i) understand information relevant to the decision; and

(ii) retain information relevant to the decision; and

(iii) use or weigh information relevant to the decision; and
(iv) communicate the decision (whether by speech, gesture or other means).

(3) For the purposes of this section –
(a) an adult or child may be taken to understand information relevant to a decision if it reasonably appears that he or she is able to understand an explanation of the nature and consequences of the decision given in a way that is appropriate to his or her circumstances (whether by words, signs or other means); and
(b) an adult or child may be taken to be able to retain information relevant to a decision even if he or she may only be able to retain the information briefly.

(4) In this section –
information relevant to a decision includes information on the consequences of –
(a) making the decision one way or the other; and
(b) deferring the making of the decision; and
(c) failing to make the decision.

8. Meaning of *informed consent* to assessment or treatment

(1) For the purposes of this Act, a medical practitioner may regard a person's consent to an assessment or a treatment as being informed consent if satisfied that –
(a) the person, at the time of giving the consent, has decision-making capacity; and
(b) the person has had a reasonable opportunity to make a considered decision whether or not to give the consent; and
(c) the person, having had that opportunity, has given the consent freely by some positive means, not by mere acquiescence.

(2) For the purposes of subsection (1)(b) in its application to a treatment, a person may be taken to have had the requisite reasonable opportunity if –
(a) the treating medical practitioner and the person have discussed the treatment; and
(b) in those discussions the person was given an opportunity to disclose his or her priorities, expectations and fears about the treatment; and
(c) following those discussions the person was given –
(i) a clear and candid explanation of the advantages and disadvantages of the treatment, including information about the associated risks and common or expected side effects; and
(ii) where applicable, a clear and candid explanation of the alternative treatments that may be available, including information about the associated advantages and disadvantages; and
(iii) clear and candid answers to any questions the person may have

had; and

(iv) any other information that was considered, by the treating medical practitioner or person, to be of relevant importance and likely to influence the person's decision-making with regard to the treatment; and

(v) a reasonable opportunity to –

(A) obtain independent medical or other advice; and

(B) consider the advantages and disadvantages of giving the consent.

(3) For the purposes of subsection (1)(c), a person is taken to have given consent freely if the consent is given without coercion, pressure or undue influence, whether from another person or a medication.

(4) For the purposes of subsection (2), the information, explanations or answers must have been in a language and form that the person could understand.

(5) Nothing in this Act is to be taken to prevent a person with decision-making capacity from withdrawing his or her consent to an assessment or a treatment before the assessment or treatment is made or provided and, if he or she does so, he or she is not to be taken to have given informed consent to the assessment or treatment.

9. Informed consent for child who lacks capacity to decide on own assessment or treatment

(1) For the purposes of this Act, informed consent for the assessment or treatment of a child who lacks decision-making capacity may be given by a parent of the child.

(2) To avoid doubt, for subsection (1) the informed consent of one parent is sufficient.

(3) Informed consent for the assessment or treatment of a child who lacks decision-making capacity may be withdrawn before the assessment or treatment is made or provided, but only by each parent of the child consenting to the withdrawal of consent.

(4) Nothing in this Act is to be taken to prevent the withdrawal under subsection (3) of consent to an assessment or a treatment before the assessment or treatment is made or provided and, if the consent is withdrawn, informed consent is not to be taken to have been given to the assessment or treatment.

3. Interpretation

(1) In this Act, unless the contrary intention appears –

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;

Treatment authorised by the Mental Health Tribunal

- The Mental Health Tribunal may authorise treatment for a forensic patient if it is satisfied of the matters set out in section 88 of the Act
- This includes that:
  - The patient has a mental illness, and
  - Without the treatment, the mental illness will, or is likely to, seriously harm the patient's health or safety or the safety of other people, and
  - The treatment will be appropriate and effective in terms of the treatment outcomes referred to in section 6 of the Act, and
  - The patient does not have decision-making capacity
- The terms "mental illness", "decision-making capacity" and "treatment" are defined in sections 4, 7 and 6 of the Act respectively

Chief Psychiatrist Approved

4. Meaning of *mental illness*

(1) For the purposes of this Act –

(a) a person is taken to have a mental illness if he or she experiences, temporarily, repeatedly or continually –

(i) a serious impairment of thought (which may include delusions); or

(ii) a serious impairment of mood, volition, perception or cognition; and

(b) nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug-taking from being regarded as an indication that a person has a mental illness.

(2) However, under this Act, a person is not to be taken to have a mental illness by reason only of the person's –

(a) current or past expression of, or failure or refusal to express, a particular political opinion or belief; or

(b) current or past expression of, or failure or refusal to express, a particular religious opinion or belief; or

(c) current or past expression of, or failure or refusal to express, a particular philosophy; or

(d) current or past expression of, or failure or refusal to express, a particular sexual preference or orientation; or

(e) current or past engagement in, or failure or refusal to engage in, a

particular political or religious activity; or
(f) current or past engagement in a particular sexual activity or sexual promiscuity; or
(g) current or past engagement in illegal conduct; or
(h) current or past engagement in an antisocial activity; or
(i) particular economic or social status; or
(j) membership of a particular cultural or racial group; or
(k) intoxication (however induced); or
(l) intellectual or physical disability; or
(m) acquired brain injury; or
(n) dementia; or
(o) temporary unconsciousness.

6. Meaning of *treatment*

(1) For the purposes of this Act, ***treatment*** is the professional intervention necessary to –

(a) prevent or remedy mental illness; or
(b) manage and alleviate, where possible, the ill effects of mental illness; or
(c) reduce the risks that persons with mental illness may, on that account, pose to themselves or others; or
(d) monitor or evaluate a person's mental state.

(2) However, this professional intervention does not extend to –

(a) special psychiatric treatment; or
(b) a termination of pregnancy; or
(c) a procedure that could render a person permanently infertile; or
(d) the removal, for transplantation, of human tissue that cannot thereafter be replaced by natural processes of growth or repair; or
(e) general health care.

(3) For the purposes of this Act, "treatment" does not include seclusion, chemical restraint, mechanical restraint or physical restraint.

88. Authorisation of treatment by Tribunal

(1) The Tribunal may authorise treatment for a forensic patient if satisfied that –

(a) the treatment has been recommended and applied for by an approved medical practitioner (the ***applicant***) in accordance with section 195; and
(b) the patient has a mental illness; and
(c) without the treatment, the mental illness will, or is likely to, seriously harm –

(i) the patient's health or safety; or
(ii) the safety of other persons; and

(d) the treatment will be appropriate and effective in terms of the outcomes referred to in section 6(1); and

(e) the patient does not have decision-making capacity.

(2) The Tribunal is to determine the application by way of a hearing before a division of the Tribunal constituted by 3 members.

(3) The treatment may be authorised unconditionally or on such conditions as to time, method, supervision or otherwise as the Tribunal considers necessary or desirable and specifies in the authorisation.

(4) The authorisation is to be in an MHT approved form.

(5) The Tribunal is to –

(a) give a copy of the authorisation to the patient (together with a statement of rights in an MHT approved form); and

(b) give a copy of the authorisation to –

(i) the applicant; and

(ii) the CFP.

(6) The authorisation has effect according to its terms.

Treatment authorised by the Mental Health Tribunal - determination

- The Tribunal is required to consider an application for authorisation at a hearing conducted before three members of the Tribunal
- Treatment may be authorised unconditionally, or subject to conditions around time, method, supervision or otherwise
- A single member of the Tribunal may also authorise treatment for a forensic patient but only if the Tribunal member is satisfied of the matters set out in section 91 of the Act
- This includes that:
  - The Tribunal cannot immediately determine the matter, and
  - Achieving the necessary treatment outcomes would be compromised by waiting for the treatment to be authorised by the Tribunal at a hearing under section 88 of the Act

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91. Interim authorisation of treatment by Tribunal member

(1) A single member of the Tribunal (the ***MHT member***) may authorise treatment for a forensic patient if satisfied that –

(a) the treatment has been recommended and applied for by an approved medical practitioner (the ***applicant***) in accordance with section 195; and
(b) the Tribunal cannot immediately determine the application; and
(c) the criteria specified in section 88(1)(b), (c), (d) and (e) are satisfied; and
(d) achieving the treatment outcomes would be compromised by waiting for the treatment to be authorised by the Tribunal.

(2) The MHT member may authorise the treatment on the basis of the application alone, without any hearing or further investigation.

(3) The treatment may be authorised unconditionally or on such conditions as to time, method, supervision or otherwise as the MHT member considers necessary or desirable and specifies in the authorisation.

(4) The MHT member is to advise the patient, the applicant and the CFP of the authorisation without delay, and this may be done by any means of communication the MHT member considers appropriate in the circumstances.

(5) However, if the advice of the authorisation is given orally, the MHT member is to

confirm it in writing by means of an MHT approved form.

(6) The MHT member or the Tribunal may revoke or vary the authorisation at any time.

(7) The MHT member or the Tribunal, as the case may be, is to advise the patient, applicant and CFP of the revocation or variation of the authorisation without delay, and this may be done by any means of communication the MHT member or Tribunal considers appropriate in the circumstances.

(8) However, if the advice of the revocation or variation of the authorisation is given orally, the MHT member or the Tribunal, as the case may be, is to confirm it in writing by means of an MHT approved form.

(9) Subject to subsection (6), the authorisation continues in effect according to its terms until the relevant application is determined by the Tribunal.

(10) However, the authorisation lapses after 14 days (calculated from the precise time it is given) if, by then, the Tribunal has not determined the relevant application.

(11) Once an advice under subsection (4) or (7) has been put in writing, the MHT member or the Tribunal, as the case may be, is to –

(a) give a copy of the advice to the patient (together with a statement of rights in an MHT approved form); and

(b) give a copy of the advice to –

(i) the applicant; and

(ii) the CFP.

Treatment authorised by the Mental Health Tribunal - duration

- Treatment that has been authorised by a single member of the Tribunal lasts for up to 14 days
- Treatment that has been authorised by the Mental Health Tribunal at a hearing lasts until the patient is discharged from the secure mental health unit, or until the Tribunal discharges the authorisation, whichever occurs first
- Tribunal authorisation that is still in force on the day that a forensic patient is discharged from a secure mental health unit automatically becomes a six month Treatment Order enabling the patient's ongoing treatment post-discharge from the unit

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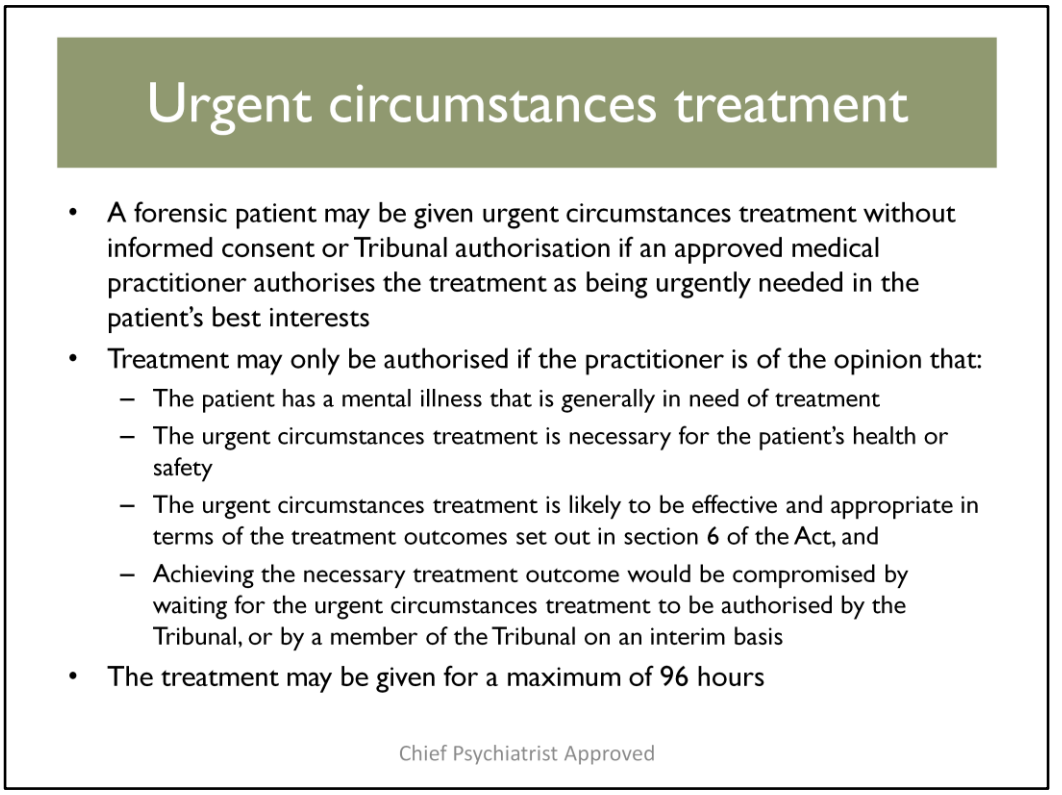
89. Discharge of Tribunal treatment authorisation

The Tribunal may discharge an authorisation under section 88 at any time while the patient is a forensic patient.

90. Authorisation becomes treatment order when person ceases to be forensic patient

If a patient to whom an authorisation under section 88 applies ceases to be a forensic patient on a day, the authorisation is taken to be a treatment order in relation to the person on and from that day for a period of 6 months, unless the treatment order is discharged or otherwise ceases to be in effect.



87. Urgent circumstances treatment

(1) A forensic patient may be given treatment (**"urgent circumstances treatment"**) without informed consent or Tribunal authorisation if an approved medical practitioner authorises the treatment as being urgently needed in the patient's best interests.

(2) The approved medical practitioner may, under subsection (1), authorise treatment as being urgently needed in the patient's best interests only if the approved medical practitioner is of the opinion that achieving the necessary treatment outcome would be compromised by waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member thereof on an interim basis).

(3) The approved medical practitioner may give the authorisation if, and only if, he or she has concluded from an examination that -

(a) the patient has a mental illness that is generally in need of treatment; and
(b) the urgent circumstances treatment is necessary for –
(i) the patient's health or safety; or
(ii) the safety of other persons; and
(c) the urgent circumstances treatment is likely to be effective and appropriate in terms of the outcomes referred to in section 6(1); and
(d) achieving the necessary treatment outcome would be compromised by

waiting for the urgent circumstances treatment to be authorised by the Tribunal (or by a member thereof on an interim basis).

(4) The advice under subsection (5) may be given by any means of communication the approved medical practitioner considers appropriate in the circumstances but, if it is given orally, the approved medical practitioner is to confirm it in writing by means of a CFP approved form.

(5) If the authorisation is given, the approved medical practitioner has the following obligations:

(a) to ensure that the patient is advised of the authorisation as soon as possible after it is given;

(ab) to give a copy of the authorisation to the CFP and the Tribunal;

(ac) to give a copy of the authorisation to the patient (together with a statement of rights in a CFP approved form);

(b) to place a copy of the authorisation on the patient's clinical record.

(6) If the authorisation is given, the patient may be given the urgent circumstances treatment until whichever of the following first occurs:

(a) the treatment is completed;

(b) an approved medical practitioner, for any reason he or she considers sufficient, stops the urgent circumstances treatment;

(c) the 96-hour period immediately following the giving of the authorisation expires;

(d) the patient is discharged from the SMHU;

(e) the authorisation is set aside by the Tribunal.

Seclusion and restraint

- The Act allows forensic patients to be secluded and restrained in certain, limited circumstances
- A forensic patient may only be secluded or restrained if the seclusion or restraint is authorised as being necessary:
  - To facilitate the patient's treatment or general health care
  - To ensure the patient's health or safety or the safety of other people
  - To provide for the management, good order or security of a secure mental health unit
  - To prevent the patient from destroying or damaging property
  - To prevent the patient's escape from lawful custody
  - To facilitate the patient's lawful transfer to or from another facility
  - For a reason sanctioned by Chief Forensic Psychiatrist Standing Orders

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92. Interpretation of Division

In this Division –
prescribed reason, for applying force to a forensic patient or placing a forensic patient in seclusion or under restraint, means –
(a) to facilitate the patient's treatment; or
(b) to facilitate the patient's general health care; or
(c) to ensure the patient's health or safety; or
(d) to ensure the safety of other persons; or
(e) to prevent the patient from destroying or damaging property; or
(f) to prevent the patient's escape from lawful custody; or
(g) to provide for the management, good order or security of the SMHU; or
(h) to facilitate the patient's lawful transfer to or from another facility, whether in this State or elsewhere; or
(i) a reason sanctioned by CFP standing orders.

94. Seclusion

(1) Except if authorised under any other law, a forensic patient may be placed in seclusion if, and only if –

(a) the seclusion is authorised as being necessary for a prescribed reason, by –

(i) for a patient who is a child, the CFP; or

(ii) for any other patient, the CFP, a medical practitioner or approved nurse; and

(b) the person authorising the seclusion is satisfied that it is a reasonable intervention in the circumstances; and

(c) the seclusion lasts for no longer than authorised under this section; and

(d) the seclusion is managed in accordance with any relevant CFP standing orders or clinical guidelines.

(2) If a forensic patient is placed in seclusion under this section –

(a) the patient must be clinically observed by a member of the SMHU nursing staff at intervals not exceeding 15 minutes or at such different intervals as CFP standing orders may mandate; and

(b) the patient must be examined by a medical practitioner or approved nurse at intervals not exceeding 4 hours to see if the seclusion should continue or be terminated; and

(c) the patient must also be examined by an approved medical practitioner at intervals not exceeding 12 hours; and

(d) the seclusion must not extend beyond 7 hours unless –

(i) the patient has been examined by a medical practitioner within those 7 hours; and

(ii) the extension is authorised by the CFP within those 7 hours; and

(iii) if applicable, each subsequent extension (regardless of duration) is also authorised in advance by the CFP; and

(e) the CFP may impose conditions on any extension authorised under paragraph (d); and

(f) the CFP, on authorising an initial extension of the seclusion, must stipulate the maximum timeframe for its continuance; and

(g) the patient must be provided with –

(i) suitable clean clothing and bedding; and

(ii) adequate sustenance; and

(iii) adequate toilet and sanitary arrangements; and

(iv) adequate ventilation and light; and

(v) a means of summoning aid; and

(h) the administration of any prescribed medications to the patient must not be unreasonably denied or delayed; and

(i) the patient must not be deprived of physical aids except as may be strictly necessary for the patient's safety or the preservation of those physical aids for the patient's future use; and

(ia) the patient must not be deprived of any communication aid that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the communication aid for the patient's future use; and

(j) regardless of authorisation, the seclusion must not be maintained to the obvious detriment of the patient's mental or physical health.

(3) To avoid doubt, a forensic patient's seclusion is not taken to have been

interrupted or terminated merely by reason of –

(a) a scheduled observation or examination under subsection (2); or

(b) the giving of any necessary treatment or general health care.

(4) Nothing in this section is to be taken as conferring any kind of authority for a forensic patient to be placed in seclusion as a means of punishment or for reasons of administrative or staff convenience.

(5) Notwithstanding the discretionary nature of the power under section 152(1), the CFP must ensure that CFP standing orders are issued for this section.

95. Restraint

(1) Except if authorised under any other law, a forensic patient may be placed under restraint if, and only if –

(a) the restraint is authorised as being necessary for a prescribed reason by –

(i) in the case of chemical or mechanical restraint, the CFP; or

(ii) in the case of physical restraint where the patient is a child, the CFP; or

(iii) in the case of physical restraint where the patient is not a child, the CFP, a medical practitioner or an approved nurse; and

(b) the person authorising the restraint is satisfied that it is a reasonable intervention in the circumstances; and

(c) the restraint lasts for no longer than authorised under this section; and

(d) the means of restraint employed in the specific case is, in the case of mechanical restraint, approved in advance by the CFP; and

(e) the restraint is managed in accordance with any relevant CFP standing orders or clinical guidelines.

(2) If a forensic patient is placed under restraint under this section –

(a) the patient must be clinically observed by a member of the SMHU nursing staff at intervals not exceeding 15 minutes or at such different intervals as CFP standing orders may mandate; and

(b) the patient must be examined by a medical practitioner or approved nurse at intervals not exceeding 4 hours to see if the restraint should continue or be terminated; and

(c) the patient must also be examined by an approved medical practitioner at intervals not exceeding 12 hours; and

(d) the restraint must not extend beyond 7 hours unless –

(i) the patient has been examined by a medical practitioner within those 7 hours; and

(ii) the extension is authorised by the CFP within those 7 hours; and

(iii) if applicable, each subsequent extension (regardless of duration) is also authorised in advance by the CFP; and

(e) the CFP may impose conditions on any extension authorised under paragraph (d); and

(f) the CFP, on authorising an initial extension of the restraint, must stipulate the maximum timeframe for its continuance; and
(g) the patient must be provided with –
(i) suitable clean clothing and bedding; and
(ii) adequate sustenance; and
(iii) adequate toilet and sanitary arrangements; and
(iv) adequate ventilation and light; and
(v) a means of summoning aid; and
(h) the administration of any prescribed medications to the patient must not be unreasonably denied or delayed; and
(i) the patient must not be deprived of physical aids except as may be strictly necessary for the patient's safety or the preservation of those physical aids for the patient's use; and
(ia) the patient must not be deprived of any communication aid that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the communication aid for the patient's future use; and
(j) regardless of authorisation, the restraint must not be maintained to the obvious detriment of the patient's mental or physical health.

(3) Nothing in this section is to be taken as conferring any kind of authority for a forensic patient to be placed under restraint as a means of punishment or for reasons of administrative or staff convenience.

(4) However, nothing in this section applies to or prevents the emergency short-term physical restraint of a patient, subject to and in accordance with relevant CFP standing orders or clinical guidelines, so as to –
(a) prevent the patient from harming himself or herself or others; or
(b) prevent the patient from damaging, or interfering with the operation of, a facility or any equipment; or
(c) break up a dispute or affray involving the patient; or
(d) ensure, if he or she is uncooperative, the patient's movement to or attendance at any place for a lawful purpose.

(5) Notwithstanding the discretionary nature of the power under section 152(1), the CFP must ensure that CFP standing orders are issued for this section.

Note 1 The restraint of a forensic patient is reviewable by the Tribunal –
see Division 2 of Part 3 of Chapter 3.
Note 2 The CFP has power to intervene in such circumstances – see section 147.

Seclusion and restraint - authorisation

- Seclusion or restraint may only be authorised:
  - If the person authorising the seclusion or restraint is satisfied that it is a reasonable intervention in the circumstances
  - After less restrictive interventions and de-escalation techniques have been tried without success, or when these have been considered but excluded as inappropriate or unsuitable in the circumstances
  - Following as full a risk assessment as it is possible to conduct in the circumstances
  - After taking into account matters such as:
    - Whether de-escalation has been implemented
    - Whether "time out", or 1:1 nursing have been attempted
    - Whether PRN medication has been offered
    - How long the seclusion or restraint is expected to last for and the criteria that will be used to determine whether the seclusion or restraint should cease
    - The patient's post-seclusion or post-restraint plan

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An approved nurse or medical practitioner who authorises a patient's seclusion is to take immediate steps to contact the approved medical practitioner on duty to discuss the seclusion and to seek advice about whether or not the seclusion should be continued, or should cease.

A patient who has been secluded must be clinically observed by a member of nursing staff at least every fifteen minutes unless the Chief Psychiatrist's Standing Orders mandate a shorter period. For children, the requirement is for continual observation.

A patient who has been chemically restrained must be clinically observed by a member of the approved hospital's nursing staff at least every fifteen minutes unless the Chief Psychiatrist's Standing Orders mandate a shorter period.

A patient who has been mechanically or physically restrained must be continually observed at all times by a registered nurse or medical practitioner.

A patient who has been secluded or restrained must also be examined by a medical practitioner or approved nurse at least every four hours, and by an approved medical practitioner at least every 12 hours. The purpose of the examination is to see whether the seclusion or restraint should continue, or be terminated.

Seclusion and restraint – requirements

- Patients who are secluded or restrained must be provided with:
  - Suitable clean clothing and bedding
  - Adequate sustenance
  - Adequate toilet and sanitary arrangements
  - Adequate ventilation and light
  - A means of summoning aid
- Patients who are secluded or restrained must not be deprived of physical aids or communication aids that the patient uses in communicating on a daily basis, except as may be strictly necessary for the patient's safety or the preservation of the aids for the patient's future use

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Use of force

- The Act allows force to be applied to forensic patients in certain, limited circumstances
- Force may only be applied by reason of the physical violence, resistance or disturbance of the patient, and if the force is necessary either for a prescribed reason or to place the patient in seclusion or under restraint
- Force may only be applied by a member of secure mental health unit staff, a medical practitioner, a nurse, an authorised person or a person who has or is entitled to take immediate lawful custody of the patient
- "Prescribed reason" is defined in section 92 of the Act

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92. Interpretation of Division

In this Division –
prescribed reason, for applying force to a forensic patient or placing a forensic patient in seclusion or under restraint, means –
(a) to facilitate the patient's treatment; or
(b) to facilitate the patient's general health care; or
(c) to ensure the patient's health or safety; or
(d) to ensure the safety of other persons; or
(e) to prevent the patient from destroying or damaging property; or
(f) to prevent the patient's escape from lawful custody; or
(g) to provide for the management, good order or security of the SMHU; or
(h) to facilitate the patient's lawful transfer to or from another facility, whether in this State or elsewhere; or
(i) a reason sanctioned by CFP standing orders.

93. Force

(1) Except if authorised under any other law, force may be applied to a forensic patient if, and only if –

(a) by reason of the physical violence, resistance or disturbance of the patient, the force is necessary –

(i) for a prescribed reason; or

(ii) to place the patient in seclusion or under restraint; and
(b) the force is applied solely by appropriate persons or their assistants; and
(c) the force is no more excessive, unusual or prolonged than is reasonably justified in the circumstances.

(2) Nothing in this section is to be taken as conferring any kind of authority for force to be applied to a forensic patient as a means of punishment or for reasons of administrative or staff convenience.

(3) In this section –
appropriate person means –
(a) a member of the SMHU staff; or
(b) a medical practitioner; or
(c) a nurse; or
(d) an authorised person; or
(e) a person who has or is entitled to take immediate lawful custody of the patient.

Note 1 The application of force to a forensic patient is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.
Note 2 The CFP has power to intervene in such circumstances – see section 147.

109. Authorisation of persons

(1) The CFP or the controlling authority of an SMHU may authorise a person, or a member of a class of persons, for the purposes of –
(a) section 64; or
(b) any or all of the provisions of this Part; or
(c) any or all of the provisions of Part 4; or
(d) any or all of the provisions of Part 3 of Chapter 4; or
(e) any or all of the provisions of Schedule 2 –
as specified in the authorisation.

(2) A reference in a provision of this Act to an authorised person is a reference to a person who is authorised under subsection (1) for the purposes of that provision or the Part containing the provision.

Visiting, telephone and correspondence rights

- Under the Act, forensic patients have the right to:
  - Receive visitors or refuse to receive visitors
  - Make or refuse to make telephone calls
  - Receive or refuse to receive telephone calls
  - Send or refuse to send mail
  - Receive or refuse to receive mail
- The exercise of visiting, telephone and correspondence rights is reviewable by the Tribunal
- The CFP may also intervene with respect to the exercise of visiting, telephone and correspondence rights in relevant circumstances

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Visiting rights

- The Act regulates:
  - The circumstances in which a person may enter a secure mental health unit as a visitor, including the information that a visitor may be required to provide before being allowed entry
  - The circumstances in which a person may be refused entry to a secure mental health as a visitor, and when visits may be terminated
  - Police visits
- The Act also requires visitors to comply with directions and allows visitors who fail to comply with directions to be removed from the secure mental health unit, and if necessary, detained so that the visitor can be arrested by a police officer

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85. Interpretation of Part

In this Part –

proper grounds, for the refusal or termination of any visiting, telephone or correspondence rights of or in respect of a forensic patient, means that the exercise of the right –

(a) is or might be for an unlawful purpose; or
(b) is or might be detrimental to the management, good order or security of the SMHU; or
(c) is or might be harmful, distressing or offensive to the patient or another person; or
(d) is or might be detrimental to the health or safety of the patient; or
(e) is or might be interfering with the patient's treatment; or
(f) is or might be inopportune because the patient is seriously or acutely unwell; or
(g) should, having regard to any proper matter, not be allowed on account of some other compelling reason or risk;

responsible official, for an SMHU, means its controlling authority, the CFP or an authorised person at the SMHU;

visitor, to an SMHU, includes –

(a) a person who is seeking to enter the SMHU as a visitor; and
(b) a person who is completing a visit.

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 3of 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.

98. Privileged visitors, callers and correspondents

(1) For the purposes of this Act, a person is a privileged visitor if he or she is one of the following:
(a) the Principal Official Visitor or an Official Visitor;
(b) a judge, associate judge or magistrate;
(c) the Ombudsman, the Deputy Ombudsman or a member of the Ombudsman's staff;
(d) a Chief Psychiatrist;
(e) a member of the Tribunal, the Registrar of the Tribunal or an MHT staff member;
(f) the Health Complaints Commissioner or a member of that Commissioner's staff;
(g) the Anti-Discrimination Commissioner or a member of that Commissioner's staff;
(h) the Public Guardian, the Deputy Public Guardian, a member of the staff of the Public Guardian, a member of the Guardianship and Administration Board, a member of the staff of that Board, or the Registrar, each within the meaning of the *Guardianship and Administration Act 1995*;
(i) a person prescribed by the regulations.

(4) The CFP, by notice, may cancel or suspend for a time any individual's privileged visitor, privileged caller or privileged correspondent status if the CFP is satisfied on reasonable grounds that the individual has engaged in behaviour that is incompatible with the management, good order or security of an SMHU.

(5) The cancellation or suspension of the individual's privileged visitor, privileged caller or privileged correspondent status takes effect as soon as he or she is given notice of it.
Note A cancellation or suspension of privileged visitor, privileged caller or privileged

correspondent status under this section is reviewable by the Tribunal – see Division 2 of Part 3 of Chapter 3.

99. Entry of visitors

(1) A person may enter an SMHU as a visitor at reasonable times and intervals determined by a responsible official.

(2) The responsible official may give the visitor such directions as the responsible official considers necessary or desirable for the management, good order or security of the SMHU.

(3) The visitor must comply with the responsible official's directions.
Penalty: Fine not exceeding 25 penalty units.

(4) This section applies to any visitor, including a privileged visitor.

100. Visitor identity

(1) A responsible official may require a person seeking to enter an SMHU as a visitor to provide proof of identity or status.

(2) The required proof of identity may extend to fingerprints or other biometric data approved by CFP standing orders.

(3) This section applies to any visitor, including a privileged visitor.

101. Visitor information

(1) A responsible official may require a person seeking to enter an SMHU as a visitor to –

(a) explain the nature of the person's relationship to any forensic patient in the SMHU; and
(b) explain the purpose of the visit; and
(c) provide any other relevant information the responsible official may require.

(2) This section applies to any visitor other than a privileged visitor.

102. Refusal of visits

(1) A responsible official –

(a) must refuse to allow a person to enter an SMHU as a visitor if –

(i) the person has not complied fully or at all with a requirement under section 100 or 101; or
(ii) the responsible official is not satisfied as to any information

provided under those sections, whether as to its truth or otherwise; and

(b) may refuse to allow a person to enter an SMHU as a visitor if the responsible official reasonably considers that there are proper grounds to do so.

(2) If the duty or power of refusal under subsection (1) is exercised, the responsible official may direct the person to leave the SMHU forthwith or by a specified time.

(3) The person must comply with the responsible official's direction.
Penalty: Fine not exceeding 25 penalty units.

(4) This section applies to any visitor, including a privileged visitor.

103. Termination of visits

(1) A responsible official may direct a person who has entered an SMHU as a visitor to leave the SMHU forthwith or by a specified time if the responsible official reasonably considers that there are proper grounds to do so.

(2) The responsible official is not obliged to give the visitor reasons for the direction.

(3) The visitor must comply with the direction.
Penalty: Fine not exceeding 25 penalty units.

(4) This section applies to any visitor, including a privileged visitor.

104. Arrest, &c., of visitors who fail to comply with directions

If a visitor to an SMHU fails to comply with a direction under section 99(2), section 102(2) or section 103(1) –

(a) an authorised person, with such assistants and using such force as he or she considers appropriate in the circumstances, may remove the visitor from the SMHU or detain the visitor for such time as is necessary for the visitor to be arrested by a police officer; and

(b) a police officer may arrest the person without warrant.

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.

Telephone and correspondence rights

- The Act regulates the circumstances in which forensic patients may:
  - Make or refuse to make telephone calls (including text messages)
  - Receive or refuse to receive telephone calls (including text messages)
  - Send or refuse to send mail (including email)
  - Receive or refuse to receive mail (including email)
- In the case of telephone calls, the Act identifies the information that a caller may be required to provide before a call is allowed to proceed
- The Act also permits the controlling authority of the secure mental health unit, the Chief Forensic Psychiatrist or an authorised person to require any mail sent to or received by a forensic patient - other than mail sent to or by a privileged correspondent - to be opened and read by an authorised person

Chief Psychiatrist Approved

85. Interpretation of Part

In this Part –

proper grounds, for the refusal or termination of any visiting, telephone or correspondence rights of or in respect of a forensic patient, means that the exercise of the right –

(a) is or might be for an unlawful purpose; or
(b) is or might be detrimental to the management, good order or security of the SMHU; or
(c) is or might be harmful, distressing or offensive to the patient or another person; or
(d) is or might be detrimental to the health or safety of the patient; or
(e) is or might be interfering with the patient's treatment; or
(f) is or might be inopportune because the patient is seriously or acutely unwell; or
(g) should, having regard to any proper matter, not be allowed on account of some other compelling reason or risk;

responsible official, for an SMHU, means its controlling authority, the CFP or an authorised person at the SMHU;

98. Privileged visitors, callers and correspondents

(2) For the purposes of this Act, a person is a privileged caller if he or she is one of the following:

(a) the Principal Official Visitor or an Official Visitor;
(b) a judge, associate judge or magistrate;
(c) the Ombudsman, the Deputy Ombudsman or a member of the Ombudsman's staff;
(d) a Chief Psychiatrist;
(e) a member of the Tribunal, the Registrar of the Tribunal or an MHT staff member;
(f) the Health Complaints Commissioner or a member of that Commissioner's staff;
(g) the Anti-Discrimination Commissioner or a member of that Commissioner's staff;
(h) an Australian legal practitioner (acting in a professional capacity);
(i) a medical practitioner (acting in a professional capacity);
(j) the Public Guardian, the Deputy Public Guardian, a member of the staff of the Public Guardian, a member of the Guardianship and Administration Board, a member of the staff of that Board, or the Registrar, each within the meaning of the *Guardianship and Administration Act 1995*;
(k) a person prescribed by the regulations.

(3) For the purposes of this Act, a person is a privileged correspondent if he or she is one of the following:

(a) the Principal Official Visitor or an Official Visitor;
(b) a judge, associate judge or magistrate;
(c) the Ombudsman, the Deputy Ombudsman or a member of the Ombudsman's staff;
(d) a Chief Psychiatrist;
(e) a member of the Tribunal, the Registrar of the Tribunal or an MHT staff member;
(f) the Health Complaints Commissioner or a member of that Commissioner's staff;
(g) the Anti-Discrimination Commissioner or a member of that Commissioner's staff;
(h) any court or commission, committee, tribunal or other board connected to the legal process, or an officer of any court or any such commission, committee, tribunal or other board;
(i) the Secretary;
(j) the Secretary (Corrections);
(k) the Secretary (Youth Justice);
(l) a State authority, within the meaning of the *State Service Act 2000*, that is connected to the legal process or concerned with the rights or treatment of prisoners or patients in hospitals or an officer of such State authority;
(m) an Australian legal practitioner (acting in a professional capacity);
(n) a medical practitioner (acting in a professional capacity);

(o) the Public Guardian, the Deputy Public Guardian or a member of the Public Guardian's staff;
(p) a person prescribed by the regulations.

(4) The CFP, by notice, may cancel or suspend for a time any individual's privileged visitor, privileged caller or privileged correspondent status if the CFP is satisfied on reasonable grounds that the individual has engaged in behaviour that is incompatible with the management, good order or security of an SMHU.

(5) The cancellation or suspension of the individual's privileged visitor, privileged caller or privileged correspondent status takes effect as soon as he or she is given notice of it.

Note A cancellation or suspension of privileged visitor, privileged caller or privileged correspondent status under this section is reviewable by the Tribunal –
see Division 2 of Part 3 of Chapter 3.

106. Patient telephone rights

(1) A forensic patient has, and may exercise subject to and in accordance with this section -
(a) the right to make or refuse to make telephone calls; and
(b) The right to receive or refuse to receive telephone calls.

(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 make or receive telephone calls to or from anyone who is not a privileged caller if –
(a) the responsible official reasonably considers that there are proper grounds to do so; or
(b) in the case of outgoing telephone calls, the responsible official is aware that the intended recipient of the call does not wish to be contacted by the patient; or
(c) in the case of incoming telephone calls, the responsible official is aware that the patient does not wish to be contacted by the caller; or
(d) in the case of incoming calls, they are telemarketing, telepolling or other kinds of nuisance calls.

(4) A responsible official may refuse to allow the patient to make or receive telephone calls to or from a privileged caller if –
(a) in the case of outgoing telephone calls, the responsible official is aware that the intended recipient of the call does not wish to be contacted by the patient; or
(b) in the case of incoming telephone calls, the responsible official is aware that the patient does not wish to be contacted by the caller.

(5) A responsible official may require a person making or wishing to make a telephone call to the patient to provide proof of identity or status and, to avoid doubt, this applies to a privileged caller.

(6) If a person making or wishing to make a telephone call to the patient is not a privileged caller, a responsible official may require the person to -

(a) Explain the nature of the person's relationship to the patient; and
(b) Explain the purpose of the call; and
(c) Provide any other relevant information the responsible official may require.

(7) If subsection (5) or (6) applies, the responsible official may refuse to allow the telephone call to be made or proceed if –

(a) the caller does not comply fully or at all with the requirement; or
(b) the responsible official is not satisfied as to any information provided, whether as to its truth or otherwise

(8) If the patient makes or receives a telephone call on a reverse charges basis, a responsible official may require the patient to meet those charges.

(9) The rights conferred by subsection (1) do not extend to a right to

(a) stipulate that any telephone call be made or received via any particular kind or brand of telephone, technology or telecommunications provider; or
(b) have possession of a mobile telephone or other kind of telephonic device or component.

(10) In this section –
telephone call means any communication made by using a telephone, radio or similar electronic device, including a communication consisting of a text message or picture.

Note 1 The exercise of telephone rights under this Subdivision 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 – seesection 147.

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.

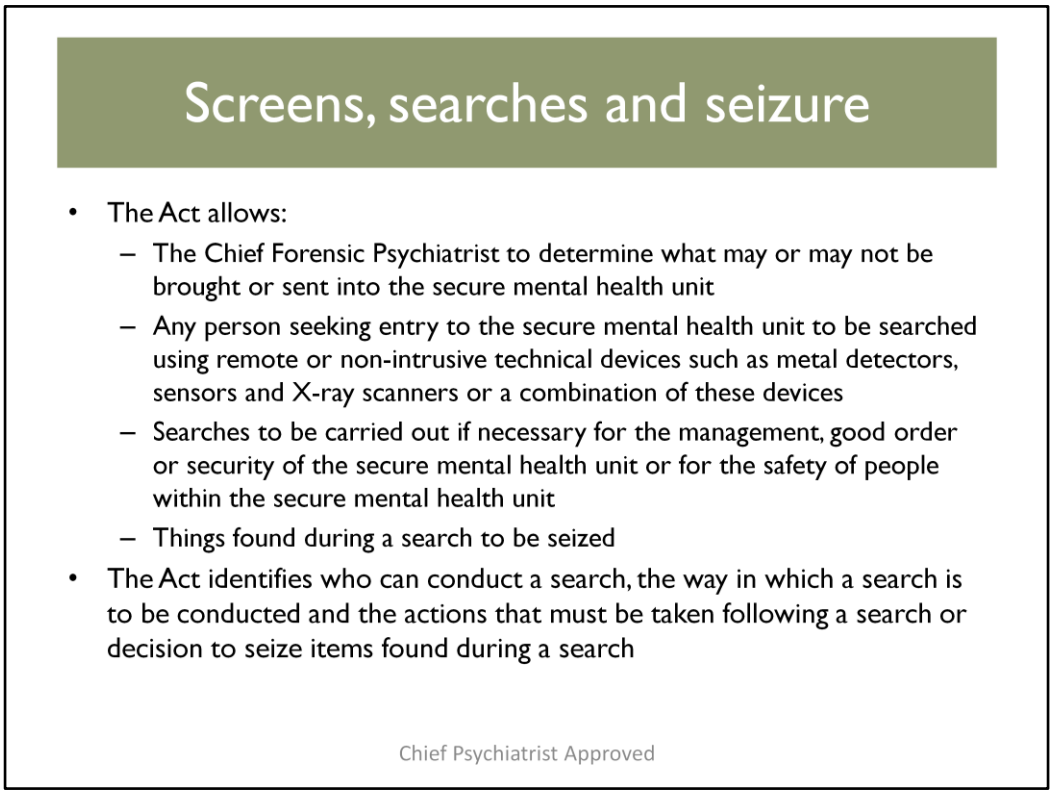
(5) A responsible official may require that any mail sent to or received by the patient, other than mail sent to or by a privileged correspondent, be opened and read by an authorised person.

(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.

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.



110. Screening of persons seeking entry to SMHU

(1) The CFP may, in relation to an SMHU –

(a) require that any person seeking entry to the SMHU be screened; and

(b) refuse to allow the person into the SMHU if he or she fails to comply with the requirement.

(2) Without limiting the CFP's discretion, a person may be wholly or partially exempted from the screening requirement if the relevant screening devices –

(a) might pose any kind of medical risk to the person; or

(b) might destroy or damage something in the person's possession.

(3) To avoid doubt, medical practitioners, nurses, mental health officers, privileged visitors within the meaning of section 98, police officers, lawyers and SMHU staff members have no immunity from the screening requirement.

(4) Under this section, the controlling authority of the SMHU has the same discretionary powers as the CFP but, in the event of any disagreement between them, the decision of the CFP prevails.

(5) In this section –

screen means a search of a person's body, clothes or belongings conducted by remote or non-intrusive technical devices such as metal detectors, sensors and X-ray

scanners or combinations thereof.

111. Searches

(1) The CFP may, in relation to an SMHU, authorise or direct an authorised person to carry out searches for –

(a) the management, good order or security of the SMHU; or

(b) the safety of any persons in the SMHU.

(2) The authorisation or direction constitutes full and sufficient authority for the authorised person to carry out the relevant search, subject to this section, without further formality.

(3) If the authorisation or direction is given orally, it must be confirmed in writing in a CFP approved form.

(4) However, the authorisation or direction cannot apply to privileged visitors unless it is in writing.

(5) The authorisation or direction may do one or more of the following:

(a) be for a specific search or, in the nature of a standing order, for a search to be carried out, either routinely or randomly, at certain times or when certain circumstances apply;

(b) confer related discretions on the authorised person, whether as to timing and search protocol;

(c) provide for the use of specified search equipment or techniques.

(6) A search may be of –

(a) any part of the SMHU; or

(b) anything in the SMHU; or

(c) anything being delivered to or removed from the SMHU or any vehicle, conduit or other thing being used in connection with that delivery or removal; or

(d) any forensic patient, visitor, staff member or other person in the SMHU; or

(e) clothing, personal belongings, physical aids, containers or any other thing in or under the possession or control of a forensic patient, visitor, staff member or other person in the SMHU; or

(f) the information held on a computer, mobile phone or other device.

(7) A search of a person, or of anything in or under a person's possession or control, may be conducted without the person's consent.

(8) If a person other than a forensic patient or SMHU staff member refuses to submit to or hinders a search, an authorised person may direct the person to leave the SMHU forthwith or by a specified time.

(9) A person must comply with a direction under subsection (8).
Penalty: Fine not exceeding 25 penalty units.

(10) If a person refuses or fails to comply with a direction under subsection (8) –

(a) an authorised person may detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and

(b) a police officer may arrest the person without warrant.

(11) Unless the CFP directs otherwise in a particular case, a search that involves any touching or undressing of a person, or any touching of a person's clothing or personal belongings, must be carried out –

(a) by an authorised person of the same gender as that person and only in the presence of persons of that gender; and

(b) in privacy.

(12) An authorised person who carries out a search may –

(a) use such force, means and assistance as he or she considers reasonably necessary for the purpose; and

(b) ask and require answers to questions as to the source, identity, nature, purpose, properties or contents of anything found.

(13) Under this section, the controlling authority of the SMHU has the same discretionary powers as the CFP but, in the event of any disagreement between them, the decision of the CFP prevails.

(14) In this section –
search means a search carried out by manual, animal detection, electronic or mechanical means, or by any combination of those means;
SMHU includes its immediate precincts.

112. Seizure

(1) An authorised person who is carrying out a search under section 111 may seize any one or more of the following:

(a) anything found (whether in or under a person's possession or control or not) that in the reasonable opinion of the authorised person places, or could place, the management, good order or security of the SMHU or the safety of persons in the SMHU in jeopardy;

(b) anything found on a patient or in or under a patient's possession or control (other than a thing that the patient is authorised to wear or possess or control under this Part, the regulations or CFP standing orders or by the controlling authority);

(c) anything that in the reasonable opinion of the authorised person places, or could place, the management, good order or security of the SMHU or the safety of persons in the SMHU in jeopardy (even if it is something that the

patient is authorised to wear or possess or control under this Part, the regulations or CFP standing orders or by the controlling authority).

(2) An authorised person who seizes anything under subsection (1) is to inform the search authority of the seizure forthwith.

(3) The search authority is to ensure that –

(a) anything seized from a visitor or SMHU staff member under this section is returned to that visitor or staff member when he or she leaves the SMHU; or

(b) anything seized from a patient under this section is, on the discharge of the patient from the SMHU, returned to or given into the custody of the patient, the Director, the Secretary (Youth Justice) or the controlling authority of an approved hospital, as appropriate.

(4) However, subsection (3) does not apply if the thing seized is an illicit drug, illicit weapon or other illicit thing.

(5) If the thing seized is an illicit drug, illicit weapon or other illicit thing –

(a) the search authority is to surrender it to the Commissioner of Police; and

(b) the Commissioner of Police may dispose of it as he or she thinks fit.

(6) In this section –

search authority means whichever of the following authorised or directed the relevant search:

(a) the CFP;

(b) the controlling authority of the SMHU.

113. Certain things not to be brought into SMHU

(1) A person must not bring or send into an SMHU anything that the CFP has not authorised to be brought or sent into the SMHU.

Penalty: Fine not exceeding 25 penalty units or imprisonment for a term not exceeding 6 months.

(2) If an SMHU staff member finds a person contravening subsection (1) –

(a) an authorised person may detain the person for such time as is necessary for the person to be arrested by a police officer under paragraph (b); and

(b) a police officer may arrest the person without warrant.

(3) In addition to any other penalty that may be imposed, a person who is convicted of an offence against subsection (1) is not entitled to be employed in or undertake any work, including the practice of medicine, in any SMHU unless the Minister determines otherwise.

(4) In this section –

sending into includes throwing or propelling into or dropping onto.

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:
  - 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
  - Memorandum of Understanding for the Delivery of Services to People with Mental Illness

Questions

Any questions?

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