



# Outline

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## What treatment does the Act regulate?

- The Act regulates treatment as defined in section 6 of the Act.
- Treatment is defined in section 6 as the professional intervention necessary to:
  - Prevent or remedy mental illness, or
  - Manage and alleviate, where possible, the ill effects of mental illness, or
  - Reduce the risks that persons with mental illness may, on that account, pose to themselves or others, or
  - Monitor or evaluate a person's mental state
- The Act also regulates special psychiatric treatment
- It does NOT regulate general health care, terminations of pregnancy, procedures that could render a person infertile, or the removal of human tissue for purposes of transplantation

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### 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.

### 122. Meaning of *special psychiatric treatment*

- (1)** For the purposes of this Act, *special psychiatric treatment* is -
- (a)** psychosurgery; or
  - (b)** any treatment that the regulations declare to be special psychiatric treatment.
- (2)** For the purposes of subsection (1), *psychosurgery* is either of the following procedures:
- (a)** the use of surgery or intracerebral electrodes to create a lesion in a person's brain with the intention of permanently altering the person's thoughts, emotions or behaviour; or
  - (b)** the use of intracerebral electrodes to stimulate a person's brain (without creating a lesion) with the intention of temporarily altering or influencing the person's thoughts, emotions or behaviour.
- (3)** For the purposes of subsection (2) -
- (a)** it is irrelevant whether the procedure will, by itself, fully achieve the relevant intention; and
  - (b)** the behaviour referred to is not behaviour that is secondary to epilepsy.

The Act operates alongside the Common Law, which regulates treatment for persons with decision making capacity, and the Guardianship and Administration Act 1995, which regulates treatment for persons with a disability which impacts on their ability to make a decision for themselves

## When may treatment be given

A patient may be given treatment:

- With informed consent – this may be given by a parent, if the patient is an immature minor
- If the treatment is authorized by a Treatment Order or by the Tribunal a member of the Tribunal
- If the treatment is authorised as being urgently needed in the patient's best interests (urgent circumstances treatment)

A person may be given special psychiatric treatment with Tribunal authorisation. Informed consent may also be required

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### 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

A medical practitioner may regard a person's consent to assessment or treatment as being informed if he or she is satisfied that:

- The person has decision making capacity at the time of giving the consent, and
- The person has had a reasonable opportunity to make a considered decision about whether or not to give consent
- The person has given consent freely by some positive means – the consent must be given without coercion, pressure or undue influence

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## 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.



# Who may give informed consent

- Informed consent may be given by:
  - An adult with decision making capacity about his or her own assessment or treatment
  - A child with decision making capacity about his or her own assessment or treatment
  - A parent of a child who does not have decision making capacity about his or her own assessment or treatment
- Informed consent may be withdrawn by the person who gave it
- If the patient is a child, the consent of all parents to withdrawal of consent is required

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## 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.

# Urgent circumstances treatment slide 1

- A patient may be given 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
- Treatment may only be authorised if the 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 of the Tribunal on an interim basis
- Urgent circumstances treatment may be authorised for patients on Assessment Orders and Treatment Orders
- Urgent circumstances treatment may also be authorised for forensic patients

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## 55. Urgent circumstances treatment

(1) An involuntary 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) An 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) An approved medical practitioner may give the authorisation if, and only if, he or she has concluded from an assessment 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 CCP 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 Chief Civil Psychiatrist and the Tribunal;

**(ac)** to give a copy of the authorisation to the patient (together with a statement of rights in a CCP 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 treatment;

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

**(d)** the assessment order, treatment order or interim treatment order ceases or is discharged;

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

## Urgent circumstances treatment slide 2

An approved medical practitioner may only authorise urgent circumstances treatment if he or she has concluded, from an examination, that:

- The patient has a mental illness that is generally in need of treatment
- The urgent circumstances treatment is necessary for the patient's health or safety or the safety of others
- The urgent circumstances treatment is likely to be effective and appropriate to achieve treatment outcomes
- Achieving the necessary treatment outcome would be compromised by waiting for the treatment to be authorised by the Tribunal or by a member of the Tribunal on an interim basis

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## Urgent circumstances treatment slide 3

An approved medical practitioner who authorises urgent circumstances treatment must:

- Ensure that the patient is advised of the authorisation
- Confirm the authorisation in writing and give a copy of the authorisation to the patient, the Chief Civil Psychiatrist and the Tribunal
- Place a copy of the authorisation on the patient's clinical record
- Give the patient a statement of rights

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## Urgent circumstances treatment slide 4

Once authorised, urgent circumstances treatment may be given until whichever of the first occurs first:

- The treatment is completed
- An approved medical practitioner stops the treatment (this may be for any reason)
- 96 hours after the authorisation is given
- The Assessment Order, Treatment Order or interim Treatment Order ceases or is discharged
- The Tribunal sets the authorisation aside

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# Treatment Plans

- A treatment plan is a document that outlines the treatment that an involuntary patient is to receive
- Each involuntary patient is required to have a treatment plan
- A treatment plan may be prepared by any medical practitioner involved in the patient's treatment or care
- Consultation must occur with the patient
- Consultation may also occur with other people, as the medical practitioner thinks fit in the circumstances
- Treatment plans may be varied at any time

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## 50. Nature of treatment plan

The treatment plan for a patient is an instrument that sets out an outline of the treatment the patient is to receive.

## 51. Requirement for treatment plan

The CCP is to ensure that each involuntary patient has a treatment plan.

## 52. Form of treatment plan

A treatment plan is to be in a CCP approved form.

## 53. Preparation of treatment plan

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

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

(a) is to consult the patient; and

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

- (3)** A medical practitioner who prepares a treatment plan is to –
- (a)** give a copy of the treatment plan to –
    - (i)** the patient; and
    - (ii)** the CCP; and
  - (b)** place a copy of the treatment plan on the patient's clinical record.

#### **54. Variation of treatment plan**

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

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

- (3)** In varying a treatment plan, a medical practitioner –
- (a)** is to consult the patient; and
  - (b)** may, after consulting the patient, consult such other persons as the medical practitioner thinks fit in the circumstances.

- (4)** A medical practitioner who varies a treatment plan is to –
- (a)** ensure that the variation (and the reasons for the variation) is fully documented; and
  - (b)** give a copy of the documentation to the CCP; and
  - (c)** Place a copy of the documentation on the patient's clinical record; and
  - (d)** Give notice of the variation (and the reason for the variation) to the patient.

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



## Treatment under a Treatment Order

- A Treatment Order is authority for an involuntary patient to be given the treatment, or type of treatment, specified in the Order, without the patient's informed consent
- The Mental Health Tribunal may vary the treatment, or type of treatment, specified in the Order
- The Tribunal may vary a Treatment Order at any time on its own motion, or on the application of any approved medical practitioner or person with the necessary standing, including the patient
- The Tribunal may vary a Treatment Order whether or not it has conducted a review

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### 42. Effect of treatment order

**(1)** A treatment order is authority for the patient to be given, without informed consent, the treatment, or type of treatment, specified in the order.

**(2)** A treatment order is authority –

**(a)** for the patient to be admitted to, and if necessary, detained in an approved facility, or type of approved facility, for the purposes of receiving treatment, if the terms of the order so specify; or

**(b)** in any case, if [section 47](#) or section 47A applies in relation to the patient, authority for the patient to be admitted to and, if necessary, detained in an approved facility (other than an SMHU) – until whichever of the following first occurs:

**(c)** the order is varied so as to provide for a different treatment setting;

**(d)** if the detention is authorised under the order, the order ceases to have effect under this Act.

**(3)** If a patient is admitted to an approved facility under this section, the controlling authority of the approved facility is to notify the Tribunal and the CCP of the patient's admission.

**(4)** A treatment order in respect of a person is authority for any MHO or police officer to take the patient under escort to ensure that he or she presents for

treatment under the order.

**(5)** For the purposes of subsection (2), the Tribunal, any member of the Tribunal, the Registrar, the CCP or any medical practitioner may request that the patient be taken under escort (in which case the maker of the request is to give the escort a copy of the treatment order).

**(6)** If a patient is taken under escort in accordance with this section, the custody and escort provisions apply, and continue to apply for so long as the patient is subject to the treatment order.

### **181. Review of treatment order**

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

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

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

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

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

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

**(i)** on its own motion; or

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

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

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

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

**(a)** on its own motion; or

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

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

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

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

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

**(b)** give a copy of its determination to –

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

- (ii)** if the patient is also a forensic patient, the CFP and the controlling authority of the relevant SMHU; and
- (iii)** in any other case, the CCP.

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

- (a)** has adequate facilities and staff for the appropriate treatment and care of the patient; and
- (b)** is, in the circumstances, the most appropriate place available to detain the patient.

## Treatment setting

- A Treatment Order may include a requirement that a treatment setting for a patient be an approved facility, or a premises or place, or type of approved facility or premises or place, specified in the Order
- A Treatment Order may also provide for a combination of treatment settings and for the admission, and readmission of the patient to those settings
- A patient subject to a Treatment Order may be admitted to and, if necessary, detained in an approved facility, or type of approved facility, for the purposes of receiving treatment, if this is permitted by the Order

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### 38. Interim treatment order

**(1)** Despite section 36, a single member of the Tribunal may make an interim treatment order in respect of a person if, but only if, the member is satisfied that –

**(a)** an approved medical practitioner has applied for a treatment order in respect of the person; and

**(b)** the requirements of section 37 appear to have been met in respect of the application; and

**(c)** the person meets the treatment criteria; and

**(d)** the Tribunal cannot immediately determine the application; and

**(e)** the delay that would be involved in awaiting a decision of the Tribunal under section 39 should the interim treatment order not be made would, or is likely to, seriously harm –

**(i)** the person's health or safety; or

**(ii)** the safety of other persons.

**(2)** An interim treatment order may include a requirement –

**(a)** that the treatment setting for a patient be –

**(i)** an approved facility (other than an SMHU), or a premises or place, specified in the order; or

**(ii)** a type of approved facility (other than an SMHU), or a type of premises or place, specified in the order; and

**(b)** that, for the purposes of receiving treatment, a patient may be

admitted to and, if necessary, detained in –

- (i) an approved facility (other than an SMHU) specified in the order; or
- (ii) a type of approved facility (other than an SMHU) specified in the order.

**(2A)** An interim treatment order may provide for a combination of treatment settings and for the admission and re-admission of the patient to those settings.

**(3)** Despite subsection (2), the Tribunal member is not to make an interim treatment order requiring a patient who is a child to be admitted to and, if necessary, detained in an approved hospital for the purposes of receiving treatment unless the member is satisfied that the hospital –

- (a) has facilities and staff for the treatment and care of the patient; and
- (b) is, in the circumstances, the most appropriate place available to accommodate the patient.

**(4)** The Tribunal member may make the interim treatment order on the basis of the application alone, without any hearing or further investigation.

**(5)** Section 41 applies in relation to the making of an interim treatment order.

**(6)** If an interim treatment order is made, the order is, for all purposes, taken to be a treatment order made by the Tribunal except that sections 43, 44 and 48 do not apply in relation to the order.

**(7)** The interim treatment order –

- (a) takes effect as soon as it is made; and
- (b) continues in effect, subject to subsection (8), until the application is determined by the Tribunal.

**(8)** Any Tribunal member may revoke or amend the interim treatment order at any time.

**(9)** The interim treatment order lapses after 10 days (calculated from the precise time it is made) if, by then, the Tribunal has not determined the application.

### **39. Determination of application for treatment order**

**(1)** The Tribunal may make a treatment order in respect of a person if, and only if, it is satisfied that –

- (a) an approved medical practitioner has applied for a treatment order in respect of the person; and
- (b) the requirements of section 37 have been met in respect of the application; and

(c) the person meets the treatment criteria; and  
(d) a treatment plan has been prepared for the person; and  
(e) the requirements of section 53(2) appear to have been met with respect to the treatment plan.

**(2)** A treatment order may include a requirement –

(a) that the treatment setting for a patient be –  
(i) an approved facility (other than an SMHU), or a premises or place, specified in the order; or  
(ii) a type of approved facility (other than an SMHU), or a type of premises or place, specified in the order; and  
(b) that, for the purposes of receiving treatment, a patient may be admitted to and, if necessary, detained in –  
(i) an approved facility (other than an SMHU) specified in the order; or  
(ii) a type of approved facility (other than an SMHU) specified in the order.

**(2A)** A treatment order may provide for a combination of treatment settings and for the admission and re-admission of the patient to those settings.

**(3)** Despite subsection (2), the Tribunal is not to make a treatment order requiring a patient who is a child to be admitted to and, if necessary, detained in an approved hospital for the purposes of receiving treatment unless it is satisfied that the hospital –

(a) has facilities and staff for the treatment and care of the patient;  
and  
(b) is, in the circumstances, the most appropriate place available to accommodate the patient.

**(4)** The Tribunal is to determine an application for a treatment order as soon as practicable after it is received and must do so by way of a hearing.

**(5)** An application for a treatment order lapses and is rendered invalid if the Tribunal for any reason fails to determine the application within 10 days after it is lodged.

**(6)** The President of the Tribunal is to ensure that a hearing for the purposes of this section is before a division of the Tribunal constituted by 3 members.

#### **42. Effect of treatment order**

**(1)** A treatment order is authority for the patient to be given, without informed consent, the treatment, or type of treatment, specified in the order.

**(2)** A treatment order is authority –

(a) for the patient to be admitted to, and if necessary, detained in an

approved facility, or type of approved facility, for the purposes of receiving treatment, if the terms of the order so specify; or

**(b)** in any case, if [section 47](#) or section 47A applies in relation to the patient, authority for the patient to be admitted to and, if necessary, detained in an approved facility (other than an SMHU) –

until whichever of the following first occurs:

**(c)** the order is varied so as to provide for a different treatment setting;

**(d)** if the detention is authorised under the order, the order ceases to have effect under this Act.

**(3)** If a patient is admitted to an approved facility under this section, the controlling authority of the approved facility is to notify the Tribunal and the CCP of the patient's admission.

**(4)** A treatment order in respect of a person is authority for any MHO or police officer to take the patient under escort to ensure that he or she presents for treatment under the order.

**(5)** For the purposes of subsection (2), the Tribunal, any member of the Tribunal, the Registrar, the CCP or any medical practitioner may request that the patient be taken under escort (in which case the maker of the request is to give the escort a copy of the treatment order).

**(6)** If a patient is taken under escort in accordance with this section, the custody and escort provisions apply, and continue to apply for so long as the patient is subject to the treatment order.

## Treatment setting (cont.)

- A patient subject to a Treatment Order may be admitted to and, if necessary, detained in an approved facility (other than a secure mental health unit) if the patient has failed to comply with the Order under section 47
- A patient subject to a Treatment Order may also be admitted to, and if necessary, detained in an approved facility if the patient requires admission to prevent possible harm under section 47A of the Act despite the patient's compliance with the Order

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## Failure to comply with a Treatment Order

- A patient's treating medical practitioner may seek to have the patient who is subject to a Treatment Order admitted to, and if necessary, detained in an approved facility if section 47 of the Act applies
- Section 47 of the Act applies if:
  - Reasonable steps have been taken to obtain the patient's compliance with the Order, and
  - The treating medical practitioner is satisfied on reasonable grounds that, despite the steps that have been taken to obtain the patient's compliance, the patient has failed to comply with the Order, and
  - The failure in compliance has seriously harmed, or is likely to seriously harm, the patient's health or safety or the safety of other people, and
  - The harm or likely harm cannot be addressed except by way of an alternative treatment setting

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### 47. Failure to comply with treatment order

**(1)** This section applies if -

- (a)** a patient is subject to a treatment order; and
- (b)** reasonable steps have been taken to obtain the patient's compliance with the order; and
- (c)** the treating medical practitioner is satisfied on reasonable grounds that –
  - (i)** despite those reasonable steps, the patient has failed to comply with the treatment order; and
  - (ii)** the failure in compliance has seriously harmed, or is likely to seriously harm –
    - (A)** the patient's health or safety; or
    - (B)** the safety of other persons; and
  - (iii)** the harm or likely harm cannot be adequately addressed except by way of alternative treatment or treatment setting (being a treatment or treatment setting that is inconsistent with the treatment order).

**(2)** If this section applies, the treating medical practitioner may, according to the circumstances –

- (a)** apply to the Tribunal, under Division 2 of Part 3 of Chapter 3, to vary the treatment order; or
- (b)** seek to have the patient admitted to and, if necessary, detained in an approved facility under and in accordance with section 42; or

- (c)** authorise urgent circumstances treatment under section 55 if the treating medical practitioner is an approved medical practitioner; or
- (d)** seek authorisation to give urgent circumstances treatment under section 55 if the treating medical practitioner is not an approved medical practitioner.

**(3)** However, the treating medical practitioner is not, by any of the processes referred to in subsection (2), to seek to have a patient who is a child admitted to and, if necessary, detained in an approved hospital unless the treating medical practitioner is satisfied that the hospital -

- (a)** has facilities and staff for the treatment and care of the patient; and
- (b)** is, in the circumstances, the most appropriate place to accommodate the patient.

## Admission to prevent possible harm

- A patient's treating medical practitioner may seek to have the patient who is subject to a Treatment Order taken under escort and involuntarily admitted to, and detained in, an approved facility if section 47A of the Act applies
- Section 47A of the Act applies if:
  - The patient's Treatment Order provides for a combination of treatment settings and for the admission and re-admission of the patient to those settings, and
  - The patient has complied with the Treatment Order, and
  - The treating medical practitioner is satisfied on reasonable grounds that, despite the patient's compliance, the patient's safety or the safety of others has been, or is likely to be, seriously harmed, and
  - The harm, or likely harm cannot be adequately addressed except by way of the patient's admission or readmission to, and if necessary, detention in an approved hospital

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### 47A. Admission to prevent possible harm

**(1)** This section applies if -

**(a)** a patient is subject to a treatment order that provides for a combination of treating settings and for the admission and re-admission of the patient to those settings; and

**(b)** the patient has complied with the treatment order; and

**(c)** the treating medical practitioner is satisfied on reasonable grounds that –

**(i)** despite the patient's compliance, the patient's health or safety or the safety of any other person has been, or is likely to be, seriously harmed; and

**(ii)** the harm, or likely harm, cannot be adequately addressed except by way of the patient's admission or readmission to and, if necessary, detention in an approved hospital.

**(2)** If this section applies, the treating medical practitioner may, according to the circumstances, seek to have the patient taken under escort and involuntarily admitted to, and detained in, an approved facility under and in accordance with section 42.

**(3)** However, the treating medical practitioner is not to seek to have a patient who is a child admitted to and, if necessary, detained in an approved hospital unless the treating medical practitioner is satisfied that the hospital -

**(a)** has facilities and staff for the treatment and care of the patient; and  
**(b)** is, in the circumstances, the most appropriate place to accommodate the patient.

# Treatment for forensic patients

The Tribunal may authorise treatment for a forensic patient on application of an approved medical practitioner if satisfied that:

- The patient has a mental illness, and
- Without treatment, the mental illness will, or is likely to, seriously harm the patient's health or safety or the safety of others, and
- The treatment will be appropriate and effective in terms of the treatment outcomes referred to in the meaning of treatment set out in the Act, and
- The patient does not have decision making capacity

Chief Psychiatrist Approved

## 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 for forensic patients (cont.)

- A single member of the Tribunal may authorise treatment on an interim basis without conducting a hearing
- Interim authorisation lasts for up to 14 days
- The Tribunal's authorisation has effect according to its terms, and may be subject to conditions around time, method, supervision or other matters
- The Tribunal is required to give copy of the authorisation to the patient, the approved medical practitioner who applied for the authorisation and the Chief Forensic Psychiatrist
- The Tribunal must also give the patient a statement of rights

Chief Psychiatrist Approved

### 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.



## Special psychiatric treatment

- A person may only be given special psychiatric treatment if the treatment has been authorised, beforehand and in writing, by the Tribunal, and if the patient gives informed consent
- Currently, applies only to psychosurgery
- The Tribunal may only authorise the treatment if an approved medical practitioner, a Chief Psychiatrist and an independent expert agree that the treatment should be given
- The Tribunal may only authorise special psychiatric treatment at a hearing before three members and there must be unanimous agreement between the members

Chief Psychiatrist Approved

### 122. Meaning of *special psychiatric treatment*

(1) For the purposes of this Act, *special psychiatric treatment* is –

- (a) psychosurgery; or
- (b) any treatment that the regulations declare to be special psychiatric treatment.

(2) For the purposes of [subsection \(1\)](#), *psychosurgery* is either of the following procedures:

- (a) the use of surgery or intracerebral electrodes to create a lesion in a person's brain with the intention of permanently altering the person's thoughts, emotions or behaviour;
- (b) the use of intracerebral electrodes to stimulate a person's brain (without creating a lesion) with the intention of temporarily altering or influencing the person's thoughts, emotions or behaviour.

(3) For the purposes of [subsection \(2\)](#) –

- (a) it is irrelevant whether the procedure will, by itself, fully achieve the relevant intention; and
- (b) the behaviour referred to is not behaviour that is secondary to epilepsy.

### 123. Application of Part

This Part applies to all patients and to all voluntary patients.

#### **124. Restriction on provision of special psychiatric treatment**

- (1)** A patient may be given special psychiatric treatment if, and only if –
- (a)** the treatment has been authorised, beforehand and in writing, by the Tribunal; and
  - (b)** if the treatment is psychosurgery, or a treatment that the regulations specify as a treatment that requires informed consent, informed consent has been given for the treatment.

**(2)** A person who gives a patient special psychiatric treatment in contravention of [subsection \(1\)](#) is guilty of an offence.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 12 months.

**(3)** A medical practitioner, nurse or other health professional who gives a patient special psychiatric treatment otherwise than as provided by [subsection \(1\)](#) is not only guilty of an offence under [subsection \(2\)](#) but is also guilty of professional misconduct of the most serious kind.

#### **125. Clinical restriction on authorisation of special psychiatric treatment**

**(1)** The Tribunal may authorise special psychiatric treatment to be given to a patient if, and only if –

**(a)** an approved medical practitioner has assessed the patient in the previous 7 days; and

**(b)** the approved medical practitioner has concluded from the assessment that –

**(i)** the patient has a mental illness; and

**(ii)** the mental illness is in general need of treatment; and

**(iii)** the mental illness is amenable to the special psychiatric treatment; and

**(iv)** the special psychiatric treatment is, having regard to the patient's condition and treatment history and the risks and benefits of the special psychiatric treatment, a reasonable and appropriate treatment for the patient; and

**(v)** the treatment is necessary for –

**(A)** the patient's health or safety; or

**(B)** the safety of other persons; and

**(c)** a Chief Psychiatrist and an independent expert, having regard to the nature, quality and results of the assessment, both agree with the approved medical practitioner's conclusions; and

**(d)** the Tribunal, having regard to the nature, quality and results of the assessment, also agrees with the approved medical practitioner's conclusions; and

- (e) the Tribunal is satisfied that appropriate equipment and facilities are available in this State for giving the special psychiatric treatment; and
- (f) if the treatment is psychosurgery, or a treatment that is specified in the regulations as one that requires informed consent, the Tribunal is satisfied that informed consent has been given for the treatment.

(2) In this section –

**independent expert** means a person who –

- (a) by virtue of professional qualifications, knowledge or experience, has expertise directly relevant to the relevant mental illness and its treatment; and
- (b) in terms of [section 222\(1\)](#) and [\(2\)](#), has no clear conflict of interest as regards the relevant patient.

## **126. Procedural restriction on authorisation of special psychiatric treatment**

(1) Despite [section 125](#), the Tribunal must not authorise any special psychiatric treatment except –

- (a) consequent on a hearing held before at least 3 members; and
- (b) on the unanimous affirmative vote of those members, with no proxies or abstentions.

(2) A Tribunal authorisation given contrary to [subsection \(1\)](#) is invalid.

## **127. Tribunal obligations regarding authorisations**

(1) The Tribunal is to ensure that an authorisation of special psychiatric treatment specifies –

- (a) the precise nature of the treatment; and
- (b) the number of times the treatment may be given; and
- (c) the person who (by name or office) may give the treatment; and
- (d) when the treatment may be given; and
- (e) any special requirements as to method, dosage, frequency, supervision, recovery or other relevant matters.

(2) On authorising any special psychiatric treatment, the Tribunal is to ensure that –

- (a) a copy of the authorisation is given to the patient before the treatment commences (together with, depending on the patient's status, a statement of rights in a CCP or CFP approved form); and
- (b) a copy of the authorisation is, depending on the patient's status, given to the CCP or CFP.

## **128. Records, &c.**

(1) If a patient is given special psychiatric treatment, the treating medical practitioner is to –

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

- (b)** place a copy of the record on the patient's clinical record; and
- (c)** give, at the end of the month in which the treatment is given, a copy of the record to –
  - (i)** the relevant Chief Psychiatrist; and
  - (ii)** the Tribunal.

**(2)** The Tribunal or relevant Chief Psychiatrist, by notice, may require the treating medical practitioner to provide further information about the special psychiatric treatment within a required time and the treating medical practitioner is to comply with such a requirement.

## Questions

# Any questions?

Chief Psychiatrist Approved