

**Version No. 093**  
**Mental Health Act 1986**  
**No. 59 of 1986**

Version incorporating amendments as at 1 December 2008

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**Version No. 093**  
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**No. 59 of 1986**

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**The Parliament of Victoria enacts as follows:**

**PART 1—PRELIMINARY**

**1 Purpose**

The purpose of this Act is to reform the law relating to mental health.

**2 Commencement**

This Act comes into operation on a day or days to be proclaimed.

**3 Definitions**

(1) In this Act—

S. 3(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1)  
(ILA s. 39B(1)).

\* \* \* \* \*

S. 3(1) def. of  
*Administrative Appeals Tribunal*  
repealed by  
No. 52/1998  
s. 311(Sch. 1  
item 61.1(a)).

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S. 3(1) def. of  
*approved  
mental health  
service*  
inserted by  
No. 98/1995  
s. 4(b),  
amended by  
No. 77/1997  
s. 3,  
substituted by  
No. 76/2003  
s. 29.

*approved mental health service* means premises  
or a service—

- (a) proclaimed to be an approved mental  
health service under section 94,  
including the Victorian Institute of  
Forensic Mental Health; or
- (b) declared to be an approved mental  
health service under section 94A;

S. 3(1) def. of  
*approved  
psychiatric  
hospital*  
repealed by  
No. 98/1995  
s. 4(a).

\* \* \* \* \*

S. 3(1) def. of  
*assessment  
order*  
inserted by  
No. 76/2003  
s. 4(1)(d).

*assessment order* means an order made under  
section 90 of the **Sentencing Act 1991**;

S. 3(1) def. of  
*authority to  
transport*  
inserted by  
No. 76/2003  
s. 4(1)(d).

*authority to transport* means an authority to  
transport under section 9A(1)(c);

*authorized psychiatrist* means the person  
appointed as authorized psychiatrist under  
section 96;

**Board** means the Mental Health Review Board  
established under section 21;

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S. 3(1) def. of *Chief General Manager* substituted by No. 42/1993 s. 25(a), amended by No. 55/1996 s. 4(1)(a)(i), repealed by No. 46/1998 s. 7(Sch. 1).

*chief psychiatrist* means the person appointed as chief psychiatrist under section 105;

S. 3(1) def. of *chief psychiatrist* amended by No. 32/1990 s. 33(a).

*community treatment order* means an order made under section 14;

S. 3(1) def. of *community treatment order* inserted by No. 42/1988 s. 4(1), amended by No. 98/1995 s. 4(c), substituted by No. 76/2003 s. 4(1)(a).

*community visitor* means a community visitor appointed under section 108;

*Correctional Services Commissioner* means the Commissioner referred to in section 8A of the **Corrections Act 1986**;

S. 3(1) def. of *Correctional Services Commissioner* inserted by No. 7/2002 s. 36(1).

*Department* means the Department of Human Services;

S. 3(1) def. of *Department* amended by Nos 42/1993 s. 25(b), 55/1996 s. 4(1)(a)(ii).

*determination* in relation to the Board, includes order, direction, consent, advice and approval;

S. 3(1) def. of *diagnosis, assessment and treatment order* inserted by No. 76/2003 s. 4(1)(d).

*diagnosis, assessment and treatment order* means an order made under section 91 of the **Sentencing Act 1991**;

*executive officer* means the executive officer of the Board appointed under section 23;

S. 3(1) def. of *forensic patient* inserted by No. 65/1997 s. 86(1)(a), amended by Nos 7/2002 s. 36(2)(3), 44/2004 s. 3.

*forensic patient* means—

- (a) a person—
  - (i) remanded in custody in an approved mental health service; or
  - (ii) committed to custody in an approved mental health service by a supervision order—

under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or

- (ab) a person detained in an approved mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- (ac) a person deemed to be a forensic patient by section 73E(4) or 73K(8) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- (ad) a person detained in an approved mental health service under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth; or

- (b) a person transferred from a prison to an approved mental health service under section 17;

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S. 3(1) def. of *hospital order* inserted by No. 76/2003 s. 4(1)(d), repealed by No. 69/2005 s. 7(1)(b).

*hospital security order* means—

- (a) an order made under section 93A of the **Sentencing Act 1991**; or  
(b) an order made under section 16A of this Act;

S. 3(1) def. of *hospital security order* inserted by No. 76/2003 s. 4(1)(d), substituted by No. 69/2005 s. 7(1)(c).

*hospital transfer order* means an order made under section 16(3)(a);

S. 3(1) def. of *hospital transfer order* inserted by No. 76/2003 s. 4(1)(d).

*informed consent*, for the purposes of Part 5, has the meaning given in section 53B;

S. 3(1) def. of *informed consent* inserted by No. 98/1995 s. 4(b).

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S. 3(1) def. of  
*involuntary  
patient*  
amended by  
Nos 49/1991  
s. 119(7)  
(Sch. 4 item  
14.1), 98/1995  
s. 4(d)(i)(ii),  
55/1996  
s. 4(1)(b),  
substituted by  
No. 76/2003  
s. 4(1)(b),  
amended by  
No. 69/2005  
s. 7(1)(d).

*involuntary patient* means—

- (a) a person who is subject to an involuntary treatment order (including a person who is subject to a community treatment order); or
- (b) a person who is subject to a restricted involuntary treatment order (including a person who is subject to a restricted community treatment order); or
- (c) a person who is subject to an assessment order or a diagnosis, assessment and treatment order; or
- (d) a person who is subject to a hospital transfer order; or
- (e) a person whose detention and treatment is continued under section 12A(4) or 12C; or
- (f) a person to whom section 93F, 93H or 93K(5) applies;

S. 3(1) def. of  
*involuntary  
treatment  
order*  
inserted by  
No. 76/2003  
s. 4(1)(d).

*involuntary treatment order* means an order made under section 12 or 12AA;

S. 3(1) def. of  
*medical  
practitioner*  
repealed by  
No. 23/1994  
s. 118(Sch. 1  
item 38.1(a)).

*licence* means a licence issued under section 75;

\* \* \* \* \*

S. 3(1) def. of  
*mental  
disorder*  
inserted by  
No. 98/1995  
s. 4(b).

*mental disorder* includes mental illness;



*mental illness* has the meaning given in section 8;

S. 3(1) def. of *mental illness* inserted by No. 98/1995 s. 4(b).

*Panel* means Forensic Leave Panel established under section 59 of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

S. 3(1) def. of *Panel* inserted by No. 65/1997 s. 86(1)(b).

*patient* means—

- (a) a forensic patient; or
- (b) an involuntary patient; or
- (c) a security patient;

S. 3(1) def. of *patient* amended by Nos 98/1995 s. 4(e), 65/1997 s. 86(1)(c).

*prescribed* means prescribed by the regulations;

*President* means the President of the Board appointed under section 21;

*primary carer* means any person who is primarily responsible for providing support or care to a person other than wholly or substantially on a commercial basis;

S. 3(1) def. of *primary carer* amended by No. 98/1995 s. 4(f).

*private hospital* has the same meaning as in the **Health Services Act 1988**;

S. 3(1) def. of *private hospital* amended by No. 68/1996 s. 37.

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S. 3(1) def. of *psychiatric in-patient service* repealed by No. 98/1995 s. 4(a).

*Psychosurgery Review Board* means the Psychosurgery Review Board established under section 56;

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S. 3(1) def. of  
*Public Advocate*  
inserted by  
No. 42/1988  
s. 4(2),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 61.1(b)).

***Public Advocate*** means the Public Advocate  
appointed under the **Guardianship and  
Administration Act 1986**;

S. 3(1) def. of  
*registered medical  
practitioner*  
inserted by  
No. 23/1994  
s. 118(Sch. 1  
item 38.1(b)),  
amended by  
No. 97/2005  
s. 182(Sch. 4  
item 37(a)).

***registered medical practitioner*** means a medical  
practitioner registered under the **Health  
Professions Registration Act 2005**;

S. 3(1) def. of  
*registered nurse*  
inserted by  
No. 98/1995  
s. 4(b),  
amended by  
No. 97/2005  
s. 182(Sch. 4  
item 37(b)).

***registered nurse*** means a nurse whose name is  
included in division 1 or 3 of the register of  
nurses kept under the **Health Professions  
Registration Act 2005**;

S. 3 def. of  
*regulations*  
repealed by  
No. 98/1995  
s. 4(a).

\* \* \* \* \*

S. 3(1) def. of  
*request and recommend-  
ation*  
inserted by  
No. 76/2003  
s. 4(1)(d).

***request and recommendation*** means a request  
and recommendation under section 9;

S. 3(1) def. of  
*restricted community  
treatment order*  
inserted by  
No. 76/2003  
s. 4(1)(d).

***restricted community treatment order*** means an  
order made under section 15A;

*restricted hospital transfer order* means an order made under section 16(3)(b);

S. 3(1) def. of *restricted hospital transfer order* inserted by No. 76/2003 s. 4(1)(d).

*restricted involuntary treatment order* means an order made under section 93 of the **Sentencing Act 1991**;

S. 3(1) def. of *restricted involuntary treatment order* inserted by No. 69/2005 s. 7(1)(a).

*Secretary* means—

- (a) in relation to any act to which section 6(3) of the **Health Act 1958** applies, the body corporate established under section 6 of that Act;
- (b) in any other case, the Secretary to the Department;

S. 3(1) def. of *Secretary* inserted by No. 98/1995 s. 4(b), amended by No. 55/1996 s. 4(1)(c), substituted by No. 46/1998 s. 7(Sch. 1).

*security patient* means—

- (a) a person detained in an approved mental health service under a hospital security order or a restricted hospital transfer order; or
- (b) a person detained in an approved mental health service while serving a sentence of imprisonment within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth—

S. 3(1) def. of *security patient* amended by Nos 49/1991 s. 119(7) (Sch. 4 item 14.2), 98/1995 s. 4(g), 65/1997 s. 86(1)(d)(i)(ii), 67/1998 s. 16, 76/2003 s. 4(1)(c), substituted by No. 69/2005 s. 7(1)(e).

including a person who is on leave of absence or special leave of absence or is absent without leave;

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S. 3(1) def. of  
*senior  
available next  
of kin*  
inserted by  
No. 27/2001  
s. 6(Sch. 4  
item 6).

*senior available next of kin* has the same meaning  
as in the **Human Tissue Act 1982**;

S. 3(1) def. of  
*senior officer*  
amended by  
No. 42/1988  
s. 4(3),  
substituted by  
No. 98/1995  
s. 4(h).

*senior officer*, in relation to an approved mental  
health service, means the person appointed  
as the senior officer of that service under  
section 87A;

S. 3(1) def. of  
*treatment*  
inserted by  
No. 98/1995  
s. 4(b).

*treatment*, in relation to a mental disorder, means  
things done in the course of the exercise of  
professional skills to—

- (a) remedy the mental disorder; or
- (b) lessen its ill effects or the pain and  
suffering which it causes;

S. 3(1) def. of  
*treatment plan*  
inserted by  
No. 76/2003  
s. 4(1)(d).

*treatment plan* for a patient, means the patient's  
treatment plan under section 19A;

S. 3(1) def. of  
*Tribunal*  
inserted by  
No. 52/1998  
s. 311(Sch. 1  
item 61.1(c)).

*Tribunal* means Victorian Civil and  
Administrative Tribunal established by the  
**Victorian Civil and Administrative  
Tribunal Act 1998**;

S. 3(1) def. of  
*voluntary  
patient*  
repealed by  
No. 98/1995  
s. 4(a).

\* \* \* \* \*

S. 3(2)  
inserted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 132.1).

- (2) If under the **Public Administration Act 2004** the  
name of the Department of Human Services is  
changed, the reference in the definition of  
*Department* in subsection (1) to that Department  
must, from the date when the name is changed, be  
treated as a reference to the Department by its new  
name.

### 3A Meaning of consent of a person

S. 3A  
inserted by  
No. 41/2002  
s. 29.

- (1) In considering, for the purposes of a provision listed in subsection (2), whether a person in respect of whom—

- (a) a guardian within the meaning of the **Guardianship and Administration Act 1986**; or
- (b) a person responsible within the meaning given by section 37 of that Act may make decisions relating to treatment; or
- (c) an agent has been appointed under the **Medical Treatment Act 1988**—

has refused or is unable to give consent (including informed consent) to treatment, or has given such consent, only that person's personal refusal or consent is relevant and not the refusal or consent of that person's guardian, the person responsible, the agent or the Tribunal.

- (2) Subsection (1) applies for the purposes of each of these provisions—

- (a) section 8 (criteria for involuntary treatment);
- (b) section 12AB (interim treatment under involuntary treatment order);
- (c) section 12AD (treatment for involuntary patients);
- (d) section 16B (treatment for security patients);

S. 3A(2)(a)  
substituted by  
No. 76/2003  
s. 4(2).

S. 3A(2)(b)  
substituted by  
No. 76/2003  
s. 4(2).

S. 3A(2)(c)  
substituted by  
No. 76/2003  
s. 4(2).

S. 3A(2)(d)  
substituted by  
No. 69/2005  
s. 7(2).

- 
- (e) section 17A (status of forensic patients);
  - (f) section 53B (requirements for obtaining informed consent);
  - (g) section 57 (consent required);
  - (h) section 73 (informed consent required);
  - (i) section 83 (definitions concerning non-psychiatric treatment).
- (3) This section has effect despite anything in the **Guardianship and Administration Act 1986**, the **Medical Treatment Act 1988** or any other law.
-

**PART 2—OBJECTS, OBJECTIVES, FUNCTIONS AND PRINCIPLES**

Pt 2  
(Heading)  
amended by  
No. 98/1995  
s. 5.

**4 Objects of Act**

(1) The objects of this Act are—

- (a) to provide for the care, treatment and protection of mentally ill people who do not or cannot consent to that care, treatment or protection; and
- (ab) to facilitate the provision of treatment and care to people with a mental disorder; and
- (ac) to protect the rights of people with a mental disorder; and
- (b) to establish a Mental Health Review Board; and
- (c) to establish a Psychosurgery Review Board; and
- (d) to provide for the appointment and functions of community visitors; and
- (da) to establish a Victorian Institute of Forensic Mental Health; and
- (e) to ensure that people with a mental disorder are informed of and make use of the provisions of this Act.

S. 4(1)(a)  
substituted by  
No. 98/1995  
s. 6(1)(a).

S. 4(1)(ab)  
inserted by  
No. 98/1995  
s. 6(1)(a).

S. 4(1)(ac)  
inserted by  
No. 98/1995  
s. 6(1)(a).

S. 4(1)(da)  
inserted by  
No. 77/1997  
s. 4.

S. 4(1)(e)  
amended by  
No. 98/1995  
s. 6(1)(b).

(2) It is the intention of Parliament that the provisions of this Act are to be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that—

**s. 5**

S. 4(2)(a)  
substituted by  
No. 98/1995  
s. 6(2)(a).

(a) people with a mental disorder are given the best possible care and treatment appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that care and treatment; and

S. 4(2)(b)  
amended by  
No. 98/1995  
s. 6(2)(b)  
(i)–(iii).

(b) in providing for the care and treatment of people with a mental disorder and the protection of members of the public any restriction upon the liberty of patients and other people with a mental disorder and any interference with their rights, privacy, dignity and self-respect are kept to the minimum necessary in the circumstances.

## **5 Objectives of the Department**

The objectives of the Department under this Act are as follows—

(a) to establish, develop, promote, assist and encourage mental health services which—

S. 5(a)(i)  
amended by  
No. 98/1995  
s. 7(a)(i)(A)(B).

(i) provide standards and conditions of care and treatment for people with a mental disorder which are in all possible respects at least equal to those provided for people suffering from other forms of illness; and

S. 5(a)(ii)  
substituted by  
No. 98/1995  
s. 7(a)(ii).

(ii) take into account the age-related, gender-related, religious, cultural, language and other special needs of people with a mental disorder; and

S. 5(a)(iii)  
amended by  
No. 98/1995  
s. 7(a)(iii).

(iii) minimize the adverse effects of mental disorders on the individual and his or her family and community; and



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- |   |   |
|---|---|
| (iv) are comprehensive and accessible; and  |   |
| (v) are designed to promote the mental health of, and reduce the incidence of mental disorder in, the community; and  | <b>S. 5(a)(v)</b><br>amended by<br>No. 98/1995<br>s. 7(a)(iv).        |
| (vi) provide for intervention at an early stage of mental disorder; and   | <b>S. 5(a)(vi)</b><br>amended by<br>No. 98/1995<br>s. 7(a)(v).        |
| (vii) support people with a mental disorder in the community and co-ordinate with other community services; and   | <b>S. 5(a)(vii)</b><br>amended by<br>No. 98/1995<br>s. 7(a)(vi)(vii). |
| (viii) provide information on, and access to, complaint mechanisms about standards of treatment and care; and   | <b>S. 5(a)(viii)</b><br>inserted by<br>No. 98/1995<br>s. 7(a)(vii).   |
| (ix) encourage patients and other people with a mental disorder to participate as far as possible in the development and operation of those services;   | <b>S. 5(a)(ix)</b><br>inserted by<br>No. 98/1995<br>s. 7(a)(vii).     |
| (b) to ensure that patients and other people with a mental disorder are informed of their legal rights and other entitlements under this Act and that the relevant provisions of this Act are explained to patients and other people with a mental disorder in the language, mode of communication or terms which they are most likely to understand; | <b>S. 5(b)</b><br>amended by<br>No. 98/1995<br>s. 7(b)(i)(ii).        |
| (c) to ensure that appropriate facilities and services are available for the care and treatment of security patients and forensic patients.   | <b>S. 5(c)</b><br>amended by<br>No. 65/1997<br>s. 86(2).              |
-

S. 6  
amended by  
Nos 74/1987  
s. 11, 42/1993  
s. 26(a)(b),  
substituted by  
No. 98/1995  
s. 8.

## 6 Functions of the Secretary

The functions of the Secretary under this Act are as follows—

- (a) to facilitate the provision of care, protection, treatment and rehabilitation of people (including children) with a mental disorder;
- (b) to facilitate the planning, co-ordination and development of a comprehensive and accessible range of mental health services which are integrated within an identifiable mental health program and which are provided within the organisational arrangements for general health services;
- (c) to promote the development of systems and services which improve continuity of treatment and care and which enhance access to general health, mental health and welfare services;
- (d) to oversee and monitor standards of mental health services;
- (e) to promote the establishment of community mental health services for the purpose of enabling the assessment, treatment, rehabilitation and support of people with a mental disorder and which are conducive to continued participation in community life wherever possible;
- (f) to facilitate the provision of appropriate and comprehensive information and education to people receiving treatment for a mental disorder in an approved mental health service and other people with a mental disorder about their mental disorder, its treatment and the services available to meet their needs;

- (g) to facilitate education, assistance and consultation programs about mental disorders for primary health care workers in order to help them understand, manage and appropriately refer people with a mental disorder;
- (h) to facilitate education about mental disorders to educators, police and other non-health professionals to enable them to recognise and refer people who may have a mental disorder;
- (i) to promote, encourage and assist the development and maintenance of a high standard of training of people responsible for the care and treatment of people with a mental disorder;
- (j) to support the development of services which assist carers and promote self-help and advocacy for people with a mental disorder;
- (k) to facilitate the provision of information, education and support to carers and advocates;
- (l) to assist in the identification of special needs groups and to encourage the development of mental health services which are responsive to the varying needs of those groups;
- (m) to promote research into mental disorders;
- (n) to make recommendations and reports to the Minister with respect to matters affecting the health, accommodation, maintenance, care, treatment and welfare of people with a mental disorder;
- (o) to submit recommendations to the Minister concerning amendments to this Act or the regulations;

- (p) to promote informed public opinion on matters of mental health by publishing reports and information and giving advice concerning mental disorders and to promote public understanding of, and involvement in, measures for the prevention, treatment and care of mental disorders and the care, protection and rehabilitation of people with a mental disorder;
- (q) to carry out or arrange for the carrying out of any works necessary to provide services or facilities to give effect to this Act;
- (r) to purchase, rent, lease, sell, renovate and maintain or otherwise deal with any land or buildings for the purposes of this Act in the name of the Secretary or any government agency;
- (s) subject to the general direction and control of the Minister, to administer this Act;
- (t) any other functions that may be necessary for the proper administration of this Act.

**S. 6A**  
**inserted by**  
**No. 98/1995**  
**s. 9.**

#### **6A Principles of treatment and care**

It is the intention of Parliament that the following principles be given effect to with respect to the provision of treatment and care to people with a mental disorder—

- (a) people with a mental disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards;
- (b) wherever possible, people with a mental disorder should be treated in the community;

- 
- (c) the provision of treatment and care should be designed to assist people with a mental disorder to, wherever possible, live, work and participate in the community;
  - (d) the provision of treatment and care for people with a mental disorder should promote and assist self reliance;
  - (e) people with a mental disorder should be provided with appropriate and comprehensive information about their mental disorder, proposed and alternative treatments, including medication, and services available to meet their needs;
  - (f) people with a mental disorder should be treated near their homes or the homes of relatives or friends wherever possible;
  - (g) when receiving treatment and care the age-related, gender-related, religious, cultural, language and other special needs of people with a mental disorder should be taken into consideration;
  - (h) the prescription of medication should meet the best health needs of the person with a mental disorder and should be given only for therapeutic or diagnostic purposes and never as a punishment or for the convenience of others;
  - (i) treatment and care should be provided by appropriately qualified people and within a multi-disciplinary framework;

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Part 2—Objects, Objectives, Functions and Principles

**s. 6A**

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- (j) every effort that is reasonably practicable should be made to involve a person with a mental disorder in the development of an ongoing treatment plan. Treatment and care of a person with a mental disorder should be based on this plan. The plan should be reviewed regularly and revised as necessary.
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**PART 3—ADMISSION OF PATIENTS**

**Division 1—Introductory**

Pt 3 Div. 1  
(Heading and  
s. 7)  
amended by  
Nos 42/1988  
s. 4(4)(a)(b),  
23/1994  
s. 118(Sch. 1  
item 38.2),  
repealed by  
No. 98/1995  
s. 10, new  
Pt 3 Div. 1  
(Heading  
and s. 7)  
inserted by  
No. 76/2003  
s. 5.

**7 Definitions**

New s. 7  
inserted by  
No. 76/2003  
s. 5.

In this Part—

***authorised person*** means—

- (a) a registered medical practitioner; or
- (b) a registered nurse; or
- (c) a person who is a member of a class of health service providers prescribed as a class of authorised persons for the purposes of this Part;

***mental health practitioner*** means a person who is a member of a class of health service providers prescribed as a class of mental health practitioners for the purposes of this Part;

***prescribed person*** means—

- (a) a member of the police force; or
- (b) an ambulance officer; or
- (c) a person who is a member of a class prescribed as a class of prescribed persons for the purposes of this Part;

*prescribed registered medical practitioner* means  
a registered medical practitioner of a class  
prescribed as a class of registered medical  
practitioners for the purposes of this Part.

## Division 2—Involuntary patients

S. 8 (Heading)  
inserted by  
No. 76/2003  
s. 6(1).

### 8 Criteria for involuntary treatment

S. 8(1)  
amended by  
Nos 42/1988  
s. 4(5),  
98/1995  
s. 11(1),  
41/2002  
s. 30(a),  
substituted by  
No. 76/2003  
s. 6(2).

- (1) The criteria for the involuntary treatment of a person under this Act are that—
  - (a) the person appears to be mentally ill; and
  - (b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and
  - (c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
  - (d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and
  - (e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her freedom of decision and action.

#### Note

In considering whether a person has refused or is unable to consent to treatment, see section 3A.



- (1A) Subject to subsection (2), a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.
- (2) A person is not to be considered to be mentally ill by reason only of any one or more of the following—
- (a) that the person expresses or refuses or fails to express a particular political opinion or belief;
  - (b) that the person expresses or refuses or fails to express a particular religious opinion or belief;
  - (c) that the person expresses or refuses or fails to express a particular philosophy;
  - (d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
  - (e) that the person engages in or refuses or fails to engage in a particular political activity;
  - (f) that the person engages in or refuses or fails to engage in a particular religious activity;
  - (g) that the person engages in sexual promiscuity;
  - (h) that the person engages in immoral conduct;
  - (i) that the person engages in illegal conduct;
  - (j) that the person is intellectually disabled;
  - (k) that the person takes drugs or alcohol;
  - (l) that the person has an antisocial personality;
  - (m) that the person has a particular economic or social status or is a member of a particular cultural or racial group.

S. 8(1A)  
inserted by  
No. 98/1995  
s. 11(2).

S. 8(2)(m)  
inserted by  
No. 98/1995  
s. 11(3).

s. 9

- (3) Subsection (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

S. 8(4)  
inserted by  
No. 98/1995  
s. 11(4),  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 61.2  
(a)(b)),  
substituted by  
No. 40/1999  
s. 26(1),  
repealed by  
No. 41/2002  
s. 30(b).

\* \* \* \*

S. 9  
amended by  
Nos 32/1990  
s. 4, 23/1994  
s. 118(Sch. 1  
item 38.3),  
98/1995 s. 12,  
substituted by  
No. 76/2003  
s. 7.

## 9 Request and recommendation for involuntary treatment

- (1) The documents required to initiate the involuntary treatment of a person are—
- (a) a request in the prescribed form and containing the prescribed particulars; and
  - (b) a recommendation in the prescribed form by a registered medical practitioner following a personal examination of the person.
- (2) A request may be signed before or after a recommendation is made.
- (3) A registered medical practitioner must not make a recommendation under subsection (1) unless he or she considers that—
- (a) the criteria in section 8(1) apply to the person; and
  - (b) an involuntary treatment order should be made for the person.

- (4) A request and recommendation have effect for 72 hours following the examination of the person by the registered medical practitioner who made the recommendation.
- (5) While they have effect, a request and recommendation made in accordance with this section are sufficient authority for a person referred to in subsection (6) to—
  - (a) arrange for the assessment of the person to whom the recommendation relates by a registered medical practitioner employed by an approved mental health service or a mental health practitioner; or
  - (b) take the person to whom the recommendation relates to an appropriate approved mental health service.
- (6) The persons who may take action under subsection (5) are—
  - (a) the person making the request; or
  - (b) a person authorised by the person making the request; or
  - (c) a prescribed person.

**S. 9(5)(a)**  
**amended by**  
**No. 42/2005**  
**s. 15.**

**9A Authority to transport**

**S. 9A**  
**inserted by**  
**No. 76/2003**  
**s. 7.**

- (1) Despite anything to the contrary in section 9, a person in respect of whom a request is made in accordance with section 9(1)(a) may be taken to an appropriate approved mental health service without a recommendation being made under section 9(1)(b) if—
  - (a) a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and

**s. 9B**

- (b) a mental health practitioner considers that—
    - (i) the criteria in section 8(1) apply to the person; and
    - (ii) the person should be taken to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and
  - (c) the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.
- (2) A person who has made a request under section 9(1)(a) in respect of a person must not complete an authority to transport that person under subsection (1)(c).

**S. 9B**  
inserted by  
No. 76/2003  
s. 7.

**9B Taking a person to an approved mental health service**

- (1) This section applies if a person is to be taken to an approved mental health service under—
- (a) a request and recommendation; or
  - (b) an authority to transport; or
  - (c) section 12(2)(a) or 12(6); or
  - (ca) section 12AA(7); or
  - (d) section 12AC(4)(b).
- (2) For the purpose of taking the person to the approved mental health service, a prescribed person may with such assistance as is required and such force as may be reasonably necessary—
- (a) enter any premises in which the prescribed person has reasonable grounds for believing that the person may be found; and

**S. 9B(1)(ca)**  
inserted by  
No. 69/2005  
s. 8.

- (b) if necessary to enable the person to be so taken safely, use such restraint as may be reasonably necessary.
- (3) If a prescribed registered medical practitioner considers that it is necessary to sedate the person so that the person can be taken safely to the approved mental health service, the prescribed registered medical practitioner may administer or direct an authorised person to administer sedation to the person.
- (4) A person who uses restraint under subsection (2) or administers sedation or directs an authorised person to administer sedation under subsection (3) must specify the particulars required by the prescribed form and deal with the prescribed form in accordance with the regulations.

**10 Apprehension of mentally ill persons in certain circumstances**

- (1) A member of the police force may apprehend a person who appears to be mentally ill if the member of the police force has reasonable grounds for believing that—
  - (a) the person has recently attempted suicide or attempted to cause serious bodily harm to herself or himself or to some other person; or
  - (b) the person is likely by act or neglect to attempt suicide or to cause serious bodily harm to herself or himself or to some other person.

**S. 10(1)**  
**amended by**  
**No. 32/1990**  
**s. 5(a).**

- (1A) A member of the police force is not required for the purposes of subsection (1) to exercise any clinical judgment as to whether a person is mentally ill but may exercise the powers conferred by this section if, having regard to the behaviour and appearance of the person, the person appears

**S. 10(1A)**  
**inserted by**  
**No. 98/1995**  
**s. 13.**

**s. 10**

to the member of the police force to be mentally ill.

- (2) For the purpose of apprehending a person under subsection (1) a member of the police force may with such assistance as is required—

- (a) enter any premises; and
- (b) use such force as may be reasonably necessary.

**S. 10(3)**  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.4),  
67/2003  
s. 10(1).

- (3) A member of the police force exercising the powers conferred by this section may be accompanied by a registered medical practitioner or a mental health practitioner.

**S. 10(4)**  
substituted by  
No. 32/1990  
s. 5(b),  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.4),  
substituted by  
No. 67/2003  
s. 10(2).

- (4) A member of the police force must, as soon as practicable after apprehending a person under subsection (1), arrange for—

- (a) an examination of the person by a registered medical practitioner; or
- (b) an assessment of the person by a mental health practitioner.

**S. 10(5)**  
inserted by  
No. 32/1990  
s. 5(b),  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.4),  
substituted by  
No. 67/2003  
s. 10(2).

- (5) The mental health practitioner may assess the person, having regard to the criteria in section 8(1) and—

- (a) advise the member of the police force to—
  - (i) arrange for an examination of the person by a registered medical practitioner; or
  - (ii) release the person from apprehension under this section; or

**S. 10(5)(b)**  
amended by  
No. 76/2003  
s. 8(a).

- (b) complete an authority to transport the person to an approved mental health service in accordance with section 9A(1).

- (6) If the mental health practitioner assesses the person and advises the member of the police force to arrange for an examination of the person by a registered medical practitioner the member of the police force must do so as soon as practicable. S. 10(6) inserted by No. 67/2003 s. 10(2).
- (7) If the mental health practitioner assesses the person and advises the member of the police force to release the person from apprehension under this section the member must do so unless the member arranges for a personal examination of the person by a registered medical practitioner. S. 10(7) inserted by No. 67/2003 s. 10(2).
- (8) If an arrangement is made under this section to have a person examined by a registered medical practitioner, a registered medical practitioner may examine the person for the purposes of section 9. S. 10(8) inserted by No. 67/2003 s. 10(2).
- (9) Nothing in this section limits— S. 10(9) inserted by No. 67/2003 s. 10(2).
- (a) any other powers of a registered medical practitioner or mental health practitioner in relation to that person under this Act; or
- (b) any other powers of a member of the police force in relation to that person.
- \* \* \* \* \*
- S. 10(10) inserted by No. 67/2003 s. 10(2), repealed by No. 76/2003 s. 8(b).

## 11 Persons incapable of caring for themselves

- (1) Where a member of the police force or any other person has reasonable grounds for believing that a person who appears to be mentally ill is because of mental illness incapable of caring for herself or himself the member of the police force or that other person may give the information upon oath to a magistrate.

**s. 12**

S. 11(2)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.5).

- (2) A magistrate may upon that information authorize and direct a member of the police force accompanied by a registered medical practitioner to visit and examine that person.
- (3) An authorization and direction under subsection (2) is to be in the form of a special warrant in the prescribed form.
- (4) A member of the police force acting under a special warrant may with such assistance as is required—

S. 11(4)(b)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.5).

- (a) enter any premises; and
- (b) use such force as may be reasonably necessary to enable the registered medical practitioner to examine that person.

S. 12  
amended by  
Nos 42/1988  
s. 4(6),  
32/1990 s. 6,  
23/1994  
s. 118(Sch. 1  
item 38.6),  
98/1995 s. 14,  
41/2002 s. 31,  
substituted by  
Nos 76/2003  
s. 9, 42/2005  
s. 16.

**12 Involuntary treatment orders—persons in the community**

- (1) This section applies if—
  - (a) a request and recommendation have been made for a person; and
  - (b) a registered medical practitioner employed by an approved mental health service or a mental health practitioner has assessed the person in accordance with the request and recommendation.
- (2) The practitioner must—
  - (a) take the person, or arrange for the person to be taken, to an appropriate approved mental health service; or
  - (b) make an involuntary treatment order for the person.



- 
- (3) The practitioner must have regard to the criteria in section 8(1) in deciding what action to take under subsection (2).
  - (4) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.
  - (5) If the practitioner makes an involuntary treatment order for a person but does not consider that—
    - (a) the criteria in section 8(1) apply to the person; or
    - (b) an involuntary treatment order should be made for the person—the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.
  - (6) At any time after an involuntary treatment order is made for a person under this section, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.
  - (7) If a person is taken to an approved mental health service under subsection (6), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the authorised psychiatrist examines him or her under section 12AC.
-

**s. 12AA**

S. 12AA  
inserted by  
No. 76/2003  
s. 9,  
substituted by  
No. 42/2005  
s. 16.

**12AA Involuntary treatment orders—persons in approved mental health services**

- (1) This section applies if—
  - (a) a request and recommendation have been made for a person; and
  - (b) the person has been taken to, or is in, an approved mental health service.
- (2) A registered medical practitioner employed by the approved mental health service or a mental health practitioner must make an involuntary treatment order for the person.
- (3) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.
- (4) An involuntary treatment order made for a person in accordance with this section is sufficient authority for the detention of the person in an approved mental health service.
- (5) A registered medical practitioner employed by the approved mental health service or a mental health practitioner may release a person from detention under subsection (4) to await the examination by the authorised psychiatrist under section 12AC if the practitioner has—
  - (a) had regard to the criteria in section 8(1); and
  - (b) consulted with the authorised psychiatrist.
- (6) If the practitioner makes an involuntary treatment order for a person but does not consider that—
  - (a) the criteria in section 8(1) apply to the person; or

(b) an involuntary treatment order should be made for the person—

the practitioner must notify the authorised psychiatrist of the appropriate approved mental health service as soon as practicable.

- (7) At any time after an involuntary treatment order is made for a person under this section for a person who is not detained in an approved mental health service, but before the authorised psychiatrist examines the person under section 12AC, a registered medical practitioner employed by an approved mental health service or a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the practitioner considers it necessary to do so.
- (8) If a person is taken to an approved mental health service under subsection (7), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the authorised psychiatrist examines him or her under section 12AC.

**12AB Interim treatment under involuntary treatment order**

**S. 12AB  
inserted by  
No. 76/2003  
s. 9.**

- (1) This section applies to a person who is subject to an involuntary treatment order at any time before he or she is examined by the authorised psychiatrist under section 12AC.
- (2) If a registered medical practitioner employed by the approved mental health service considers that—
- (a) the person requires any treatment immediately; and
  - (b) the person is unable to consent to that treatment; and

**s. 12AC**

- (c) the treatment required is of such a nature that it would not be in the best interests of the person to await examination by the authorised psychiatrist under section 12AC—

the practitioner may on behalf of the person consent to the treatment being carried out until the authorised psychiatrist examines the person under section 12AC.

**Note**

In considering whether a person has refused or is unable to consent to treatment, see section 3A.

S. 12AC  
inserted by  
No. 76/2003  
s. 9.

**12AC Examination by authorised psychiatrist**

- (1) If an involuntary treatment order is made for a person, the authorised psychiatrist must examine the person—
- (a) if section 12(5) or 12AA(6) applies—as soon as practicable after the order is made, but in any case within 24 hours after the order is made; or
- (b) otherwise—within 24 hours after the order is made.
- (2) On examining the person under subsection (1)—
- (a) if the authorised psychiatrist considers that the criteria in section 8(1) do not apply to the person—the authorised psychiatrist must discharge the person from the order;
- (b) if the authorised psychiatrist is satisfied that the criteria in section 8(1) apply to the person—the authorised psychiatrist must confirm the order.
- (3) If the authorised psychiatrist confirms an involuntary treatment order under subsection (2)(b), he or she may make a community treatment order under section 14 for the person.

S. 12AC(1)(a)  
amended by  
No. 42/2005  
s. 17.

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- (4) If the authorised psychiatrist confirms the involuntary treatment order under subsection (2)(b) but does not make a community treatment order under subsection (3)—
    - (a) the person is to be detained in the approved mental health service; and
    - (b) if the person is not currently in the approved mental health service, the authorised psychiatrist may take the person, or arrange for the person to be taken, to the approved mental health service.
  - (5) The authorised psychiatrist may confirm an involuntary treatment order without making a community treatment order only if he or she is satisfied that the treatment required for the person cannot be obtained through the making of a community treatment order.
  - (6) A registered medical practitioner who has made a recommendation under section 9 in respect of a person must not examine the person under this section.

**12AD Treatment for involuntary patients**

**S. 12AD  
inserted by  
No. 76/2003  
s. 9.**

- (1) An involuntary patient is to be given treatment for his or her mental illness.
- (2) If an involuntary patient refuses to consent to necessary treatment or is unable to consent to treatment for his or her mental illness, consent in writing may be given by the authorised psychiatrist.

**Note**

In considering whether a person has refused or is unable to consent to treatment, see section 3A.

**s. 12AE**

**S. 12AE**  
inserted by  
No. 76/2003  
s. 9.

**12AE Notification of guardian**

If a person becomes an involuntary patient, the authorised psychiatrist must ensure that any guardian of the person is notified that the person has become an involuntary patient and the grounds for the person becoming an involuntary patient.

**S. 12A**  
inserted by  
No. 98/1995  
s. 15.

**12A Application to continue detention and treatment of involuntary patient**

**S. 12A(1)**  
substituted by  
No. 76/2003  
s. 10(1).

- (1) This section applies to a person who is detained in an approved mental health service under an involuntary treatment order that has been confirmed under section 12AC.

**S. 12A(2)**  
amended by  
No. 76/2003  
s. 10(2).

- (2) If the authorised psychiatrist for the approved mental health service in which a person to whom this section applies is detained considers that—
- (a) the person no longer satisfies the criteria in section 8(1); and
  - (b) the person appears to have a mental disorder; and
  - (c) having regard to the person's recent behaviour, the person, if not continued to be detained and treated, would cause serious physical harm to himself or herself; and
  - (d) treatment for the mental disorder can be obtained in the approved mental health service—

the authorised psychiatrist, despite discharging the person from the order under section 37(1), may apply in writing to the chief psychiatrist for approval of the continued detention and treatment of the person for a period not exceeding 3 months.

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- (3) Before making an application under this section the authorised psychiatrist—
- (a) must consider the relevant characteristics of the person's behaviour, including its nature, duration and frequency and its impact on the person; and
  - (b) may consult any person, including—
    - (i) any member of the family of the person or his or her primary carer or guardian;
    - (ii) any registered medical practitioner or other person who is or has been involved in the provision of treatment to the person.
- (4) On the making of an application under this section the authorised psychiatrist may authorise the continued detention and treatment of the person until the application is determined.
- (5) The chief psychiatrist must advise the Secretary as soon as practicable of the making of an application under this section.

**12B Determination of application**

**S. 12B  
inserted by  
No. 98/1995  
s. 15.**

- (1) The Secretary must convene a meeting of a committee constituted by the chief psychiatrist and two other qualified psychiatrists to determine an application made under section 12A.
- (2) An authorised psychiatrist who makes an application must not be a member of the committee that determines the application.
- (3) Each member of the committee must personally examine the person about whom the application was made.

**s. 12C**

- (4) If, after considering the application and examining the person, the committee—
  - (a) is satisfied as to the matters specified in paragraphs (a), (b), (c) and (d) of section 12A(2), it may give its consent to the continued detention and treatment of the person for a period not exceeding 3 months specified by it; or
  - (b) is not satisfied as to those matters, it must refuse to give its consent.
- (5) The members of the committee may determine an application by majority decision.
- (6) Subject to this Act, the procedure of the committee is at its discretion.

S. 12C  
inserted by  
No. 98/1995  
s. 15.

**12C Continued detention and treatment**

- (1) If the committee gives its consent under section 12B(4)(a), the person about whom the application was made is to continue to be detained and treated in the approved mental health service for the period specified by the committee.
- (2) If—
  - (a) the committee refuses to give its consent; or
  - (b) the committee has not determined the application within 7 days after the day the application was made—the authorised psychiatrist must discharge the person as an involuntary patient.
- (3) The continued detention and treatment of a person under this section may be renewed for a further period not exceeding 3 months on an application made and determined in accordance with sections 12A and 12B.



- (4) There is no limit to the number of times the continued detention of a person may be renewed under subsection (3).
- (5) If the chief psychiatrist considers that the criteria specified in section 12A(2) no longer apply to a person whose detention has been continued under this section, the chief psychiatrist must order that the person be discharged as an involuntary patient.

S. 12C(5)  
inserted by  
No. 19/1996  
s. 3.

**12D Chief psychiatrist may make application**

S. 12D  
inserted by  
No. 98/1995  
s. 15.

- (1) If, in relation to a person to whom section 12A applies—
  - (a) the chief psychiatrist is satisfied as to the matters specified in paragraphs (a), (b), (c) and (d) of section 12A(2); and
  - (b) no application under section 12A(2) is made by the authorised psychiatrist—the chief psychiatrist may make an application to the Secretary for approval of the continued detention and treatment of the person.
- (2) If the chief psychiatrist makes an application under subsection (1), sections 12A (except subsection (5)), 12B, 12C and 32 apply as if a reference in those sections to the authorised psychiatrist were a reference to the chief psychiatrist, but, despite section 12B(2), the chief psychiatrist is to be a member of the committee established under section 12B to determine the application.
- (3) A person is discharged from their involuntary treatment order on the making of an application by the chief psychiatrist under subsection (1) in relation to the person, but the person remains an involuntary patient.

S. 12D(3)  
inserted by  
No. 76/2003  
s. 10(3).

s. 13

S. 13  
amended by  
Nos 42/1988  
s. 4(7),  
32/1990 s. 7,  
98/1995 s. 16,  
substituted by  
No. 76/2003  
s. 11.

### **13 Admission to a general hospital or emergency department**

- (1) An involuntary treatment order may be made for a person who—
  - (a) satisfies the criteria in section 8(1); and
  - (b) requires medical treatment which is life-sustaining or to prevent serious physical deterioration and which can only be appropriately provided in a general hospital or emergency department of the general hospital.
- (2) This Division applies in relation to the making of an involuntary treatment order for a person referred to in subsection (1) as if a reference in this Division (other than in this section) to an approved mental health service were a reference to the general hospital or emergency department of the general hospital.
- (3) If an involuntary treatment order is made for a person referred to in subsection (1), the person is taken to be absent on leave from the appropriate approved mental health service, but section 42 does not apply to the person.

S. 14  
amended by  
Nos 42/1988  
s. 5, 33/1989  
s. 9, 32/1990  
s. 8, 42/1993  
s. 27, 23/1994  
s. 118(Sch. 1  
item 38.7),  
98/1995 s. 17,  
52/1998  
s. 311(Sch. 1  
item 61.2),  
40/1999  
s. 26(2),  
41/2002 s. 32,  
substituted by  
No. 76/2003  
s. 12.

### **14 Community treatment orders**

- (1) At any time, an authorised psychiatrist may make a community treatment order for a person who is subject to an involuntary treatment order if the authorised psychiatrist is satisfied that—
  - (a) the criteria in section 8(1) apply to the person; and
  - (b) the treatment required for the person can be obtained through the making of a community treatment order.

- 
- (2) A community treatment order is an order requiring the person to obtain treatment for their mental illness while not detained in an approved mental health service.
  - (3) A community treatment order—
    - (a) must specify the duration of the order, which must not exceed 12 months; and
    - (b) may specify where the person must live, if this is necessary for the treatment of the person's mental illness.
  - (4) If an authorised psychiatrist makes a community treatment order for a person, the authorised psychiatrist must—
    - (a) inform the person that the order has been made; and
    - (b) give the person a copy of the order; and
    - (c) inform the person of the grounds on which the authorised psychiatrist decided to make the order.
  - (5) On the expiry (other than by revocation) of a community treatment order, or a person's discharge from a community treatment order, the person's involuntary treatment order is taken to expire and, consequently, the person ceases to be an involuntary patient.

**Note**

A community treatment order can be extended under section 14B before its expiry.

**s. 14A**

S. 14(6)  
amended by  
No. 69/2005  
s. 7(3).

Note to  
s. 14(6)  
amended by  
No. 69/2005  
s. 7(3).

- (6) Despite subsection (5), the person does not cease to be an involuntary patient if a restricted involuntary treatment order or hospital transfer order is made for the person.

**Note**

Section 14E(4) provides that a person is discharged from his or her involuntary treatment order on the making of a restricted involuntary treatment order, hospital transfer order, hospital security order or restricted hospital transfer order. However, if a restricted involuntary treatment order or hospital transfer order is made, the person remains an involuntary patient. If a hospital security order or restricted hospital transfer order is made, the person becomes a security patient.

S. 14A  
inserted by  
No. 76/2003  
s. 12.

**14A Monitoring persons on community treatment orders**

- (1) The supervising medical practitioner of a person subject to a community treatment order must assess the person at regular intervals.
- (2) In assessing the person, the supervising medical practitioner must consider whether—
- (a) the criteria in section 8(1) still apply to the person; and
  - (b) the treatment required for the person can still be obtained under the order.
- (3) If the supervising medical practitioner does not consider that—
- (a) the criteria in section 8(1) still apply to the person; or
  - (b) the treatment required for the person can still be obtained under the order—

the supervising medical practitioner must notify the monitoring psychiatrist as soon as practicable.

(4) If the supervising medical practitioner notifies the monitoring psychiatrist under subsection (3), the monitoring psychiatrist must examine the person subject to the order as soon as practicable.

(5) In this section—

***monitoring psychiatrist*** of a person subject to a community treatment order, means the monitoring psychiatrist specified in the person's treatment plan;

***supervising medical practitioner*** of a person subject to a community treatment order, means the supervising medical practitioner specified in the person's treatment plan.

**14B Extension of community treatment orders**

S. 14B  
inserted by  
No. 76/2003  
s. 12.

- (1) The authorised psychiatrist may extend a community treatment order for a period not exceeding 12 months if the authorised psychiatrist—
- (a) examines the person subject to the order; and
  - (b) is satisfied that—
    - (i) the criteria in section 8(1) still apply to the person; and
    - (ii) the treatment required for the person can be obtained through the extension of the order.
- (2) The extension takes effect from the time the authorised psychiatrist makes the extension.
- (3) There is no limit to the number of times a community treatment order may be extended under subsection (1).
- (4) For the avoidance of doubt, a community treatment order cannot be extended after it has expired.

**s. 14C**

- (5) If an authorised psychiatrist extends a person's community treatment order, the authorised psychiatrist must—
- (a) inform the person that the order has been extended; and
  - (b) give the person a copy of the extension; and
  - (c) inform the person of the grounds on which the authorised psychiatrist decided to extend the order.

**S. 14C**  
inserted by  
No. 76/2003  
s. 12.

**14C Variation of community treatment orders**

- (1) The authorised psychiatrist may vary a community treatment order at any time.
- (2) If the authorised psychiatrist does so, he or she must—
  - (a) inform the person that the order has been varied; and
  - (b) give the person a copy of the order as varied; and
  - (c) inform the person of the grounds on which the authorised psychiatrist decided to vary the order.

**S. 14D**  
inserted by  
No. 76/2003  
s. 12.

**14D Revocation of community treatment orders**

- (1) The authorised psychiatrist may revoke a community treatment order if satisfied on reasonable grounds that—
  - (a) the criteria in section 8(1) still apply to the person subject to the order; and
  - (b) the treatment required for the person cannot be obtained under the order.

- 
- (2) The authorised psychiatrist may also revoke a community treatment order if—
- (a) the authorised psychiatrist is satisfied on reasonable grounds that the person subject to the order has not complied with the order or the person's treatment plan; and
  - (b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and
  - (c) the authorised psychiatrist is satisfied on reasonable grounds that there is a significant risk of deterioration in the person's mental or physical condition because of the non-compliance.
- (3) If the authorised psychiatrist revokes a community treatment order—
- (a) the authorised psychiatrist must make reasonable efforts to inform the person that the order has been revoked and that the person must go to an approved mental health service; and
  - (b) the person remains an involuntary patient under the person's involuntary treatment order and is taken to be absent without leave from an approved mental health service.

**Note**

Section 43 provides for the apprehension of involuntary patients absent without leave.

s. 14E

S. 14E  
inserted by  
No. 76/2003  
s. 12.

**14E Effect of person's detention in custody etc. on involuntary treatment orders and community treatment orders**

- (1) An involuntary treatment order or community treatment order has no effect while a person subject to it is in custody under a sentence of imprisonment or under any order of a court requiring the person to be held in custody.
- (2) A community treatment order to which subsection (1) applies expires at the time it would otherwise have expired under this Act despite any period during which it has no effect.

**Note**

See section 14(5) for the effect of the expiry of a community treatment order on the person's involuntary treatment order.

- (3) For the purposes of subsection (1), a person is in custody if the person is held in—

- (a) a prison; or
- (b) a remand centre, youth residential centre or youth justice centre (within the meaning of the **Children, Youth and Families Act 2005**); or
- (c) a police gaol within the meaning of the **Corrections Act 1986**.

S. 14E(3)(b)  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.1).

S. 14E(4)  
amended by  
No. 69/2005  
s. 7(3).

- (4) A person is discharged from his or her involuntary treatment order and community treatment order (if any) on the making of a restricted involuntary treatment order, hospital transfer order, hospital security order or restricted hospital transfer order for the person.



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**Division 3—Persons convicted of criminal offences or in a prison**

**15 Discharge of involuntary patients**

S. 15  
amended by  
Nos 42/1988  
s. 6(1)(2),  
32/1990  
s. 9(a)(b),  
substituted by  
No. 49/1991  
s. 119(7)  
(Sch. 4  
item 14.3).

- (1) If an order is made under section 36BA(2) or 37B for a person to be discharged from his or her assessment order or diagnosis, assessment and treatment order, the Board or chief psychiatrist (as the case requires) must immediately notify the court.
- (2) The person is discharged on being returned to the court to be dealt with under section 92 of the **Sentencing Act 1991**.

S. 15(1)  
substituted by  
No. 76/2003  
s. 13(1),  
amended by  
No. 69/2005  
s. 9.

**15A Restricted community treatment orders**

- (1) At any time, an authorised psychiatrist or the chief psychiatrist may make a restricted community treatment order for a person who is subject to a restricted involuntary treatment order if the authorised psychiatrist or the chief psychiatrist (as the case requires) is satisfied that—
  - (a) the criteria in section 93(1)(a) of the **Sentencing Act 1991** apply to the person; and

S. 15A  
inserted by  
No. 32/1990  
s. 10,  
amended by  
Nos 49/1991  
s. 119(7)  
(Sch. 4 items  
14.3–14.6),  
98/1995  
s. 18(1)–(3),  
29/1999  
s. 4(1)(2),  
76/2003  
s. 13(2)–(4),  
substituted by  
No. 69/2005  
s. 10.

- (b) the treatment required for the person can be obtained through the making of a restricted community treatment order.

**Note**

The criteria in section 93(1)(a) of the **Sentencing Act 1991** are—

- the person appears to be mentally ill; and
  - the person's mental illness requires treatment and that treatment can be obtained by the person being subject to a restricted involuntary treatment order; and
  - because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.
- (2) A restricted community treatment order is an order requiring the person to obtain treatment for their mental illness while not detained in an approved mental health service.
- (3) A restricted community treatment order for a person remains in force until the first of the following occurs—
- (a) the order is revoked; or
  - (b) the person is discharged from the order; or
  - (c) the person is discharged from their restricted involuntary treatment order; or
  - (d) the person's restricted involuntary treatment order expires.

**Note**

See sections 36D(8) and 37A(4) for the effect of the discharge from a restricted community treatment order on the person's restricted involuntary treatment order.

- (4) A restricted community treatment order must specify any conditions that the authorised psychiatrist or chief psychiatrist making the order considers appropriate.
- (5) The authorised psychiatrist or chief psychiatrist who makes a restricted community treatment order for a person must—
  - (a) inform the person that the order has been made; and
  - (b) give the person a copy of the order; and
  - (c) inform the person of the grounds for making the order.
- (6) If a restricted community treatment order is made by an authorised psychiatrist, he or she must notify the chief psychiatrist in writing as soon as practicable.

**15AB Monitoring persons on restricted community treatment orders**

**S. 15AB**  
inserted by  
**No. 76/2003**  
**s. 14.**

- (1) The monitoring psychiatrist of a person subject to a restricted community treatment order must assess the person at regular intervals.
- (2) In assessing the person, the monitoring psychiatrist must consider whether—
  - (a) the criteria in section 93(1)(a) of the **Sentencing Act 1991** still apply to the person; and
  - (b) the treatment required for the person can still be obtained under the order.
- (3) If the monitoring psychiatrist does not consider that—
  - (a) the criteria in section 93(1)(a) of the **Sentencing Act 1991** still apply to the person; or

**S. 15AB(2)(a)**  
amended by  
**No. 69/2005**  
**s. 11(1)(a).**

**S. 15AB(3)(a)**  
amended by  
**No. 69/2005**  
**s. 11(1)(a).**

**s. 15C**

(b) the treatment required for the person can still be obtained under the order—

the monitoring psychiatrist must notify the chief psychiatrist as soon as practicable.

(4) If the monitoring psychiatrist notifies the chief psychiatrist under subsection (3), the chief psychiatrist must examine the person subject to the order as soon as practicable.

(5) In this section—

***monitoring psychiatrist*** of a person subject to a restricted community treatment order, means the monitoring psychiatrist specified in the person's treatment plan.

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S. 15B  
inserted by  
No. 32/1990  
s. 10,  
amended by  
Nos 49/1991  
s. 119(7)  
(Sch. 4  
item 14.7),  
98/1995  
s. 18(4)(5),  
29/1999  
s. 4(3)(4)  
(a)–(d),  
substituted by  
No. 76/2003  
s. 15,  
repealed by  
No. 69/2005  
s. 11(1)(b).

S. 15C  
inserted by  
No. 32/1990  
s. 10,  
amended by  
No. 98/1995  
s. 18(6),  
substituted by  
No. 76/2003  
s. 15.

S. 15C(1)  
amended by  
No. 69/2005  
s. 11(1)(c).

**15C Variation of restricted community treatment orders**

(1) The authorised psychiatrist or the chief psychiatrist may vary a restricted community treatment order at any time.

- (2) If the authorised psychiatrist or the chief psychiatrist does so, the authorised psychiatrist or the chief psychiatrist (as the case requires) must—
- (a) inform the person that the order has been varied; and
  - (b) give the person a copy of the order as varied; and
  - (c) inform the person of the grounds on which the authorised psychiatrist or the chief psychiatrist (as the case requires) decided to vary the order.

S. 15C(2)  
amended by  
No. 69/2005  
s. 11(1)(d)(i).

S. 15C(2)(c)  
amended by  
No. 69/2005  
s. 11(1)(d)(ii).

**15D Revocation of restricted community treatment orders**

S. 15D  
inserted by  
No. 76/2003  
s. 15.

- (1) The authorised psychiatrist or the chief psychiatrist may revoke a restricted community treatment order if satisfied on reasonable grounds that—
- (a) the criteria in section 93(1)(a) of the **Sentencing Act 1991** still apply to the person subject to the order; and
  - (b) the treatment required for the person cannot be obtained under the order.
- (1A) The authorised psychiatrist or the chief psychiatrist may also revoke a restricted community treatment order if—
- (a) the authorised psychiatrist or the chief psychiatrist (as the case requires) is satisfied on reasonable grounds that the person subject to the order has not complied with the order or the person's treatment plan; and
  - (b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and

S. 15D(1)  
substituted by  
No. 69/2005  
s. 11(2).

S. 15D(1A)  
inserted by  
No. 69/2005  
s. 11(2).

**s. 15E**

(c) the authorised psychiatrist or the chief psychiatrist (as the case requires) is satisfied on reasonable grounds that there is a significant risk of deterioration in the person's mental or physical condition because of the non-compliance.

S. 15D(2)  
amended by  
No. 69/2005  
s. 11(3)(a)(i).

(2) If the authorised psychiatrist or the chief psychiatrist revokes a restricted community treatment order—

S. 15D(2)(a)  
amended by  
No. 69/2005  
s. 11(3)(a)(ii).

(a) the authorised psychiatrist or the chief psychiatrist (as the case requires) must make reasonable efforts to inform the person that the order has been revoked and that the person must go to an approved mental health service; and

S. 15D(2)(b)  
amended by  
No. 69/2005  
s. 11(3)(a)(iii).

(b) the person remains an involuntary patient under the person's restricted involuntary treatment order who is taken to be absent without leave from an approved mental health service.

**Note**

Section 43 provides for the apprehension of involuntary patients absent without leave.

S. 15E  
inserted by  
No. 76/2003  
s. 15.

**15E Effect of person's detention etc. on restricted community treatment orders**

S. 15E(1)  
amended by  
No. 69/2005  
s. 11(3)(b).

(1) A restricted involuntary treatment order or restricted community treatment order has no effect while a person subject to it is in custody under a sentence of imprisonment or under any order of a court requiring the person to be held in custody.

S. 15E(2)  
repealed by  
No. 69/2005  
s. 11(3)(c).

\* \* \* \* \*

(3) For the purposes of subsection (1), a person is in custody if the person is held in—

- (a) a prison; or
- (b) a remand centre, youth residential centre or youth justice centre (within the meaning of the **Children, Youth and Families Act 2005**); or
- (c) a police gaol within the meaning of the **Corrections Act 1986**.

S. 15E(3)(b)  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.2).

(4) A person is discharged from his or her restricted community treatment order, if any, (but not his or her restricted involuntary treatment order) on the making of a hospital transfer order or restricted hospital transfer order for the person.

S. 15E(4)  
inserted by  
No. 69/2005  
s. 11(4).

## 16 Transfer of mentally ill prisoners

- (1) The Secretary to the Department of Justice may by an order under this section transfer a person who—
- (a) is lawfully imprisoned or detained in a prison or other place of confinement; and
  - (b) appears to be mentally ill—
- to an approved mental health service.

S. 16(1)  
amended by  
Nos 42/1988  
s. 7(1)(a),  
98/1995  
s. 19(1),  
45/1996  
s. 18(Sch. 2  
item 10.1),  
76/2003  
s. 16(1).

(1A) Subsection (1) does not apply to a person who is—

- (a) detained in a prison under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (whether on remand or under a supervision order made under that Act); or
- (b) serving a sentence in a prison under section 93A(7) of the **Sentencing Act 1991**.

S. 16(1A)  
inserted by  
No. 65/1997  
s. 86(3),  
substituted by  
No. 69/2005  
s. 12(1).

Mental Health Act 1986  
No. 59 of 1986  
Part 3—Admission of Patients

**s. 16**

S. 16(2)  
amended by  
Nos 42/1988  
s. 7(1)(a),  
45/1996  
s. 18(Sch. 2  
item 10.2(a)),  
76/2003  
s. 16(1).

(2) The Secretary to the Department of Justice cannot make an order under this section unless—

S. 16(2)(a)  
amended by  
Nos 42/1988  
s. 7(1)(b),  
98/1995  
s. 19(1)(2),  
45/1996  
s. 18(Sch. 2  
item 10.2(b)),  
7/2002 s. 37,  
substituted by  
No. 69/2005  
s. 12(2).

- (a) the Secretary has received a certificate by a psychiatrist and is satisfied that—
  - (i) the person appears to be mentally ill; and
  - (ii) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an order under this section; and
  - (iii) because of the person's mental illness, the detention and treatment of the person in an approved mental health service is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

S. 16(2)(b)  
amended by  
Nos 42/1988  
s. 7(1)(c),  
98/1995  
s. 19(3),  
45/1996  
s. 18(Sch. 2  
item 10.2(b)),  
substituted by  
No. 69/2005  
s. 12(2).

- (b) the Secretary has received a report from the authorised psychiatrist of the approved mental health service to which it is proposed to transfer the person—
  - (i) recommending that the transfer be made; and
  - (ii) stating that there are facilities or services available in that service for the treatment of the person.



- (3) The Secretary to the Department of Justice may make either of the following orders under this section—
- (a) an order under which the person is admitted to and detained in an approved mental health service as an involuntary patient (*hospital transfer order*);
  - (b) an order under which the person is admitted to and detained in an approved mental health service as a security patient (*restricted hospital transfer order*).
- (4) In determining whether to make a hospital transfer order or restricted hospital transfer order, the Secretary to the Department of Justice must have regard to the public interest and all the circumstances of the case including the person's criminal record and psychiatric history.
- (5) A hospital transfer order or restricted hospital transfer order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.

S. 16(3)  
amended by  
Nos 42/1988  
s. 7(1)(a),  
98/1995  
s. 19(1),  
45/1996  
s. 18(Sch. 2  
item 10.3),  
substituted by  
No. 76/2003  
s. 16(2).

S. 16(4)  
amended by  
Nos 42/1988  
s. 7(1)(a),  
45/1996  
s. 18(Sch. 2  
item 10.4),  
76/2003  
s. 16(3).

S. 16(5)  
inserted by  
No. 74/1987  
s. 12,  
substituted by  
No. 69/2005  
s. 12(3).

\* \* \* \* \*

S. 16(6)  
inserted by  
No. 74/1987  
s. 12,  
amended by  
Nos 32/1990  
s. 11(a),  
98/1995  
s. 19(4),  
41/2002 s. 33,  
repealed by  
No. 69/2005  
s. 12(4).

**s. 16A**

S. 16(7)  
inserted by  
No. 32/1990  
s. 11(b),  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.5).

S. 16(7)(a)(i)  
amended by  
Nos 69/1992  
s. 36(a),  
46/1998  
s. 7(Sch. 1),  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.3).

S. 16(7)(b)(i)  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.4).

S. 16A  
inserted by  
No. 69/2005  
s. 13.

(7) In this section—

- (a) a reference to the Secretary to the Department of Justice includes a reference to—
  - (i) the Secretary in relation to a person detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and
  - (ii) the Chief Commissioner of Police in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986** or being held in police custody on the order of a court; and
- (b) a reference to a prison or other place of confinement includes a reference to—
  - (i) a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and
  - (ii) a police gaol within the meaning of the **Corrections Act 1986**.

**16A Transfer of prisoners subject to hospital security orders**

- (1) The Secretary to the Department of Justice may by an order under this section transfer to an approved mental health service a person who is serving a sentence in a prison under section 93A(7) of the **Sentencing Act 1991** if—

- 
- (a) the Secretary is satisfied, by the production of a certificate of a psychiatrist, that—
- (i) the person appears to be mentally ill; and
  - (ii) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to an order under this section; and
  - (iii) because of the person's mental illness, the detention and treatment of the person in an approved mental health service is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
- (b) the Secretary has received a report from the authorised psychiatrist of the approved mental health service to which it is proposed to transfer the person—
- (i) recommending that the transfer be made; and
  - (ii) stating that there are facilities or services available in that service for the treatment of the person.
- (2) An order under this section has effect as a hospital security order under section 93A of the **Sentencing Act 1991** for the unexpired portion of the sentence of imprisonment.

**Note**

Section 93A(5) of the **Sentencing Act 1991** provides that a hospital security order is sufficient authority for the detention of the person who is subject to the order in an approved mental health service.

**s. 16B**

S. 16B  
inserted by  
No. 69/2005  
s. 13.

**16B Treatment for security patients**

- (1) A security patient is to be given treatment for his or her mental illness.
- (2) If a security patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental illness consent in writing may be given by the authorised psychiatrist.

**Note**

In considering whether a person has refused or is unable to consent to treatment, see section 3A.

Pt 3 Div. 4  
(Heading and  
s. 17)  
amended by  
No. 48/1987  
s. 11,  
repealed by  
No. 42/1988  
s. 8, new  
Pt 3 Div. 4  
(Heading and  
ss 17–17B)  
inserted by  
No. 65/1997  
s. 87.

**Division 4—Forensic patients**

New s. 17  
inserted by  
No. 65/1997  
s. 87.

**17 Transfer of persons detained in prison under Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**

- (1) The Secretary to the Department of Justice may by order transfer a person who—
  - (a) is detained in a prison under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (whether on remand or under a supervision order made under that Act); and
  - (b) appears to be mentally ill—to an approved mental health service as a forensic patient.

- 
- (2) The Secretary to the Department of Justice cannot transfer a person under subsection (1) unless—
- (a) the Secretary to the Department of Justice has received a certificate by a psychiatrist and is satisfied that—
    - (i) the person appears to be mentally ill and to require treatment for that illness; and
    - (ii) the treatment can be obtained by admission to and detention in an approved mental health service; and
    - (iii) because of that person's mental illness, the person should be admitted and detained for treatment for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
  - (b) the Secretary to the Department of Justice has received a report from the authorised psychiatrist of the approved mental health service to which it is proposed to admit the person which recommends that the transfer be made.
- (3) In determining whether to transfer a person under subsection (1), the Secretary to the Department of Justice must have regard to the public interest and all the circumstances of the case including the person's psychiatric history.

**17A Status of forensic patients**

- (1) Upon admission to an approved mental health service (whether under section 17 or otherwise), a forensic patient is to be detained and treated for his or her condition.

S. 17A  
inserted by  
No. 65/1997  
s. 87.

**s. 17B**

- (2) If a forensic patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental disorder, consent in writing may be given by the authorised psychiatrist.

**Note to  
s. 17A(2)  
inserted by  
No. 41/2002  
s. 34.**

**Note**

In considering whether a person has refused or is unable to consent to treatment, see section 3A.

**S. 17B  
inserted by  
No. 65/1997  
s. 87.**

**17B Security conditions**

- (1) A forensic patient detained in an approved mental health service or absent on leave from an approved mental health service is subject to such security conditions as the authorised psychiatrist considers necessary.
- (2) A forensic patient may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

**Division 5—Patient's rights**

**18 Statement of patient's rights**

**S. 18(1)  
amended by  
Nos 42/1988  
s. 7(2),  
98/1995  
s. 20(1)(a),  
76/2003  
s. 17(a).**

- (1) Every person on becoming a patient must be given the appropriate prescribed printed statement—

(a) advising the patient as to the legal rights and other entitlements of patients under this Act including the right to obtain legal representation and to have a second psychiatric opinion; and

**S. 18(1)(b)  
amended by  
Nos 98/1995  
s. 20(1)(b),  
76/2003  
s. 17(b),  
44/2004 s. 4.**

(b) containing any other information relating to the treatment and care of the patient that the Department considers relevant including, in the case of a patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth, information as to his or

her legal rights and other entitlements under that Act.

- (2) The statement may be printed in different languages so that wherever possible a patient can be given a copy of the statement printed in a language with which the patient is familiar.
- (3) In addition to the statement, the patient must be given an oral explanation of the information contained in the statement and, if he or she appears not to have understood, or to be incapable of understanding, the information contained in the statement, arrangements must be made to convey the information to the patient in the language, mode of communication or terms which he or she is most likely to understand.
- (4) It is the duty of the authorized psychiatrist to ensure that this section is complied with in the approved mental health service.

S. 18(3)  
substituted by  
No. 98/1995  
s. 20(2).

S. 18(4)  
inserted by  
No. 32/1990  
s. 12,  
amended by  
No. 98/1995  
s. 20(3).

## 19 Information to be provided

There must be kept at a place readily accessible to all patients—

- (a) copies of this Act and the **Guardianship and Administration Act 1986** and any publications prepared by the Department for the purpose of explaining the provisions of the Acts; and
- (b) copies of the statement under section 18(1); and
- (c) the address to which the patient may write to and the business telephone number of the following—

S. 19(a)  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 61.3).

**s. 19A**

S. 19(c)(v)  
substituted by  
No. 48/1995  
s. 11(6).

- (i) the Board;
- (ii) the Public Advocate;
- (iii) the chief psychiatrist;
- (iv) the community visitors;
- (v) Victoria Legal Aid;

S. 19(c)(vii)  
inserted by  
No. 32/1990  
s. 13.

- (vi) the Ombudsman;
- (vii) the Health Services Commissioner.

S. 19A  
inserted by  
No. 76/2003  
s. 18.

**19A Treatment plans**

- (1) The authorised psychiatrist must prepare, review on a regular basis and revise as required, a treatment plan for each patient.
- (2) In preparing, reviewing and revising a treatment plan for a patient, the authorised psychiatrist must take into account—
  - (a) the wishes of the patient, as far as they can be ascertained; and
  - (b) unless the patient objects, the wishes of any guardian, family member or primary carer who is involved in providing ongoing care or support to the patient; and
  - (c) whether the treatment to be carried out is only to promote and maintain the patient's health or well-being; and
  - (d) any beneficial alternative treatments available; and



- (e) the nature and degree of any significant risks associated with the treatment or any alternative treatment; and
  - (f) any prescribed matters.
- (3) The treatment plan for a patient who is detained in an approved mental health service must contain an outline of the treatment the patient is to receive.
- (4) The treatment plan for a patient who is subject to a community treatment order or restricted community treatment order must contain or specify—
- (a) an outline of the treatment the patient is to receive; and
  - (b) the authorised psychiatrist or delegate of the authorised psychiatrist who is to monitor the patient's treatment (*monitoring psychiatrist*); and
  - (c) the registered medical practitioner who is to supervise the patient's treatment (*supervising medical practitioner*); and
  - (d) the patient's case manager; and
  - (e) the place at which the patient is to receive treatment; and
  - (f) the times at which the patient is required to attend to receive treatment; and
  - (g) the intervals at which the supervising medical practitioner must submit a written report concerning the patient's treatment to the monitoring psychiatrist.
- (5) A treatment plan may contain anything else the authorised psychiatrist thinks appropriate.

S. 19A(4)(g)  
substituted by  
No. 69/2005  
s. 14.

s. 20

S. 19A(6)  
substituted by  
No. 42/2005  
s. 18.

- (6) The authorised psychiatrist must ensure that—
- (a) the patient is given a copy of his or her treatment plan and any revisions to it; and
  - (b) the treatment plan is discussed with the patient by a registered medical practitioner, the patient's case manager or any member of a prescribed class of person.

## 20 Correspondence

S. 20(1)  
amended by  
No. 43/1998  
s. 41(1).

- (1) A letter written to or by an involuntary patient must be forwarded without being opened to the person to whom it is addressed.
- (2) A letter written to or by a security patient must subject to any security conditions imposed under section 47 be forwarded without being opened to the person to whom it is addressed.

S. 20(3)  
inserted by  
No. 43/1998  
s. 41(2).

- (3) A letter written to or by a forensic patient must, subject to any security conditions imposed under section 17B, be forwarded without being opened to the person to whom it is addressed.

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**PART 4—REVIEW, DISCHARGE, LEAVE AND TRANSFER  
OF PATIENTS**

**Division 1—Establishment, constitution and procedure of  
the board**

**21 The Mental Health Review Board**

- (1) There is established a Board to be known as the Mental Health Review Board.
- (2) The Board is to be constituted by—
  - (a) a President; and
  - (b) such other members as are necessary from time to time for the proper functioning of the Board.
- (3) Schedule 1 has effect with respect to members of the Board.

**22 Functions of the Board**

- (1) The functions of the Board are as follows—
  - (a) to hear appeals by or on behalf of involuntary patients and security patients;
  - (b) to review periodically the orders made for involuntary patients and security patients and their treatment plans;
  - (c) to hear appeals against the refusal of the chief psychiatrist to grant special leave to security patients;
  - (ca) to hear appeals against the transfer of involuntary patients and security patients;

S. 22(1)(a)  
substituted by  
No. 76/2003  
s. 19(1).

S. 22(1)(b)  
substituted by  
No. 76/2003  
s. 19(1).

S. 22(1)(c)  
amended by  
No. 7/2002  
s. 38.

S. 22(1)(ca)  
inserted by  
No. 42/1988  
s. 9.

Mental Health Act 1986

No. 59 of 1986

Part 4—Review, Discharge, Leave and Transfer of Patients

s. 23

S. 22(1)(d)  
repealed by  
No. 42/1993  
s. 28,  
new s. 22(1)(d)  
inserted by  
No. 55/1996  
s. 4(1)(d).

(d) to review orders for the transfer of  
involuntary patients to interstate mental  
health facilities;

S. 22(1)(e)(f)  
repealed by  
No. 42/1993  
s. 28.

\* \* \* \* \*

(g) such other functions as are specified in this  
Act.

(2) The Board must in determining any review or  
appeal have regard primarily to the patient's  
current mental condition and consider the patient's  
medical and psychiatric history and social  
circumstances.

S. 22(3)  
inserted by  
No. 69/2005  
s. 15(1).

(3) In the case of a review or an appeal of a restricted  
involuntary treatment order or restricted  
community treatment order, the Board must, in  
addition to the matters in subsection (2), consider  
the patient's forensic history.

## 23 Staff of the Board

S. 23(1)  
amended by  
No. 68/1992  
s. 114(Sch. 7  
item 2.1),  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 132.1).

(1) An executive officer and any employees that are  
necessary for the proper functioning of the Board  
are to be employed under Part 3 of the **Public  
Administration Act 2004**.

- (2) The executive officer is, subject to the general control and direction of the President, to perform such functions and exercise such powers as are conferred on the executive officer.

## **24 Procedure of the Board**

- (1) The Board—
- (a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct any proceedings in a formal manner.
- (2) Schedule 2 has effect with respect to the procedure of the Board.
- (3) The Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.
- (4) Evidence before the Board—
- (a) may be given orally or in writing or partly orally and partly in writing; and
  - (b) may be given—
    - (i) on oath or affirmation; or
    - (ii) by declaration instead of an oath where permitted by law.
- (5) A member of the Board may administer an oath or take an affirmation or declaration for the purposes of this Act.
- (6) Evidence given before the Board cannot be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.

- (7) The Board may of its own motion or on the application of any party to the proceedings before it direct the executive officer to serve upon any person a summons to appear before the Board to give evidence or to produce such documents as are specified in the summons.
- (8) The Board may make an order for the manner of service, including substituted service, of a summons under subsection (7).
- (9) A person who without lawful excuse disobeys a summons of the Board is guilty of an offence.

Penalty: 5 penalty units.

S. 25  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.8),  
46/1998  
s. 7(Sch. 1).

## **25 Appointment of persons to assist the Board**

The Board may appoint a duly qualified legal practitioner, an interpreter approved by the Secretary, a registered medical practitioner or any other person with appropriate expertise to assist the Board in any proceedings before the Board.

## **26 Appearance and representation at any hearing of the Board**

- (1) At any hearing of the Board the patient in respect of whom the hearing is conducted has unless subsection (6) applies the right to appear before the Board in person.
- (2) If a patient decides not to appear before the Board the Board must satisfy itself that the patient has made the decision of his or her own free will.
- (3) The patient may be represented before the Board by any person authorized to that effect by the patient.
- (4) At any hearing of the Board—
  - (a) any person other than the patient who is given notice of the hearing may appear before the Board in person and be heard or,

where that person is unable to be present at the hearing and the Board so allows, may be represented before the Board by any person authorized to that effect by the first-mentioned person; and

- (b) any other person who wishes to be heard and whom the Board agrees to hear may appear before the Board in person and be heard.
- (5) Where in any proceedings the patient is not represented before the Board, the Board may appoint a person to represent the patient in those proceedings.
- (6) If the Board is satisfied that the appearance of the patient before the Board would be detrimental to the patient's health, the Board may order that the patient not appear at the hearing in person.
- (7) Unless the Board makes an order under subsection (8), the patient or a person representing the patient is entitled to inspect or otherwise have access to any documents to be given to the Board in connection with the hearing at least 24 hours before the commencement of the hearing.
- (8) On an application made by or on behalf of the authorised psychiatrist, the Board may order that the patient is not entitled personally to inspect or otherwise have access to all of the documents referred to in subsection (7), or to any specified document or part of a document included in those documents, if the Board is satisfied that such inspection or access by the patient would—
  - (a) cause serious harm to the patient's health or the health or safety of another person; or
  - (b) involve the unreasonable disclosure of information relating to the personal affairs of any person; or

**S. 26(7)  
inserted by  
No. 98/1995  
s. 21.**

**S. 26(8)  
inserted by  
No. 98/1995  
s. 21.**

- (c) breach a confidentiality provision imposed by a person who supplied information that is contained in the documents or document.

S. 26(9)  
inserted by  
No. 98/1995  
s. 21.

- (9) The Board may permit a person representing the patient before the Board to inspect or otherwise have access to any document to which an order made under subsection (8) applies.

## **27 Statement of reasons**

- (1) A party to the proceedings may, by notice in writing given to the Board within 28 days after the making of a determination, request the Board to give to that person a statement in writing of reasons for the determination.
- (2) The Board must as soon as practicable but in any case within 14 days after receiving a request under subsection (1) prepare and give a statement of reasons to that person.

## **28 Register**

The executive officer must keep a register containing particulars of—

- (a) applications lodged with the executive officer; and
- (b) all determinations of the Board; and
- (c) the reasons for each determination.

## **Division 2—Appeals and reviews**

## **29 Appeals**

S. 29(1)  
substituted by  
No. 76/2003  
s. 19(2).

- (1) An appeal may be made to the Board at any time—

- (a) by an involuntary patient—

S. 29(1)(a)(i)  
amended by  
No. 69/2005  
s. 15(2)(a).

- (i) against his or her involuntary treatment order, community treatment order, restricted involuntary treatment order,



- 
- restricted community treatment order,  
assessment order, diagnosis, assessment  
and treatment order or hospital transfer  
order; or
- (ii) against his or her continued detention  
under section 12A(4) or 12C;
- (b) by a security patient against his or her  
hospital security order or restricted hospital  
transfer order.
- (1A) An appeal to the Board may also be made at any  
time on behalf of an involuntary patient or  
security patient by a community visitor or any  
other person who satisfies the Board of a genuine  
concern for the involuntary patient or security  
patient. S. 29(1A)  
inserted by  
No. 76/2003  
s. 19(2).
- (2) An involuntary patient or security patient may  
initiate the appeal by writing to—
- (a) the executive officer; or
- (b) the chief psychiatrist; or
- (c) an authorized psychiatrist; or
- (d) a community visitor; or
- (e) the Ombudsman; or
- (f) the Health Services Commissioner. S. 29(2)(f)  
inserted by  
No. 32/1990  
s. 14(a).
- (3) If the chief psychiatrist, an authorized psychiatrist,  
a community visitor, the Ombudsman or the  
Health Services Commissioner receives an  
application for an appeal he or she must  
immediately forward it to the executive officer. S. 29(3)  
amended by  
No. 32/1990  
s. 14(b).
- (4) The Board must commence the hearing of an  
appeal without delay.
-

**s. 30**

**S. 30**  
amended by  
No. 42/1993  
s. 29,  
substituted by  
No. 98/1995  
s. 22,  
amended by  
Nos 65/1997  
s. 86(4),  
29/1999  
s. 4(4)(e),  
substituted by  
No. 76/2003  
s. 20.

### **30 Reviews**

(1) The Board must conduct an initial review of—

**S. 30(1)(a)**  
amended by  
No. 69/2005  
s. 15(2)(a).

- (a) an involuntary treatment order, restricted involuntary treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject;
- (b) a hospital security order or restricted hospital transfer order to which a security patient is subject—

within 8 weeks after the order is made.

(2) The Board must conduct an initial review of the continued detention of an involuntary patient under section 12C within 14 days after the day on which the committee consented under section 12B to the continued detention.

(3) The Board must conduct a periodic review of—

**S. 30(3)(a)**  
amended by  
No. 69/2005  
s. 15(2)(a).

- (a) an involuntary treatment order, restricted involuntary treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject;
- (b) a hospital security order or restricted hospital transfer order to which a security patient is subject;

(c) the continued detention of an involuntary patient under section 12C—

at intervals not exceeding 12 months following the initial review.

(4) The Board must conduct a review of the extension of a community treatment order within 8 weeks after the order is extended.

S. 30(4)  
amended by  
No. 69/2005  
s. 15(2)(b).

(5) If a restricted community treatment order has been in force for at least 12 months, the Board must conduct a review of the order within 8 weeks after the end of that 12 month period.

S. 30(5)  
substituted by  
No. 69/2005  
s. 15(3).

### **31 Appeals and reviews may be held concurrently**

The Board may conduct more than one appeal or review (or both) in respect of the same person concurrently.

S. 31  
substituted by  
Nos 32/1990  
s. 15, 76/2003  
s. 20.

### **32 Notice of appeal or review**

(1) The executive officer must at least 7 days before the day on which the appeal or review is to be held cause notice of the hearing to be given to—

S. 32(1)  
amended by  
No. 42/1988  
s. 10(1).

(a) the involuntary patient or security patient;  
and

(b) in the case of an appeal by a person other than the involuntary patient or security patient, the person making the appeal; and

(c) the authorized psychiatrist; and

(d) if the involuntary patient or security patient is a prisoner, the Secretary to the Department of Justice; and

S. 32(1)(d)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.6).

(e) any other person having regard to the wishes of the involuntary patient or security patient that the Board directs be given notice.

**s. 33**

**S. 32(1A)**  
inserted by  
No. 76/2003  
s. 21(1).

**S. 32(2)(c)**  
substituted by  
No. 76/2003  
s. 21(2).

**S. 32(4)**  
inserted by  
No. 98/1995  
s. 23.

- (1A) The authorised psychiatrist must give a copy of the notice to the patient's case manager as soon as practicable after receiving the notice.
- (2) A notice of the hearing must contain information with respect to—
  - (a) the time and place of the hearing; and
  - (b) the nature of the proceedings; and
  - (c) the legal status under this Act of the person to whom the hearing relates; and
  - (d) in the case of a notice given under subsection (1)(a), (1)(b) or (1)(d) the right to be represented before the Board.
- (3) Where the Board considers it appropriate to do so, the Board may—
  - (a) reduce the time limit specified in subsection (1); or
  - (b) dispense with the requirement that notice in writing be given to one or more of the persons specified in subsection (1).
- (4) In the case of a review under section 30(2), in addition to the requirements of subsection (1), the executive officer must cause a notice of the review which complies with subsection (2) to be given to the Public Advocate at least 7 days before the day on which the review is to be held.

**33 Proceedings to be closed to the public**

- (1) Unless subsection (2) applies, proceedings before the Board are closed to members of the public.
- (2) The Board may direct that particular proceedings or any part of the proceedings are to be open to members of the public if the Board is satisfied that it would be in the best interests of the patient or in the public interest.

### **34 Reports of proceedings**

- (1) Unless the Board otherwise determines in a particular case a person must not publish or broadcast or cause to be published or broadcast any report of the proceedings of the Board.
- (2) Where the Board considers it would be in the public interest to do so the Board may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Board provided that—
  - (a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and
  - (b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.
- (3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

### **35 Secrecy provision**

- (1) Unless subsection (2) or section 34 applies, a person who—
  - (a) is or has at any time been a member of the Board or member of staff of the Board; or
  - (b) is or has been present at any proceedings of the Board—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any

S. 35(1)(a)  
amended by  
No. 76/2003  
s. 30(a).

**s. 35A**

information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Subsection (1) does not preclude a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
- (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

**S. 35A**  
inserted by  
**No. 76/2003**  
**s. 22.**

**35A Review of treatment plans**

- (1) On each appeal and review under this Division, the Board must review the patient's treatment plan to determine whether—
  - (a) the authorised psychiatrist has complied with section 19A in making, reviewing or revising the plan (as the case may be); and
  - (b) the plan is capable of being implemented by the approved mental health service.

- (2) The Board may order the authorised psychiatrist to revise the treatment plan, if the Board is satisfied that—
  - (a) the authorised psychiatrist has not complied with section 19A in making, reviewing or revising the plan; or
  - (b) the plan is not capable of being implemented by the approved mental health service.

### **Division 3—Involuntary patients**

#### **36 Power of Board on appeal or review of involuntary treatment orders—patients who are detained**

- (1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under an involuntary treatment order.
- (2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be discharged from the involuntary treatment order.
- (3) If the Board is satisfied that the criteria in section 8(1) apply to the patient, the Board must confirm the involuntary treatment order.
- (4) If the Board confirms the involuntary treatment order, the Board may order the authorised psychiatrist to make a community treatment order for the patient within a reasonable period specified by the Board, if the Board considers that the treatment required for the person can be obtained through the making of a community treatment order.
- (5) The authorised psychiatrist may apply to the Board, at any time during the period specified under subsection (4), for the Board to reconsider an order made under that subsection.

**S. 36**  
amended by  
Nos 42/1988  
s. 10(2),  
49/1991  
s. 119(7)  
(Sch. 4 item  
14.8), 98/1995  
s. 24, 19/1996  
s. 4, 29/1999  
s. 4(4)(f)-(6),  
substituted by  
No. 76/2003  
s. 23.

**s. 36A**

- (6) Sections 31 to 35 and this section apply to an application under subsection (5) as if it were a review.

**Note**

The Board must take various factors into consideration in deciding what to do on the appeal or review, including the patient's social circumstances—see section 22(2).

S. 36A  
inserted by  
No. 76/2003  
s. 23.

**36A Power of Board on appeal or review of hospital transfer orders**

- (1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under a hospital transfer order.
- (2) If the Board considers that the continued detention of the patient as an involuntary patient is unnecessary, the Board must order that the patient be discharged from the hospital transfer order and be returned to a prison or other place of confinement (within the meaning of section 16).
- (3) If the Board considers that the continued detention of the patient as an involuntary patient is necessary, the Board must confirm the hospital transfer order.
- (4) The Board must have regard to the criteria in section 16(2)(a) and (4) in making a decision on the appeal or review.

S. 36B  
inserted by  
No. 76/2003  
s. 23,  
substituted by  
No. 69/2005  
s. 16.

**36B Power of Board on appeal or review of restricted involuntary treatment orders—patients who are detained**

- (1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under a restricted involuntary treatment order.
- (2) If the Board considers that the criteria in section 93(1)(a) of the **Sentencing Act 1991** do not apply to the patient, the Board must order that



the patient be discharged from the restricted involuntary treatment order.

- (3) If the Board is satisfied that the criteria in section 93(1)(a) of the **Sentencing Act 1991** apply to the patient, the Board must confirm the restricted involuntary treatment order.
- (4) If the Board confirms the restricted involuntary treatment order, the Board may order the authorised psychiatrist to make a restricted community treatment order for the patient within a reasonable period specified by the Board, if the Board considers that the treatment required for the person can be obtained through the making of a restricted community treatment order.
- (5) The authorised psychiatrist may apply to the Board, at any time during the period specified under subsection (4), for the Board to reconsider an order made under that subsection.
- (6) Sections 31 to 35 and this section apply to an application under subsection (5) as if it were a review.

**Note**

The Board must take various factors into consideration in deciding what to do on the appeal or review, including the patient's social circumstances—see section 22(2) and (3).

**36BA Power of Board on appeal or review of assessment orders or diagnosis, assessment and treatment orders**

**S. 36BA  
inserted by  
No. 69/2005  
s. 16.**

- (1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under an assessment order or a diagnosis, assessment and treatment order.
- (2) If the Board considers that the continued detention of the patient as an involuntary patient is unnecessary, the Board must order that the patient be discharged from the order.

**s. 36C**

- (3) If the Board considers that the continued detention of the patient as an involuntary patient is necessary, the Board must confirm the order.
- (4) The Board must have regard to the criteria in section 90(1)(b) or 91(1)(b) of the **Sentencing Act 1991** (as the case requires) in making a decision on the appeal or review.

S. 36C  
inserted by  
No. 76/2003  
s. 23.

**36C Power of Board on appeal or review for patients on community treatment orders**

- (1) This section applies on an appeal or review for a patient who is subject to a community treatment order.
- (2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be discharged from the community treatment order.

**Note**

See section 14(5) for the effect of the discharge from a community treatment order on the patient's involuntary treatment order.

- (3) If the Board is satisfied that the criteria in section 8(1) apply to the patient—the Board may—
  - (a) confirm or vary the community treatment order; or
  - (b) revoke the community treatment order if satisfied on reasonable grounds that the treatment required for the patient cannot be obtained under the order.
- (4) The Board may also revoke a community treatment order if—
  - (a) the Board is satisfied on reasonable grounds that the patient has not complied with the order or the patient's treatment plan; and

- (b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and
  - (c) the Board is satisfied on reasonable grounds that there is a significant risk of deterioration in the patient's mental or physical condition because of the non-compliance.
- (5) If the Board revokes a community treatment order—
- (a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and
  - (b) the patient remains an involuntary patient under his or her involuntary treatment order and is taken to be absent without leave from an approved mental health service.

**Note**

Section 43 provides for the apprehension of involuntary patients absent without leave.

- (6) If the Board varies a community treatment order, the Board must—
- (a) inform the person that the order has been varied; and
  - (b) give the person written details of the variation; and
  - (c) inform the person of the grounds on which the Board decided to vary the order.
- (7) If the Board varies a community treatment order, the authorised psychiatrist must give the person subject to the order a copy of the order as varied within a reasonable period.

**S. 36C(6)(b)**  
substituted by  
No. 69/2005  
s. 17(1).

**S. 36C(7)**  
inserted by  
No. 69/2005  
s. 17(2).

**s. 36D**

**S. 36D**  
inserted by  
No. 76/2003  
s. 23,  
substituted by  
No. 69/2005  
s. 18.

**36D Power of Board on appeal or review for patients on restricted community treatment orders**

- (1) This section applies on an appeal or review for a patient who is subject to a restricted community treatment order.
- (2) If the Board considers that the criteria in section 93(1)(a) of the **Sentencing Act 1991** do not apply to the patient, the Board must order that the patient be discharged from the restricted community treatment order.
- (3) If the Board is satisfied that the criteria in section 93(1)(a) of the **Sentencing Act 1991** apply to the patient, the Board may—
  - (a) confirm or vary the restricted community treatment order; or
  - (b) revoke the restricted community treatment order if satisfied on reasonable grounds that the treatment required for the patient cannot be obtained under the order.
- (4) The Board may also revoke a restricted community treatment order if—
  - (a) the Board is satisfied on reasonable grounds that the patient has not complied with the order or the patient's treatment plan; and
  - (b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and
  - (c) the Board is satisfied on reasonable grounds that there is a significant risk of deterioration in the patient's mental or physical condition because of the non-compliance.

**Note**

The Board must take various factors into consideration in deciding what to do on the appeal or review, including the patient's social circumstances—see section 22(2) and (3).

- 
- (5) If the Board revokes a restricted community treatment order—
- (a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and
  - (b) the patient remains an involuntary patient under his or her restricted involuntary treatment order and is taken to be absent without leave from an approved mental health service.

**Note**

Section 43 provides for the apprehension of involuntary patients absent without leave.

- (6) If the Board varies a restricted community treatment order, the Board must—
- (a) inform the person that the order has been varied; and
  - (b) give the person written details of the variation; and
  - (c) inform the person of the grounds on which the Board decided to vary the order.
- (7) If the Board varies a restricted community treatment order, the authorised psychiatrist must give the person subject to the order a copy of the order as varied within a reasonable period.
- (8) On the discharge of a patient from a restricted community treatment order under subsection (2), the patient is taken to be discharged from his or her restricted involuntary treatment order and, consequently, he or she ceases to be an involuntary patient.

**s. 36E**

**S. 36E**  
inserted by  
No. 76/2003  
s. 23.

**36E Power of Board on appeal or review—continued detention under section 12A(4) or 12C**

- (1) This section applies on an appeal or review for a patient whose detention has been continued under section 12A(4) or 12C.
- (2) If the Board is not satisfied that the continued detention of the patient is necessary, the Board must order that the patient be discharged as an involuntary patient.
- (3) The Board must have regard to the criteria in section 12A(2) in making a decision on the appeal or review.

**S. 37**  
amended by  
Nos 42/1988  
s. 10(3),  
49/1991  
s. 119(7)  
(Sch. 4  
item 14.9),  
45/1996 s. 18  
(Sch. 2 item  
10.7),  
substituted by  
Nos 76/2003  
s. 24, 69/2005  
s. 19.

**37 Discharge of involuntary patients—involuntary treatment orders and community treatment orders**

- (1) If the authorised psychiatrist considers that the criteria in section 8(1) do not apply to a person who is detained in the approved mental health service as an involuntary patient under an involuntary treatment order, the authorised psychiatrist must discharge the person from the involuntary treatment order.
- (2) If the authorised psychiatrist considers that the criteria in section 8(1) do not apply to a person who is receiving treatment from the approved mental health service under a community treatment order, the authorised psychiatrist must discharge the person from the community treatment order.

**Note**

See section 14(5) for the effect of the discharge from a community treatment order on the person's involuntary treatment order.

- (3) For the avoidance of doubt, a person who is discharged from an involuntary treatment order under subsection (1) remains an involuntary patient if the authorised psychiatrist makes an application under section 12A for approval of the continued detention and treatment of the person.

**37A Discharge of involuntary patients—restricted involuntary treatment orders and restricted community treatment orders**

S. 37A  
inserted by  
No. 69/2005  
s. 19.

- (1) If the chief psychiatrist considers that the criteria in section 93(1)(a) of the **Sentencing Act 1991** do not apply to a person who is detained in an approved mental health service as an involuntary patient under a restricted involuntary treatment order, the chief psychiatrist must discharge the person from the restricted involuntary treatment order.
- (2) If the chief psychiatrist considers that the criteria in section 93(1)(a) of the **Sentencing Act 1991** do not apply to a person who is receiving treatment from an approved mental health service under a restricted community treatment order, the chief psychiatrist must discharge the person from the restricted community treatment order.
- (3) In determining whether or not to discharge a person from a restricted involuntary treatment order or restricted community treatment order, the chief psychiatrist must have regard primarily to the person's current mental condition and consider his or her medical, psychiatric and forensic history and his or her social circumstances.
- (4) On the discharge of a person from a restricted community treatment order under subsection (2), the person is taken to be discharged from his or her restricted involuntary treatment order and, consequently, he or she ceases to be an involuntary patient.

**s. 37B**

S. 37B  
inserted by  
No. 69/2005  
s. 19.

**37B Discharge of involuntary patients—assessment orders and diagnosis, assessment and treatment orders**

If the chief psychiatrist, having regard to the criteria in section 90(1)(b) or 91(1)(b) of the **Sentencing Act 1991** (as the case requires), considers that the continued detention of a person in an approved mental health service under an assessment order or a diagnosis, assessment and treatment order is unnecessary, the chief psychiatrist must order that the person be discharged from the order.

S. 37C  
inserted by  
No. 69/2005  
s. 19.

**37C Discharge of involuntary patients—hospital transfer orders**

If the chief psychiatrist, having regard to the criteria in section 16(2)(a) and (4), considers that the continued detention of a person in an approved mental health service under a hospital transfer order is unnecessary, the chief psychiatrist must, after advising the Secretary to the Department of Justice, order that the person be discharged from the order and be returned to a prison or other place of confinement (within the meaning of section 16).

S. 38  
substituted by  
No. 42/1988  
s. 11,  
amended by  
Nos 45/1996  
s. 18(Sch. 2  
item  
10.8(a)(b)),  
46/1998  
s. 7(Sch. 1),  
12/1999 s. 4  
(Sch. 2  
item 9.1),  
45/2001 s. 44.

**38 When discharge of involuntary patient under section 16 takes effect**

If—

S. 38(a)  
amended by  
No. 76/2003  
s. 25(1).

(a) the Board exercises its power under section 36A(2); or



- (b) the chief psychiatrist exercises his or her power under section 37C—

S. 38(b)  
amended by  
No. 69/2005  
s. 20.

to discharge a person as an involuntary patient, the Board or the chief psychiatrist, as the case may be, must immediately notify the Secretary to the Department of Justice and the person is discharged as an involuntary patient upon entering the legal custody of the Secretary to the Department of Justice under the **Corrections Act 1986**.

### 39 Transfer of involuntary patient to another approved mental health service

- (1) The authorized psychiatrist may by order direct the transfer of an involuntary patient to another approved mental health service if—

S. 39(1)  
amended by  
No. 98/1995  
s. 25(1)(a).

- (a) the authorized psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment; and

S. 39(1)(a)  
amended by  
Nos 42/1988  
s. 12(1)(a),  
32/1990  
s. 33(b),  
98/1995  
s. 25(1)(b).

- (b) the authorized psychiatrist for the approved mental health service to which it is proposed to transfer the involuntary patient approves of the transfer;

S. 39(1)(b)  
amended by  
No. 98/1995  
s. 25(1)(a)(c).

\* \* \* \* \*

S. 39(1)(c)  
repealed by  
No. 98/1995  
s. 25(1)(d).

- (2) The chief psychiatrist may by order direct the transfer of an involuntary patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment.

S. 39(2)  
amended by  
Nos 42/1988  
s. 12(1)(b),  
32/1990  
s. 33(b),  
98/1995  
s. 25(2)(a)(b).

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Part 4—Review, Discharge, Leave and Transfer of Patients

**s. 39**

**S. 39(3)**  
amended by  
No. 98/1995  
s. 25(3)(a)(b).

- (3) Where an involuntary patient is transferred to another approved mental health service any documents relevant to the admission and future treatment of the patient are to be forwarded at the same time to that approved mental health service.

**S. 39(4)**  
amended by  
Nos 98/1995  
s. 25(4),  
45/1996  
s. 18(Sch. 2  
item 10.9).

- (4) Where a person detained as an involuntary patient under section 16 is transferred to another approved mental health service the authorized psychiatrist must notify the Secretary to the Department of Justice of the transfer.

**S. 39(5)**  
inserted by  
No. 42/1988  
s. 12(1)(c).

- (5) An involuntary patient subject to a transfer order under subsection (1) or (2) may appeal to the Board against the transfer.

**S. 39(6)**  
inserted by  
No. 42/1988  
s. 12(1)(c).

- (6) On an appeal under subsection (5), the Board must consider whether the transfer—

**S. 39(6)(a)**  
amended by  
No. 32/1990  
s. 33(c).

- (a) will be of benefit to the patient; or

**S. 39(6)(b)**  
amended by  
Nos 32/1990  
s. 33(b),  
98/1995  
s. 25(5).

- (b) is necessary for the patient's treatment.

**S. 39(7)**  
inserted by  
No. 42/1988  
s. 12(1)(c),  
amended by  
No. 98/1995  
s. 25(4),  
substituted by  
No. 76/2003  
s. 25(2).

- (7) On an appeal under subsection (5), the Board may—
- (a) confirm the transfer order; or
- (b) refuse to confirm the order and, if the patient has already been transferred under the order, direct that the patient be transferred back.

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#### **40 Leave of absence**

- (1) The authorized psychiatrist may allow an involuntary patient to be absent from the approved mental health service in which the involuntary patient is detained—

**S. 40(1)**  
**amended by**  
**No. 98/1995**  
**s. 26.**

- (a) for such period; and  
(b) subject to any conditions—

that the authorized psychiatrist considers appropriate.

- (2) The authorized psychiatrist may from time to time extend the period of absence allowed under subsection (1).

- (3) The authorized psychiatrist may revoke the leave of absence allowed to an involuntary patient and require the involuntary patient to return to the approved mental health service.

**S. 40(3)**  
**amended by**  
**No. 98/1995**  
**s. 26.**

#### **41 Absence of involuntary patient with permission**

The authorized psychiatrist may allow an involuntary patient to be absent from the approved mental health service for the purpose of receiving medical treatment—

**S. 41**  
**amended by**  
**No. 98/1995**  
**s. 26.**

- (a) for the period; and  
(b) subject to any conditions—

that the authorized psychiatrist considers appropriate.

#### **42 Discharge after absence**

- (1) An involuntary patient who remains absent from an approved mental health service for a continuous period of twelve months without leave of absence is automatically discharged as an involuntary patient.

**S. 42(1)**  
**amended by**  
**No. 98/1995**  
**s. 27.**

**s. 43**

- (2) Unless subsection (3) applies, an involuntary patient who has been on leave of absence for a continuous period of twelve months is automatically discharged as an involuntary patient.
- (3) Where the chief psychiatrist or the authorized psychiatrist considers that an involuntary patient should not be automatically discharged the chief psychiatrist or the authorized psychiatrist may apply to the Board for an order that the involuntary patient is not to be discharged.
- (4) Sections 31 to 35 apply in respect of an application under subsection (3) as if it were an appeal or review.

S. 42(4)  
amended by  
No. 76/2003  
s. 25(3).

**43 Apprehension of involuntary patient absent without leave**

- (1) Except where section 42 applies, an involuntary patient who is absent from an approved mental health service without leave or permission may be apprehended at any time by—
  - (a) a prescribed person within the meaning of section 7; or
  - (b) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or
  - (c) an officer or employee of the Department authorized by the chief psychiatrist—for the purpose of being returned to the approved mental health service.

S. 43(1)  
amended by  
No. 98/1995  
s. 28(1)(a)(c).

S. 43(1)(a)  
substituted by  
No. 98/1995  
s. 28(1)(b),  
amended by  
No. 76/2003  
s. 25(4)(a).

- (1A) Section 9B applies to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

S. 43(1A)  
inserted by  
No. 32/1990  
s. 16,  
substituted by  
No. 98/1995  
s. 28(2),  
amended by  
No. 76/2003  
s. 25(4)(b).

- (2) Section 42 and this section do not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

#### **Division 4—Security patients**

#### **43A Clinical guidelines for discharge of security patients**

S. 43A  
inserted by  
No. 7/2002  
s. 39.

- (1) The chief psychiatrist may, from time to time, issue, vary and revoke clinical guidelines relating to the discharge of security patients.
- (2) Before issuing, varying or revoking any guidelines under this section, the chief psychiatrist must consult the Correctional Services Commissioner and the Board.

#### **44 Board may order discharge**

S. 44  
amended by  
No. 42/1988  
s. 12(2),  
substituted by  
Nos 7/2002  
s. 40, 69/2005  
s. 21.

On hearing an appeal or review, the Board may order that a person be discharged as a security patient and returned to a prison or other place of confinement if the Board is not satisfied that the continued detention of the person as a security patient is necessary, having regard to the clinical guidelines (if any) under section 43A and—

- (a) if the person is subject to a restricted hospital transfer order—the criteria specified in section 16(2)(a) and (4); or

- (b) if the person is subject to a hospital security order—the criteria specified in section 93A(1)(a) of the **Sentencing Act 1991**.

S. 45  
amended by  
No. 42/1988  
s. 12(3),  
substituted by  
No. 7/2002  
s. 40.

#### 45 Chief psychiatrist may order discharge

S. 45(1)  
substituted by  
No. 69/2005  
s. 22.

- (1) The chief psychiatrist may order that a person be discharged as a security patient and returned to a prison or other place of confinement if the chief psychiatrist is satisfied that the continued detention of the person as a security patient is not necessary, having regard to the clinical guidelines (if any) under section 43A and—
- (a) if the person is subject to a restricted hospital transfer order—the criteria specified in section 16(2)(a) and (4); or
- (b) if the person is subject to a hospital security order—the criteria specified in section 93A(1)(a) of the **Sentencing Act 1991**.
- (2) In exercising his or her power to discharge a person as a security patient, the chief psychiatrist must have regard primarily to the person's current mental condition and consider the patient's medical and psychiatric history and social circumstances.

#### 46 Notification and discharge

- (1) This section applies if—
  - (a) the Board exercises its power under section 44 to discharge a person as a security patient; or
  - (b) the chief psychiatrist exercises his or her power under section 45 to discharge a person as a security patient.
- (2) The Board or the chief psychiatrist (as the case requires) must immediately notify the Secretary to the Department of Justice.
- (3) The person is discharged as a security patient—
  - (a) if an order has been made under section 74 of the **Corrections Act 1986** that the person be released on parole and the time for release has occurred—on the making of the order for discharge; or
  - (b) if not—on entering the legal custody of the Secretary to the Department of Justice.

S. 46  
substituted by  
No. 42/1988  
s. 13,  
amended by  
Nos 45/1996  
s. 18(Sch. 2  
item 10.10(a)  
(b)), 46/1998  
s. 7(Sch. 1),  
12/1999  
s. 4(Sch. 2  
item 9.1),  
45/2001 s. 44,  
substituted by  
No. 69/2005  
s. 23.

#### 47 Security conditions

- (1) A security patient detained in an approved mental health service or absent from an approved mental health service under section 51 or 52 is subject to such security conditions as the authorized psychiatrist considers necessary.
- (2) A security patient may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

S. 47(1)  
amended by  
No. 98/1995  
s. 29.

**s. 49**

(3) A security patient is in the custody of the authorized psychiatrist until discharged as a security patient.

S. 47(4)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.11).

(4) If a security patient dies during detention the authorized psychiatrist must advise the Secretary to the Department of Justice as to the circumstances in which the death occurred.

S. 48  
repealed by  
No. 42/1988  
s. 14(1).

\* \* \* \* \*

#### **49 Transfer of security patient to another approved mental health service**

S. 49(1)  
amended by  
Nos 42/1988  
s. 14(2),  
32/1990  
s. 33(b),  
98/1995  
s. 30(1)(2).

(1) The chief psychiatrist may by order direct the transfer of a security patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment.

S. 49(2)  
amended by  
No. 98/1995  
s. 30(1)(3).

(2) Where a security patient is transferred to another approved mental health service any documents relevant to the detention and future treatment of the patient must be forwarded at the same time to that approved mental health service.

S. 49(3)  
amended by  
Nos 98/1995  
s. 30(1),  
45/1996  
s. 18(Sch. 2  
item 10.12).

(3) The chief psychiatrist must notify the Secretary to the Department of Justice that a security patient has been transferred to another approved mental health service under subsection (1).

S. 49(4)  
inserted by  
No. 42/1988  
s. 14(3).

(4) A security patient subject to a transfer order under subsection (1) may appeal to the Board against the transfer.



- (5) On an appeal under subsection (4), the Board must consider whether the transfer—
- S. 49(5)  
inserted by  
No. 42/1988  
s. 14(3).
- (a) will be of benefit to the patient; or
- S. 49(5)(a)  
amended by  
No. 32/1990  
s. 33(d).
- (b) is necessary for the patient's treatment.
- S. 49(5)(b)  
amended by  
Nos 32/1990  
s. 33(b),  
98/1995  
s. 30(2).
- (6) On an appeal under subsection (4), the Board may—
- S. 49(6)  
inserted by  
No. 42/1988  
s. 14(3).
- (a) confirm the decision of the chief psychiatrist to transfer the patient; or
- (b) direct that the patient—
- (i) continue to be detained in the same approved mental health service; or
- S. 49(6)(b)(i)  
amended by  
No. 98/1995  
s. 30(1).
- (ii) if the patient has already been transferred, be returned to the approved mental health service from which the patient was transferred.
- S. 49(6)(b)(ii)  
amended by  
No. 98/1995  
s. 30(1).

**50 Automatic discharge as a security patient at expiration of sentence**

- (1) A person detained in an approved mental health service as a security patient ceases to be a security patient immediately upon—
- S. 50(1)  
amended by  
No. 42/1988  
s. 14(4),  
substituted by  
No. 32/1990  
s. 17,  
amended by  
Nos 98/1995  
s. 31, 69/2005  
s. 24(a).
- (a) the person being granted bail; or
- (b) the person being released from custody by a court; or

**s. 51**

S. 50(1)(c)  
amended by  
Nos 69/1992  
s. 36(b),  
69/2005  
s. 24(b),  
48/2006  
s. 42(Sch.  
item 27.5).

(c) the expiry of the person's sentence of imprisonment or detention in a youth residential centre or youth justice centre; or

S. 50(1)(d)  
inserted by  
No. 69/2005  
s. 24(c).

(d) the expiry of the person's hospital security order.

S. 50(2)  
amended by  
Nos 42/1988  
s. 14(4),  
69/1992  
s. 36(b),  
45/1996  
s. 18(Sch. 2  
item 10.13),  
48/2006  
s. 42(Sch.  
item 27.5).

(2) The Secretary to the Department of Justice must notify the chief psychiatrist when the sentence of imprisonment or detention in a youth residential centre or youth justice centre of a patient is to expire.

S. 51  
amended by  
Nos 42/1988  
s. 14(5)(a)–(c),  
98/1995  
s. 32(1)–(4),  
45/1996  
s. 18(Sch. 2  
item 10.14),  
46/1998  
s. 7(Sch. 1),  
substituted by  
No. 7/2002  
s. 41.

**51 Leave of absence for security patients**

(1) An application for leave of absence for a security patient may be made to the Secretary to the Department of Justice by—

- (a) the security patient; or
- (b) the authorised psychiatrist for the approved mental health service in which he or she is detained.

(2) The Secretary to the Department of Justice may grant an application for leave of absence—

- (a) for the period, not exceeding 6 months; and
- (b) subject to any conditions—

that the Secretary to the Department of Justice considers appropriate.

- (3) The Secretary to the Department of Justice must not grant an application for leave of absence unless—
- (a) he or she is satisfied on the evidence available that the safety of the security patient or members of the public will not be seriously endangered as a result of the security patient being allowed leave of absence; and
  - (b) the chief psychiatrist has been consulted; and
  - (c) the Secretary has been consulted in the case of an application for leave of absence for a security patient who, before his or her transfer under section 16, was detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and
  - (d) the Chief Commissioner of Police has been consulted in the case of an application for leave of absence for a security patient who, before his or her transfer under section 16, was serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986** or being held in police custody on the order of a court.
- (4) The Secretary to the Department of Justice may—
- (a) from time to time extend the period of leave of absence allowed under subsection (2) for a period not exceeding 6 months; or
  - (b) revoke the leave of absence and require the security patient to return to the approved mental health service.

S. 51(3)(c)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 27.6).

## 52 Special leave for security patient

S. 52(1)  
amended by  
No. 7/2002  
s. 42.

- (1) A security patient, or a person on their behalf, may apply to the chief psychiatrist for special leave of absence specifying the special circumstances for which the special leave is required.
- (2) The chief psychiatrist must grant an application for special leave of absence if the chief psychiatrist is satisfied that—
  - (a) there are special circumstances; and
  - (b) the safety of members of the public will not be seriously endangered.

S. 52(3)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.15).

- (3) Before granting an application the chief psychiatrist must advise the Secretary to the Department of Justice.

- (4) Where the chief psychiatrist refuses to grant special leave of absence to a security patient, the security patient may appeal to the Board.

S. 52(5)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.16).

- (5) The Board must give notice of an appeal under subsection (4) to the Secretary to the Department of Justice.
- (6) On an appeal under subsection (4) the Board may—
  - (a) confirm the decision of the chief psychiatrist; or
  - (b) direct that the security patient be allowed special leave of absence.

(7) Special leave of absence—

(a) cannot exceed—

- (i) 7 days in the case of special leave of absence for medical treatment; or
- (ii) 24 hours in any other case; and

(b) may be subject to such conditions as the chief psychiatrist or the Board may specify.

S. 52(7)(a)  
substituted by  
No. 42/2005  
s. 19.

**53 Apprehension of security patient absent without leave**

(1) A security patient who is absent from an approved mental health service without leave of absence or special leave of absence may be apprehended at any time by—

S. 53(1)  
amended by  
No. 98/1995  
s. 33(1)(a)(c).

(a) a prescribed person within the meaning of section 7; or

S. 53(1)(a)  
substituted by  
No. 98/1995  
s. 33(1)(b),  
amended by  
No. 76/2003  
s. 25(5)(a)(i).

(b) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or

(c) an employee of the Department authorized by the chief psychiatrist—

S. 53(1)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

for the purpose of being returned to the approved mental health service.

(1A) Section 9B applies to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

S. 53(1A)  
inserted by  
No. 32/1990  
s. 18,  
substituted by  
No. 98/1995  
s. 33(2),  
amended by  
No. 76/2003  
s. 25(5)(a)(ii).

**s. 53AA**

**S. 53AA**  
inserted by  
No. 7/2002  
s. 43.

- (2) This section does not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

**53AA Warrant to arrest security patient absent without leave who leaves Victoria**

- (1) If at any time it appears to an appropriate person that a security patient—

(a) is absent from an approved mental health service without leave of absence or special leave of absence; and

(b) is no longer in Victoria—

the appropriate person may apply to the Supreme Court, the County Court or the Magistrates' Court for a warrant to arrest the security patient.

- (2) If the court to which the application is made is satisfied by evidence on oath, whether orally or by affidavit, of the matters specified in paragraphs (a) and (b) of subsection (1), the court may order that a warrant to arrest be issued against the security patient.

**Note**

Under the Service and Execution of Process Act 1992 of the Commonwealth, a person who is apprehended interstate under a warrant issued in Victoria is to be taken before a magistrate in the place where the person is apprehended. That Act provides for the magistrate to specify the place in Victoria to which the person is then to be taken.

- (3) In this section—

***appropriate person*** means—

- (a) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or  
(b) the Secretary; or

- (c) the Secretary to the Department of Justice; or
- (d) the chief psychiatrist or any person authorized by the chief psychiatrist.

**53A Application of Divisions 3 and 4**

In this Division and Division 3 (except in section 51)—

S. 53A  
inserted by  
No. 32/1990  
s. 19,  
amended by  
Nos 69/1992  
s. 36(c)(i),  
45/1996  
s. 18(Sch. 2  
item 10.16(a)  
(b)), 7/2002  
s. 44.

- (a) a reference to the Secretary to the Department of Justice includes a reference to—

S. 53A(a)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.16(a)).

- (i) the Secretary to the Department of Human Services in relation to a person detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and

S. 53A(a)(i)  
amended by  
Nos 69/1992  
s. 36(c)(ii),  
46/1998  
s. 7(Sch. 1),  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.7).

- (ii) the Chief Commissioner of Police in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986** or being held in police custody on the order of a court; and

- (b) a reference to the Department of Justice includes a reference to—

S. 53A(b)  
amended by  
No. 45/1996  
s. 18(Sch. 2  
item 10.16(b)).

**s. 53AB**

S. 53A(b)(i)  
amended by  
Nos 69/1992  
s. 36(c)(ii),  
46/1998  
s. 7(Sch. 1),  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.8).

(i) the Department of Human Services in relation to a person detained in a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and

(ii) the police force in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986** or being held in police custody on the order of a court; and

(c) a reference to a prison or other place of confinement includes a reference to—

S. 53A(c)(i)  
substituted by  
No. 48/2006  
s. 42(Sch.  
item 27.9).

(i) a remand centre, youth residential centre or youth justice centre within the meaning of the **Children, Youth and Families Act 2005**; and

(ii) a police gaol within the meaning of the **Corrections Act 1986**.

Pt 4 Div. 5  
(Heading and  
ss 53AB–  
53AD)  
inserted by  
No. 65/1997  
s. 88.

**Division 5—Forensic patients**

S. 53AB  
inserted by  
No. 65/1997  
s. 88.

**53AB Transfer of forensic patient to another approved mental health service**

S. 53AB(1)  
amended by  
No. 44/2004  
s. 5(1).

(1) Subject to subsection (1A), the chief psychiatrist may by order direct the transfer of a forensic patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer



will be of benefit to the patient or is necessary for the patient's treatment.

- (1A) The chief psychiatrist cannot make an order under subsection (1) in respect of a forensic patient detained under section 20BJ(1) or 20BM of the Crimes Act 1914 of the Commonwealth but may recommend to the Attorney-General for the Commonwealth the making of an order under section 20BJ(2) or 20BM(7) (as the case requires) of that Act varying the approved mental health service in which the forensic patient is detained.
- (2) Where a forensic patient is transferred to another approved mental health service any documents relevant to the detention and future treatment of the patient must be forwarded at the same time to that approved mental health service.
- (3) A forensic patient subject to a transfer order under subsection (1) may appeal to the Panel against the transfer.
- (4) On an appeal under subsection (3), the Panel must consider whether the transfer—
- (a) will be of benefit to the patient; or
  - (b) is necessary for the patient's treatment.
- (5) On an appeal under subsection (3), the Panel may—
- (a) confirm the decision of the chief psychiatrist to transfer the patient; or
  - (b) direct that the patient—
    - (i) continue to be detained in the same approved mental health service; or
    - (ii) if the patient has already been transferred, be returned to the approved mental health service from which the patient was transferred.

**S. 53AB(1A)**  
**inserted by**  
**No. 44/2004**  
**s. 5(2).**

**s. 53AC**

- (6) Division 3 of Part 7 of, and Schedule 2 to, the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** apply to an appeal under subsection (3) as if references in that Division and Schedule to the applicant for leave were references to the forensic patient subject to the transfer order.

S. 53AC  
inserted by  
No. 65/1997  
s. 88.

**53AC Leave of absence for forensic patient**

A forensic patient who is subject to a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** may apply for and be granted leave of absence in accordance with Part 7 of that Act.

S. 53AD  
inserted by  
No. 65/1997  
s. 88.

**53AD Apprehension of forensic patient absent without leave**

- (1) A forensic patient who is absent from an approved mental health service without leave of absence may be apprehended at any time by—

S. 53AD(1)(a)  
amended by  
No. 76/2003  
s. 25(5)(b)(i).

- (a) a prescribed person within the meaning of section 7; or

- (b) the authorised psychiatrist or any person authorised by the authorised psychiatrist; or

S. 53AD(1)(c)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (c) an employee of the Department authorised by the chief psychiatrist—

for the purpose of being returned to the approved mental health service.

S. 53AD(2)  
amended by  
No. 76/2003  
s. 25(5)(b)(ii).

- (2) Section 9B applies to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

**PART 5—CARE AND TREATMENT OF PEOPLE WITH A  
MENTAL DISORDER**

Pt 5  
(Heading)  
amended by  
No. 98/1995  
s. 34.

**Division 1AA—Informed consent**

Pt 5 Div. 1AA  
(Heading and  
s. 53B)  
inserted by  
No. 98/1995  
s. 35.

**53B Requirements for obtaining informed consent**

S. 53B  
inserted by  
No. 98/1995  
s. 35.

- (1) For the purposes of this Part (other than section 83(2)), a person is to be taken to have given informed consent to the performance on him or her of treatment only if the person gives written consent to that treatment after—
- (a) the person has been given a clear explanation containing sufficient information to enable him or her to make a balanced judgement; and
  - (b) the person has been given an adequate description of benefits, discomforts and risks without exaggeration or concealment; and
  - (c) the person has been advised of any beneficial alternative treatments; and
  - (d) any relevant questions asked by the person have been answered and the answers have been understood by the person; and
  - (e) a full disclosure has been made of any financial relationship between the person seeking informed consent or the registered medical practitioner who proposes to perform the treatment, or both, and the service, hospital or clinic in which it is proposed to perform the treatment; and

**s. 53B**

- 
- (f) subsections (2) and (3) have been complied with.
- (2) The person on whom the treatment is to be performed must be given the appropriate prescribed printed statement—
- (a) advising the person as to his or her legal rights and other entitlements including—
- (i) the right to obtain legal and medical advice (including a second psychiatric opinion) and to be represented before giving consent; and
- (ii) the right to refuse or withdraw his or her consent and to discontinue all or any part of the treatment at any time; and
- (b) containing any other information relating to the treatment that the Department considers relevant.
- (3) In addition to the statement, the person must be given an oral explanation of the information contained in the statement and, if he or she appears not to have understood, or to be incapable of understanding, the information contained in the statement, arrangements must be made to convey the information to the person in the language, mode of communication or terms which he or she is most likely to understand.
- (4) The statement may be printed in different languages so that, whenever possible, a person can be given a copy of the statement in a language with which he or she is familiar.
-

- (5) It is the duty of the authorised psychiatrist to ensure that this section is complied with in the approved mental health service.

**Note**

In considering whether a person has given informed consent to treatment, see also section 3A.

**Note to  
s. 53B(5)  
inserted by  
No. 41/2002  
s. 35.**

**Division 1—Psychosurgery**

**54 Definitions**

- (1) In this Division, *psychosurgery* means—
- (a) any surgical technique or procedure by which one or more lesions are created in a person's brain on the same or on separate occasions primarily for the purpose of altering the thoughts, emotions or behaviour of that person; or
  - (b) the use of intracerebral electrodes to create one or more lesions in a person's brain on the same or on separate occasions primarily for the purpose of altering the thoughts, emotions or behaviour of that person; or
  - (c) the use of intracerebral electrodes to cause stimulation through the electrodes on the same or on separate occasions without creating a lesion in the person's brain for the purpose of influencing or altering the thoughts, emotions or behaviour of that person.
- (2) For the purposes of subsection (1), *behaviour* of a person—
- (a) does not include—
    - (i) behaviour manifested as part of generalized convulsive or non-convulsive epilepsy; or

**s. 56**

S. 54(2)(a)(iii)  
amended by  
No. 42/1988  
s. 15(1)(a).

S. 54(2)(a)(iv)  
inserted by  
No. 42/1988  
s. 15(1)(b).

(ii) behaviour manifested as part of simple or complex partial epilepsy; or

(iii) behaviour considered to be secondary to a paroxysmal cerebral dysrhythmia; or

(iv) behaviour manifested as a result of a disorder of the basal ganglia; and

(b) does include behaviour not considered to be secondary to cerebral dysrhythmia.

S. 55  
amended by  
Nos 42/1988  
s. 15(2),  
23/1994  
s. 118(Sch. 1  
item 38.9  
(a)(b)),  
repealed by  
No. 98/1995  
s. 36.

\* \* \* \* \*

## 56 Psychosurgery Review Board

(1) There is established a Board to be known as the Psychosurgery Review Board.

(2) Schedule 3 has effect with respect to the constitution, members and procedures of the Psychosurgery Review Board.

## 57 Consent required

S. 57(1)  
amended by  
No. 98/1995  
s. 37(1).

(1) A person who—

(a) causes to be performed; or

(b) permits the performance of—

psychosurgery on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that psychosurgery is guilty of an offence against this Act.

- (2) A registered medical practitioner who performs psychosurgery on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that psychosurgery is guilty of professional misconduct.

S. 57(2)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.10(a)  
(b)), 98/1995  
s. 37(1)(2).

- (3) Psychosurgery must not be performed on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that psychosurgery.

S. 57(3)  
substituted by  
No. 98/1995  
s. 37(3).

**Note**

In considering whether a person has given informed consent to treatment, see also section 3A.

**Note to**  
s. 57(3)  
inserted by  
No. 41/2002  
s. 36.

## **58 Application to Psychosurgery Review Board**

- (1) A psychiatrist who seeks to arrange for a neurosurgeon to perform psychosurgery on a person must apply to the Psychosurgery Review Board for consent to the performance of the proposed psychosurgery.

S. 58(1)  
amended by  
No. 42/1988  
s. 15(3)(a).

- (2) An application under subsection (1) must specify—

- (a) the exact nature of the psychosurgery proposed to be performed and the name and qualifications of the person whom it is proposed will perform the psychosurgery; and
- (b) the clinical indications for the psychosurgery; and
- (c) the service, hospital or clinic in which it is proposed that the psychosurgery be performed; and

S. 58(2)(a)  
amended by  
No. 42/1988  
s. 15(3)(b).

S. 58(2)(c)  
amended by  
No. 98/1995  
s. 37(4).

**s. 59**

**S. 58(2)(d)**  
**amended by**  
**No. 98/1995**  
**s. 37(5).**

(d) whether in the applicant's opinion the person on whom the psychosurgery is proposed to be performed is capable of giving informed consent in accordance with Division 1AA to the performance on him or her of that psychosurgery; and

**S. 58(2)(e)**  
**amended by**  
**No. 98/1995**  
**s. 37(6).**

(e) whether the applicant is of the opinion that the person on whom the psychosurgery is proposed to be performed has given informed consent in accordance with Division 1AA to the performance on him or her of that psychosurgery or that there is doubt as to whether informed consent has been given.

**59 Hearing of application**

- (1) The chairperson of the Psychosurgery Review Board must within 10 days of an application under section 58 being received arrange a meeting of the Psychosurgery Review Board to hear the application within a further 21 days.
- (2) The chairperson of the Psychosurgery Review Board must at least 10 days before the day on which an application is to be heard cause notice of the hearing to be given to—
  - (a) the applicant; and
  - (b) the person in respect of whom the application is made; and
  - (c) any person nominated as advocate by the person in respect of whom the application is made; and
  - (d) the primary carer.



- (3) A notice under subsection (2) is to contain information with respect to—
  - (a) the time and place of the hearing; and
  - (b) the nature of the proceedings; and
  - (c) in the case of a notice given under subsection (2)(b), the entitlement of that person to representation before the Psychosurgery Review Board.
- (4) A person to whom notice of the hearing is given under subsection (2) is entitled to attend and be heard in person at the hearing.
- (5) The person in respect of whom an application is made may also be represented before the Psychosurgery Review Board by—
  - (a) an Australian legal practitioner (within the meaning of the **Legal Profession Act 2004**); or
  - (b) any other person authorized to that effect by that person.

S. 59(5)(a)  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 67.1).

## **60 Procedure of Psychosurgery Review Board**

- (1) The Psychosurgery Review Board—
  - (a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
  - (b) is bound by the rules of natural justice; and
  - (c) is not required to conduct any proceedings in a formal manner.
- (2) The Psychosurgery Review Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.

- 
- (3) Evidence before the Psychosurgery Review Board—
- (a) may be given orally or in writing or partly orally and partly in writing; and
  - (b) may be given—
    - (i) on oath or affirmation; or
    - (ii) by declaration instead of an oath where permitted by law.
- (4) A member of the Psychosurgery Review Board may administer an oath or take an affirmation or declaration for the purposes of this Division.
- (5) Evidence given before the Psychosurgery Review Board is not to be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.
- (6) The Psychosurgery Review Board may of its own motion or on the application of any party to the application before it cause to be served upon any person a summons to appear before the Psychosurgery Review Board to give evidence or to produce such documents as are specified in the summons.
- (7) The Psychosurgery Review Board may make an order for the manner of service, including substituted service, of a summons under subsection (6).
- (8) A person who without lawful excuse disobeys a summons of the Psychosurgery Review Board is guilty of an offence.

Penalty: 5 penalty units.

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**61 Proceedings to be closed to the public**

- (1) Unless subsection (2) applies, proceedings before the Psychosurgery Review Board are closed to members of the public.
- (2) The Psychosurgery Review Board may direct that particular proceedings or any part of the proceedings are to be open to members of the public if the Psychosurgery Review Board is satisfied that it would be in the best interests of the patient or in the public interest.

**62 Reports of proceedings**

- (1) Unless the Psychosurgery Review Board otherwise determines in a particular case a person must not publish or broadcast any report of the proceedings of the Psychosurgery Review Board.
- (2) Where the Psychosurgery Review Board considers it would be in the public interest to do so the Psychosurgery Review Board may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Psychosurgery Review Board provided that—
  - (a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and
  - (b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.
- (3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

S. 63(1)(a)  
amended by  
No. 76/2003  
s. 30(b).

### 63 Secrecy provision

(1) Unless subsection (2) or section 62 applies, a person who—

- (a) is or has at any time been a member of the Psychosurgery Review Board or a person employed or engaged to assist the Psychosurgery Review Board; or
- (b) is or has been present at any proceedings of the Psychosurgery Review Board—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Subsection (1) does not preclude a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or

- (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

#### **64 Powers of Psychosurgery Review Board**

S. 64  
amended by  
No. 42/1988  
s. 15(4)(a)(b).

- (1) If after hearing the application and making any inquiries and examinations it considers appropriate, the Psychosurgery Review Board—
  - (a) is satisfied as to the matters specified in section 65, the Psychosurgery Review Board must give its consent in accordance with section 66; or
  - (b) is not satisfied as to the matters specified in section 65, the Psychosurgery Review Board must refuse to give its consent.

S. 64(1)(b)  
substituted by  
No. 42/1988  
s. 15(4)(b).

\* \* \* \* \*

S. 64(1)(c)—  
64(2)  
repealed.<sup>1</sup>

#### **65 Matters as to which Psychosurgery Review Board is to be satisfied**

The matters as to which the Psychosurgery Review Board is to be satisfied on a hearing of an application are as follows—

- (a) the person in respect of whom the application is made has the capacity to give informed consent in accordance with Division 1AA to the performance on him or her of the proposed psychosurgery;

S. 65(a)  
amended by  
No. 98/1995  
s. 37(8).

**s. 66**

**S. 65(b)**  
amended by  
No. 98/1995  
s. 37(8).

(b) the person in respect of whom the application is made has in fact given informed consent in accordance with Division 1AA to the performance on him or her of the proposed psychosurgery;

(c) the proposed psychosurgery has clinical merit and is appropriate;

(d) any person proposing to perform the psychosurgery is properly qualified;

**S. 65(e)**  
amended by  
Nos 98/1995  
s. 37(4),  
7/2002 s. 51.

(e) the service, hospital or clinic in which it is proposed to perform the psychosurgery is an appropriate place;

(f) all other reasonable treatments have already been adequately and skilfully administered without sufficient and lasting benefit;

(g) notice of the hearing has been given in accordance with section 59(2).

**66 Matters to be specified in consent**

(1) The consent of the Psychosurgery Review Board under section 64(a) must specify the following—

**S. 66(1)(a)**  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.11(a)  
(b)).

(a) the name of the registered medical practitioner or registered medical practitioners authorized to perform the psychosurgery;

(b) the nature of the psychosurgery to be performed;

**S. 66(1)(c)**  
amended by  
No. 98/1995  
s. 37(4).

(c) the service, hospital or clinic in which the psychosurgery is to be performed;

(d) the period within which the psychosurgery is to be performed.

- (2) A consent of the Psychosurgery Review Board expires on the day specified in the consent unless before that expiry the Psychosurgery Review Board grants an application for an extension.
- (3) The Psychosurgery Review Board must cause notice of the consent to be given to—
  - (a) the applicant; and
  - (b) the person in respect of whom the application is made; and
  - (c) the legal representative and advocate if any of the person in respect of whom the application is made.

#### **67 Notice of refusal of consent**

- (1) Where the Psychosurgery Review Board refuses to give its consent under section 64(1)(b) the Psychosurgery Review Board must give its reasons in writing for refusing to give its consent.
- (2) The Psychosurgery Review Board must cause notice of its refusal of consent to be given to—
  - (a) the applicant; and
  - (b) the person in respect of whom the application is made; and
  - (c) the legal representative and advocate if any of the person in respect of whom the application is made.

**S. 67(1)**  
**amended by**  
**No. 32/1990**  
**s. 33(e).**

\* \* \* \* \*

**Ss 68, 69**  
**repealed.<sup>2</sup>**

#### **70 Report of performance of psychosurgery**

- (1) A neurosurgeon who performs psychosurgery on a person must make a written report to the Psychosurgery Review Board as to the performance of the operation within three months after the completion of the psychosurgery.

**S. 70(1)**  
**substituted by**  
**No. 42/1988**  
**s. 15(6).**

**S. 70(1A)**  
**inserted by**  
**No. 42/1988**  
**s. 15(6).**

- (1A) A psychiatrist who has arranged for a neurosurgeon to perform psychosurgery on a person must make a written report to the Psychosurgery Review Board on the results of the operation—
  - (a) within three months after the completion of the psychosurgery; and
  - (b) after three months and within 12 months after the completion of the psychosurgery.
- (2) The Psychosurgery Review Board may require any person who has submitted a report to provide any further information relating to the performance of the operation or its results as the Psychosurgery Review Board may request.

#### **71 Review of psychosurgery**

- (1) The Psychosurgery Review Board must ensure that at regular intervals there is a review of the case of any person on whom psychosurgery has been performed.
- (2) For the purposes of subsection (1) the Psychosurgery Review Board may—
  - (a) make or cause to be made observations of any person on whom psychosurgery has been performed; and
  - (b) make such arrangements for the gathering and recording of information as it considers appropriate.
- (3) The Psychosurgery Review Board cannot review the case of a person who has objected to being reviewed.



## Division 2—Electroconvulsive therapy

### 72 Electroconvulsive therapy

S. 72  
amended by  
No. 32/1990  
s. 20(a).

\* \* \* \* \*

S. 72(1)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item  
38.12(a)(b)),  
repealed by  
No. 98/1995  
s. 36.

- (2) For the purposes of this Division, a reference to *electroconvulsive therapy* includes a reference to a course of electroconvulsive therapy consisting of not more than 6 treatments given over a period with not more than 7 days elapsing between any 2 treatments.

S. 72(2)  
inserted by  
No. 32/1990  
s. 20(b),  
amended by  
No. 98/1995  
s. 38(1).

- (3) A person who gives informed consent in accordance with Division 1AA to having electroconvulsive therapy performed on him or her is to be taken to have consented to the administration of an anaesthetic to enable the electroconvulsive therapy to be performed.

S. 72(3)  
inserted by  
No. 32/1990  
s. 20(b),  
amended by  
No. 98/1995  
s. 38(2).

### 73 Informed consent required

- (1) Unless subsection (3) or (4) applies a person who—

S. 73(1)  
amended by  
No. 98/1995  
s. 39(1).

(a) causes to be performed; or

(b) permits the performance of—

electroconvulsive therapy on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that electroconvulsive therapy is guilty of an offence against this Act.

**s. 73**

**S. 73(2)**  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.13(a)  
(b)), 98/1995  
s. 39(1).

- (2) Unless subsection (3) or (4) applies a registered medical practitioner who performs electroconvulsive therapy on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that electroconvulsive therapy is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for not obtaining that consent.

**S. 73(3)**  
amended by  
No. 43/1998  
s. 41(3)(a).

- (3) If a person who is a patient is incapable of giving informed consent the electroconvulsive therapy may be performed if—

(a) the authorized psychiatrist has authorized the electroconvulsive therapy proposed to be performed after being satisfied that—

- (i) the electroconvulsive therapy has clinical merit and is appropriate; and
- (ii) having regard to any benefits, discomforts or risks the electroconvulsive therapy should be performed; and

**S. 73(3)(a)(iii)**  
inserted by  
No. 98/1995  
s. 39(2)(a).

- (iii) any beneficial alternative treatments have been considered; and

**S. 73(3)(a)(iv)**  
inserted by  
No. 98/1995  
s. 39(2)(a).

- (iv) unless the electroconvulsive therapy is performed, the patient is likely to suffer a significant deterioration in his or her physical or mental condition; and

**S. 73(3)(b)**  
amended by  
No. 32/1990  
s. 21,  
substituted by  
No. 98/1995  
s. 39(2)(b),  
amended by  
No. 43/1998  
s. 41(3)(b).

- (b) all reasonable efforts have been made to notify the patient's guardian or primary carer of the proposed performance of the electroconvulsive therapy.

- (4) Informed consent is not necessary if the nature of the mental disorder that a person has is such that the performance of the electroconvulsive therapy is urgently needed.

**S. 73(4)**  
substituted by  
No. 98/1995  
s. 39(3).

**Note**

In considering whether a person has given informed consent to treatment, see also section 3A.

**Note to**  
**s. 73(4)**  
inserted by  
No. 41/2002  
s. 37.

\* \* \* \* \*

**S. 73(5)**  
amended by  
Nos 32/1990  
s. 21, 42/1993  
s. 30(1),  
23/1994  
s. 118(Sch. 1  
item 38.14),  
repealed by  
No. 98/1995  
s. 39(4).

## **74 Premises on which electroconvulsive therapy may be performed**

- (1) Electroconvulsive therapy may only be performed on a person at premises licensed under section 75.

**S. 74(1)**  
amended by  
No. 124/1993  
s. 21.

- (2) A person who—

- (a) causes to be performed; or
- (b) permits the performance of—

electroconvulsive therapy on a person in contravention of subsection (1) is guilty of an offence against this Act.

- (3) A registered medical practitioner who performs electroconvulsive therapy on a person in contravention of subsection (1) is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for that contravention.

**S. 74(3)**  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.15(a)  
(b)).

**s. 75**

S. 74(4)  
inserted by  
No. 124/1993  
s. 22,  
substituted by  
No. 98/1995  
s. 40.

- (4) Premises which immediately before the commencement of this subsection were a psychiatric in-patient service (within the meaning of this Act as in force immediately before the commencement of section 4 of the **Mental Health (Amendment) Act 1995**) or an approved mental health service are deemed to be licensed under section 75 in respect of all forms of electroconvulsive therapy for 12 months from the commencement of this subsection and that licence may be amended or revoked accordingly.

**75 Licensing of premises**

S. 75(1)  
amended by  
No. 29/1999  
s. 5(1)(a)(i)(ii).

- (1) In this section *occupier* in relation to any premises includes a person, partnership or unincorporated association that is in occupation or control of the premises whether or not that person, partnership or unincorporated association is the owner of the premises.

S. 75(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (2) The occupier of any premises may apply to the Secretary for a licence to permit the performance of electroconvulsive therapy on those premises.

- (3) An application for a licence is to—

S. 75(3)(a)  
repealed by  
No. 29/1999  
s. 5(1)(b).

\* \* \* \* \*

(b) specify the prescribed particulars; and

(c) be forwarded with the prescribed fee.

S. 75(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (4) The Secretary must consider the application and may—

S. 75(4)(a)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(a) issue a licence subject to such conditions, limitations and restrictions as the Secretary considers appropriate; or

(b) refuse to issue a licence.

- ## 76 Provisions applying to a licence

- 123

**s. 77**

S. 76(2)(d)  
substituted by  
No. 29/1999  
s. 5(2)(b).

(d) the equipment on the premises is no longer  
suitable; or

(e) an unqualified or insufficiently qualified  
person has been performing  
electroconvulsive therapy on the premises.

## 77 Renewal of licence

S. 77(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(1) The holder of a licence may apply to the Secretary  
for the renewal of the licence.

(2) An application for the renewal of a licence is to—

S. 77(2)(a)  
repealed by  
No. 29/1999  
s. 5(2)(c)(i).

\* \* \* \*

(b) specify the prescribed particulars; and

(c) be forwarded with the prescribed fee.

S. 77(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(3) The Secretary must grant an application for the  
renewal of the licence unless he or she is satisfied  
that any of the grounds for cancellation specified  
in section 76(2) are applicable.

S. 77(4)  
amended by  
No. 46/1998  
s. 7(Sch. 1),  
repealed by  
No. 29/1999  
s. 5(2)(c)(ii).

\* \* \* \*

## 78 Amendment of licence

S. 78(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

(1) The Secretary may by notice in writing to the  
holder of a licence amend the licence by—

(a) revoking or varying any condition, limitation  
or restriction to which the licence is subject;  
or

- (b) inserting a new condition, limitation or restriction.
- (2) The holder of a licence may apply to the Secretary for the licence to be amended as specified in the application.
- (3) An application under subsection (2) must specify the prescribed particulars.

**S. 78(2)**  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
29/1999  
s. 5(2)(d).

**S. 78(3)**  
inserted by  
No. 29/1999  
s. 5(3).

## **79 Review of certain decisions by Tribunal**

- (1) A person whose interests are affected by a decision of the Secretary—
  - (a) refusing to issue; or
  - (b) refusing to renew; or
  - (c) refusing to amend; or
  - (d) cancelling; or
  - (e) amending—a licence may apply to the Tribunal for review of the decision.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the decision is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

**S. 79**  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 61.4),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

**s. 80**

S. 80  
substituted by  
No. 98/1995  
s. 42,  
amended by  
No. 29/1999  
s. 5(4).

**80 Monthly return**

A holder of a licence must as soon as practicable after the end of each month submit a return to the Department specifying the prescribed details in respect of electroconvulsive therapy performed during that month on any premises to which the licence relates.

**Division 3—Restraint and seclusion**

**81 Mechanical restraint**

S. 81(1)  
amended by  
No. 98/1995  
s. 43(1)(a)(b).

(1) Mechanical restraint of a person receiving treatment for a mental disorder in an approved mental health service can only be applied—

(a) if that restraint is necessary—

S. 81(1)(a)(i)  
amended by  
No. 98/1995  
s. 43(1)(c).

(i) for the purpose of the medical treatment of the person; or

S. 81(1)(a)(ii)  
amended by  
No. 98/1995  
s. 43(1)(c).

(ii) to prevent the person from causing injury to himself or herself or any other person; or

S. 81(1)(a)(iii)  
amended by  
No. 98/1995  
s. 43(1)(c).

(iii) to prevent the person from persistently destroying property; and

(b) if the use and form of restraint has been—

S. 81(1)(b)(ii)  
amended by  
No. 98/1995  
s. 43(1)(d)(i)(ii).

(i) approved by the authorized psychiatrist; or

(ii) in the case of an emergency, authorized by the senior registered nurse on duty and notified to a registered medical practitioner without delay; and

(c) for the period of time specified in the approval or authorization under paragraph (b).



- 
- |   |  |
|---|--|
| <p>(1A) In this section <i><b>mechanical restraint</b></i>, in relation to a person, means the application of devices (including belts, harnesses, manacles, sheets and straps) on the person's body to restrict his or her movement, but does not include the use of furniture (including beds with cot sides and chairs with tables fitted on their arms) that restricts the person's capacity to get off the furniture.</p>  | <p>S. 81(1A)<br/>inserted by<br/>No. 98/1995<br/>s. 43(2).</p> |
| <p>(1B) In the circumstances referred to in subsection (1)(b)(ii) the senior registered nurse must notify the authorised psychiatrist of the application of mechanical restraint as soon as practicable.</p>  | <p>S. 81(1B)<br/>inserted by<br/>No. 98/1995<br/>s. 43(2).</p> |
| <p>(1C) It is not necessary to obtain a person's consent to the application of mechanical restraint to him or her.</p>  | <p>S. 81(1C)<br/>inserted by<br/>No. 98/1995<br/>s. 43(2).</p> |
| <p>(1D) If mechanical restraint is applied to a person, he or she must—</p> <ul style="list-style-type: none"><li>(a) be under continuous observation by a registered nurse or registered medical practitioner; and</li><li>(b) be reviewed as clinically appropriate to his or her condition at intervals of not more than 15 minutes by a registered nurse; and</li><li>(c) subject to subsection (1E), be examined at intervals of not more than 4 hours by a registered medical practitioner; and</li><li>(d) be supplied with bedding and clothing which is appropriate in the circumstances; and</li><li>(e) be provided with food and drink at the appropriate times; and</li><li>(f) be provided with adequate toilet arrangements.</li></ul> | <p>S. 81(1D)<br/>inserted by<br/>No. 98/1995<br/>s. 43(2).</p> |
-

**s. 81**

**S. 81(1E)**  
inserted by  
No. 98/1995  
s. 43(2).

(1E) The authorised psychiatrist may vary the interval at which a person to whom mechanical restraint is applied is medically examined under subsection (1D)(c), if the authorised psychiatrist thinks it appropriate to do so.

**S. 81(1F)**  
inserted by  
No. 98/1995  
s. 43(2).

(1F) If a registered medical practitioner or the senior registered nurse on duty or the authorised psychiatrist is satisfied, having regard to the criteria specified in subsection (1), that the continued application of mechanical restraint to a person is not necessary, he or she must without delay release the person from the restraint.

**S. 81(2)**  
amended by  
No. 98/1995  
s. 43(3)(a)(b).

(2) Any person who applies mechanical restraint to a person receiving treatment for a mental disorder in an approved mental health service in contravention of subsection (1) is guilty of an offence against this Act.

**S. 81(3)**  
amended by  
Nos 42/1988  
s. 15(7),  
42/1993  
s. 30(2),  
98/1995  
s. 43(4)(a).

(3) The authorized psychiatrist must at the end of each month prepare and send to the chief psychiatrist a report of the use of mechanical restraint specifying in each case—

**S. 81(3)(a)**  
amended by  
No. 98/1995  
s. 43(4)(b).

(a) the form of mechanical restraint used; and

(b) the reasons why that restraint was used; and

(c) the name of the person who approved or authorized the use of that restraint; and

(d) the name of the person who applied that restraint; and

**S. 81(3)(e)**  
amended by  
No. 98/1995  
s. 43(4)(c)(d).

(e) the period of time for which the person was kept restrained; and

- (f) if the authorised psychiatrist varied the interval at which the person was medically examined, the reason for that variation—

S. 81(3)(f)  
inserted by  
No. 98/1995  
s. 43(4)(d).

during that month.

## 82 Seclusion of person receiving treatment

- (1) In this section, **seclusion** means the sole confinement of a person at any hour of the day or night in a room of which the doors and windows are locked from the outside.

S. 82(1)  
amended by  
No. 98/1995  
s. 44(1).

- (2) A person receiving treatment for a mental disorder in an approved mental health service may be kept in seclusion only—

S. 82(2)  
amended by  
No. 98/1995  
s. 44(2)(a).

- (a) if it is necessary to protect the person or any other person from an immediate or imminent risk to his or her health or safety or to prevent the person from absconding; and

S. 82(2)(a)  
substituted by  
No. 98/1995  
s. 44(2)(b).

- (b) if the use of seclusion has been—

- (i) approved by the authorized psychiatrist;  
or

- (ii) in the case of an emergency, authorized by the senior registered nurse on duty and notified to a registered medical practitioner without delay; and

S. 82(2)(b)(ii)  
amended by  
No. 98/1995  
s. 44(2)(c)(i)(ii).

- (c) for the period of time specified in the approval or authorization under paragraph (b).

- (2A) In the circumstances referred to in subsection (2)(b)(ii) the senior registered nurse must notify the authorised psychiatrist of the use of seclusion as soon as practicable.

S. 82(2A)  
inserted by  
No. 98/1995  
s. 44(3).

**s. 82**

**S. 82(2B)**  
inserted by  
No. 98/1995  
s. 44(3).

(2B) It is not necessary to obtain a person's consent to keep him or her in seclusion.

**S. 82(3)**  
amended by  
No. 98/1995  
s. 44(4)(a).

(3) A person who is kept in seclusion must—

**S. 82(3)(a)**  
substituted by  
No. 98/1995  
s. 44(4)(b).

(a) be reviewed as clinically appropriate to his or her condition at intervals of not more than 15 minutes by a registered nurse; and

**S. 82(3)(b)**  
substituted by  
No. 98/1995  
s. 44(4)(b).

(b) subject to subsection (3A), be examined at intervals of not more than 4 hours by a registered medical practitioner; and

(c) be supplied with bedding and clothing which is appropriate in the circumstances; and

(d) be provided with food and drink at the appropriate times; and

(e) be provided with adequate toilet arrangements.

**S. 82(3A)**  
inserted by  
No. 98/1995  
s. 44(5).

(3A) The authorised psychiatrist may vary the interval at which a person who is kept in seclusion is medically examined under subsection (3)(b), if the authorised psychiatrist thinks it appropriate to do so.

**S. 82(3B)**  
inserted by  
No. 98/1995  
s. 44(5).

(3B) If a registered medical practitioner or the senior registered nurse on duty or the authorised psychiatrist is satisfied, having regard to the criteria specified in subsection (2), that the continued seclusion of a person is not necessary, he or she must without delay end the keeping of the person in seclusion.

**S. 82(4)**  
amended by  
No. 98/1995  
s. 44(6).

(4) Any person who keeps a person in seclusion in contravention of this section is guilty of an offence against this Act.

- ### Division 4—Non-psychiatric treatment

(1) In this Division, *non-psychiatric treatment* means—

- (a) any surgical operation or procedure or series of related surgical operations or procedures; or
- (b) the administration of an anaesthetic for the purpose of medical investigation; or
- (c) the administration of any course of treatment or course of medication requiring a prescription or medical supervision—

the primary purpose of which is not the treatment of any mental disorder or the effects of mental disorder but does not include a special procedure or medical research procedure within the meaning

S. 83(1)  
amended by  
Nos 98/1995  
s. 45(1),  
41/2002  
s. 38(1),  
3/2006  
s. 12(1).

of the **Guardianship and Administration Act 1986**.

Note to  
s. 83(1)  
inserted by  
No. 3/2006  
s. 12(2).

**Note**

Part 4A of the **Guardianship and Administration Act 1986** applies to the carrying out of a special procedure or medical research procedure on persons who are incapable of giving consent to that procedure.

S. 83(1A)  
inserted by  
No. 98/1995  
s. 45(2).

(1A) In this Division *major non-psychiatric treatment* means non-psychiatric treatment of a class specified as major non-psychiatric treatment in written guidelines issued by the chief psychiatrist for the purposes of this Division.

S. 83(2)  
amended by  
Nos 98/1995  
s. 45(3),  
76/2003 s. 31.

- (2) For the purpose of this Division, a patient upon whom a non-psychiatric treatment that is not major non-psychiatric treatment is to be performed gives informed consent if that person gives free and voluntary consent after—
- (a) the person has been given a clear explanation of the proposed non-psychiatric treatment; and
  - (b) the person has been advised as to the reason why the non-psychiatric treatment is necessary.

Note to  
s. 83(2)  
inserted by  
No. 41/2002  
s. 38(2).

**Note**

In considering whether a person has given informed consent to treatment, see section 3A.

**84 Informed consent or consent of guardian or authorized psychiatrist required**

S. 84(1)  
substituted by  
No. 42/1988  
s. 15(8).

- (1) A person who—
- (a) causes to be performed; or
  - (b) permits the performance of; or

- (c) performs—  
non-psychiatric treatment on any patient without obtaining—
- (d) in the case of major non-psychiatric treatment, informed consent in accordance with Division 1AA to the performance of that treatment; or
- (da) in the case of non-psychiatric treatment that is not major non-psychiatric treatment, informed consent in accordance with section 83(2); or
- \*                      \*                      \*                      \*                      \*
- (f) if section 85 applies, consent in accordance with that section—  
is guilty of an offence against this Act.
- (2) A registered medical practitioner who performs a non-psychiatric treatment on any patient without obtaining informed consent as specified in subsection (1) or where section 85 applies consent in accordance with that section is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for not obtaining that consent.
- (3) This section does not apply to a person who performed non-psychiatric treatment, or caused or permitted such treatment to be performed, on a patient if the person believed on reasonable grounds when the treatment was performed that it was necessary, as a matter of urgency—
- (a) to save the patient's life; or

S. 84(1)(d)  
substituted by  
No. 98/1995  
s. 45(4)(a).

S. 84(1)(da)  
inserted by  
No. 98/1995  
s. 45(4)(a).

S. 84(1)(e)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.16),  
repealed by  
No. 41/2002  
s. 39(1).

S. 84(2)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.17(a)  
(b)), 98/1995  
s. 45(4)(b).

S. 84(3)  
substituted by  
No. 41/2002  
s. 39(2).

**s. 85**

(b) to prevent serious damage to the patient's health; or

(c) to prevent the patient from suffering or continuing to suffer significant pain or distress.

S. 84(4)  
inserted by  
No. 41/2002  
s. 39(2).

(4) A person to whom this section does not apply because of subsection (3) is not—

(a) guilty of assault or battery; or

(b) liable in any civil proceedings for assault or battery—

in respect of the treatment.

S. 84(5)  
inserted by  
No. 41/2002  
s. 39(2).

(5) Nothing in this section affects any duty of care owed by a registered medical practitioner to a patient.

**85 Consent to non-psychiatric treatment by guardian or authorized psychiatrist**

S. 85(1)  
amended by  
Nos 42/1988  
s. 15(9)(a),  
98/1995  
s. 45(5),  
43/1998  
s. 41(4),  
52/1998  
s. 311(Sch. 1  
item 61.5),  
substituted by  
No. 41/2002  
s. 40.

(1) If a patient is incapable of giving informed consent as specified in section 84(1) to the performance of non-psychiatric treatment, the treatment may be performed with the consent of—

(a) in the case of a patient who is 18 years of age or over, the first person listed below who, in the circumstances, is reasonably available, willing and able to make a decision concerning the proposed treatment—

(i) a person appointed by the patient under section 5A of the **Medical Treatment Act 1988**;

(ii) a person appointed by the Tribunal to make decisions concerning the proposed treatment;



- (iii) a person appointed under a guardianship order, within the meaning of the **Guardianship and Administration Act 1986**, with power to make decisions concerning the proposed treatment;
- (iv) a person appointed by the patient (before the patient became incapable of giving consent) as an enduring guardian, within the meaning of the **Guardianship and Administration Act 1986**, with power to make decisions concerning the proposed treatment;
- (v) the authorized psychiatrist; or
- (b) in the case of a patient who is under 18 years of age, any of the persons listed below who, in the circumstances, is reasonably available, willing and able to make a decision concerning the proposed treatment—
  - (i) a person with parental responsibility (within the meaning of the Family Law Act 1975 of the Commonwealth) for the patient;
  - (ii) a guardian of the patient appointed under a law of the Commonwealth or of a State or Territory;
  - (iii) a person who, under section 597 of the **Children, Youth and Families Act 2005**, can consent to the performance of the proposed treatment on the patient;

S. 85(1)(b)(iii)  
amended by  
No. 48/2006  
s. 42(Sch.  
item 27.10).

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**s. 85**

(iv) the authorized psychiatrist if there is no person with parental responsibility, guardian or custodian who is reasonably available, willing and able to make decisions concerning the proposed treatment.

**S. 85(2)**  
amended by  
Nos 42/1988  
s. 15(9)(b),  
42/1993  
s. 30(4)(a),  
substituted by  
No. 98/1995  
s. 45(6),  
amended by  
No. 29/1999  
s. 6.

(2) Each approved mental health service in which major non-psychiatric treatment is performed must keep a register of that treatment.

**S. 85(3)**  
inserted by  
No. 42/1988  
s. 15(9)(c),  
amended by  
No. 42/1993  
s. 30(4)(b),  
substituted by  
No. 98/1995  
s. 45(6).

(3) It is the duty of the authorised psychiatrist to ensure that the prescribed details in relation to a major non-psychiatric treatment are entered in the register as soon as practicable after the treatment is performed.

**S. 86**  
amended by  
Nos 32/1990  
s. 33(f),  
98/1995 s. 46,  
52/1998  
s. 311(Sch. 1  
item 61.6),  
40/1999  
s. 26(3)–(5),  
repealed by  
No. 41/2002  
s. 41.

\* \* \* \* \*

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**Division 5—Annual examination**

**87 Annual examination of patients**

- (1) Every patient must at least once every year be examined as to the patient's mental and general health.
- (2) The authorized psychiatrist must submit a report of the examination made under subsection (1) to the chief psychiatrist.

**Division 6—Patient's money<sup>3</sup>**

Pt 5 Div. 6  
(Heading and  
ss 88–93)  
substituted by  
No. 42/1988  
s. 16.

**87A Appointment or employment of senior officer**

S. 87A  
inserted by  
No. 98/1995  
s. 47.

- (1) For the purposes of this Division, a senior officer is to be appointed or employed for each approved mental health service.
- (2) The senior officer is to be appointed or employed—
  - (a) by the Secretary in respect of an approved mental health service operated by the State;  
or
  - (b) in any other case, by the governing body of the approved mental health service.
- (3) An approved mental health service that is not operated by the State must notify the Secretary of the appointment or employment of the senior officer within 5 days after that appointment or employment.

S. 87A(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 87A(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

S. 87A(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

s. 88

## 88 Patients Trust Account

S. 88  
substituted by  
No. 42/1988  
s. 16.

S. 88(1)  
amended by  
No. 98/1995  
s. 48(1)(a).

(1) The senior officer of an approved mental health service must maintain an account to be known as the Patients Trust Account with—

S. 88(1)(a)  
substituted by  
No. 11/2001  
s. 3(Sch.  
item 50(a)).

(a) an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth; or

S. 88(1)(b)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
11/2001  
s. 3(Sch.  
item 50(b)).

(b) another financial institution approved by the Secretary.

S. 88(2)  
amended by  
No. 98/1995  
s. 48(1)(a).

(2) There must be paid into the Patients Trust Account of an approved mental health service—

S. 88(2)(a)  
amended by  
No. 98/1995  
s. 48(1)(b).

(a) money held or received by the senior officer of the approved mental health service from or on behalf of a patient of the service; and

S. 88(2)(b)  
amended by  
No. 98/1995  
s. 48(1)(b).

(b) money held or received by the senior officer from a person to be held for the benefit, use or enjoyment of a specified patient of the approved mental health service; and

S. 88(2)(c)  
repealed by  
No. 98/1995  
s. 48(1)(c)(i).

\* \* \* \* \*

S. 88(2)(d)  
amended by  
No. 98/1995  
s. 48(1)(c)(ii).

(d) interest and capital gains earned from the investment of money in the account;

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\* \* \* \* \*

S. 88(2)(e)  
repealed by  
No. 98/1995  
s. 48(1)(c)(iii).

(3) There may be paid out of the Patients Trust (3)  
Account of an approved mental health service—

S. 88(3)  
amended by  
No. 98/1995  
s. 48(1)(a).

(a) amounts payable to or on behalf of patients  
of the approved mental health service in  
accordance with section 91; and

S. 88(3)(a)  
amended by  
No. 98/1995  
s. 48(1)(b).

\* \* \* \* \*

S. 88(3)(b)  
repealed by  
No. 98/1995  
s. 48(1)(d).

(c) any expenses necessarily incurred in making  
or as a result of any investment, and any loss  
incurred on the realisation of any investment  
of money in the Account.

\* \* \* \* \*

S. 88(4)  
repealed by  
No. 98/1995  
s. 48(1)(e).

## 89 Investment

Money standing to the credit of the Patients Trust  
Account of an approved mental health service that  
is not immediately required for use by patients of  
the approved mental health service may be  
invested in any manner in which trust funds may  
be invested under the **Trustee Act 1958**.

S. 89  
substituted by  
No. 42/1988  
s. 16,  
amended by  
Nos 98/1995  
s. 48(2)(a)(i)(ii),  
104/1995  
s. 6(Sch. 1  
item 18).

**s. 90**

**S. 90**  
substituted by  
No. 42/1988  
s. 16,  
amended by  
No. 98/1995  
s. 48(2)(b)(i).

**90 Financial management information system**

The senior officer of an approved mental health service must maintain the following accounts relating to money in the Patients Trust Account—

**S. 90(a)**  
amended by  
No. 98/1995  
s. 48(2)(b)(ii).

- (a) an account for each patient of the approved mental health service for whom or on whose behalf any money is held in the Patients Trust Account;

**S. 90(b)**  
repealed by  
No. 98/1995  
s. 48(2)(b)(iii).

\* \* \* \* \*

- (c) an interest account;  
(d) any other accounts that the senior officer considers desirable.

**S. 91**  
substituted by  
No. 42/1988  
s. 16.

**91 Patient's money**

**S. 91(1)**  
amended by  
No. 98/1995  
s. 48(2)(c)(i)(ii).

- (1) Any money held in the Patients Trust Account of an approved mental health service for or on behalf of a patient of the approved mental health service—

**S. 91(1)(b)**  
substituted by  
No. 124/1993  
s. 23.

- (a) may be withdrawn and paid to the patient if the patient so requests for any purpose the patient determines;  
(b) may be withdrawn on behalf of the patient if—  
(i) the senior officer of the service believes on reasonable grounds that the withdrawal of the money is necessary for the benefit, use or enjoyment of the patient; and

- |  |   |
|--|---|
| <p>(ii) the senior officer or a person employed in or by the approved mental health service and designated for that purpose by the senior officer has discussed the proposal to withdraw the money with the patient and the patient does not object.</p>   | <p>S. 91(1)(b)(ii)<br/>amended by<br/>No. 98/1995<br/>s. 48(2)(c)(ii).</p>                                  |
| <p>(2) If the amount held in a Patients Trust Account for or on behalf of a patient exceeds the amount prescribed for the purposes of this section, the senior officer of the approved mental health service must withdraw the amount of the excess and pay it to the patient or the patient's representative for use or investment as the patient or patient's representative determines.</p> | <p>S. 91(2)<br/>amended by<br/>No. 98/1995<br/>s. 48(2)(c)(ii).</p>   |
| <p>(3) A patient of an approved mental health service is entitled to interest on any money held by or through a psychiatric hospital, mental hospital or repatriation mental hospital under the <b>Mental Health Act 1959</b> on the patient's behalf at any time during the period beginning on 1 July 1986 and ending on 30 September 1987.</p>  | <p>S. 91(3)<br/>amended by<br/>No. 98/1995<br/>s. 48(2)(c)(i).</p>  |
| <p>(4) A patient of an approved mental health service is entitled to interest payable annually on money held for or on behalf of the patient in the Patients Trust Account at any time on or after 1 October 1987.</p>   | <p>S. 91(4)<br/>amended by<br/>No. 98/1995<br/>s. 48(2)(c)(i).</p>  |
| <p style="text-align: center;">*                      *                      *                      *</p>  | <p>S. 91(5)<br/>repealed by<br/>No. 98/1995<br/>s. 48(2)(c)(iii).</p>                                       |
| <p style="text-align: center;">*                      *                      *                      *</p>  | <p>S. 92<br/>substituted by<br/>No. 42/1988<br/>s. 16,<br/>repealed by<br/>No. 98/1995<br/>s. 48(2)(d).</p> |

**s. 93**

**S. 93**  
substituted by  
No. 42/1988  
s. 16.

### **93 Interest**

Money received from the investment of any part of a Patients Trust Account must be applied in the following order—

- (a) in payment of expenses and losses of investment referred to in section 88(3)(c);
- (b) as interest on patient's money in accordance with section 91(3);
- (c) as interest on patient's money in accordance with section 91(4);

**S. 93(d)**  
repealed by  
No. 98/1995  
s. 48(2)(e).

\* \* \* \* \*



**PART 5A—INTERSTATE APPLICATION OF MENTAL  
HEALTH PROVISIONS**

**Division 1—Introductory**

Pt 5A  
(Headings  
and ss 93A–  
93L)  
inserted by  
No. 55/1996  
s. 3.

**93A Definitions**

S. 93A  
inserted by  
No. 55/1996  
s. 3.

In this Part—

*corresponding law* means a law that, under an Order in force under section 93B, is declared to be a corresponding law for the purposes of this Part;

*corresponding order* means an order that, under an Order in force under section 93B, is declared to be a corresponding order for the purposes of this Part;

*interstate mental health facility* means a hospital or other facility to which a person in a participating State may be involuntarily admitted under a corresponding law in that State;

*interstate authority*, for an interstate mental health facility, means a person performing a similar or corresponding function to an authorised psychiatrist in relation to that facility;

*participating State* means a State—

- (a) in which a corresponding law is in force; and
- (b) a Minister of which has made an agreement with the Minister under section 93C;

**s. 93B**

S. 93A def. of *prescribed person* amended by No. 76/2003 s. 26(1)(a).

*prescribed person* has the meaning given in section 7;

*State* includes Territory.

S. 93B inserted by No. 55/1996 s. 3.

**93B Corresponding laws and orders**

- (1) The Governor in Council on the recommendation of the Minister, by Order published in the Government Gazette, may declare that a law of a State (other than this State) is a corresponding law for the purposes of this Part.
- (2) An Order under subsection (1) in respect of a law of another State may include a declaration that an order under that law that is substantially similar to a community treatment order is a corresponding order for the purposes of this Part.

S. 93C inserted by No. 55/1996 s. 3.

**93C Ministerial agreements**

The Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or a corresponding law.

S. 93D inserted by No. 55/1996 s. 3.

**93D Victorian officers may exercise powers under corresponding laws**

Subject to the provisions of any agreement under section 93C, an authorised psychiatrist, the chief psychiatrist or a person who is authorised under this Act to apprehend a person or take a person to an approved mental health service may exercise any power conferred on him or her by or under a corresponding law or an agreement under section 93C.

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**Division 2—Interstate transfer of persons and patients**

**93E Transfer of persons from this State**

S. 93E  
inserted by  
No. 55/1996  
s. 3.

- (1) A person who may be taken to and detained in an approved mental health service as an involuntary patient under Division 2 of Part 3 may instead be taken to an interstate mental health facility, if this is permitted by or under a corresponding law.
- (2) For the purposes of this section, a request and recommendation under section 9 may be addressed or directed to the interstate authority for the interstate mental health facility.
- (3) A person may be taken to an interstate mental health facility under subsection (1) by—
  - (a) a person who could take the person to an approved mental health service under section 9; or
  - (b) a person who, under the corresponding law, is authorised to take the person to the interstate mental health facility.
- (4) Section 9B applies to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

S. 93E(1)  
amended by  
No. 76/2003  
s. 26(1)(b).

S. 93E(4)  
amended by  
No. 76/2003  
s. 26(1)(c).

**s. 93F**

**S. 93F**  
inserted by  
No. 55/1996  
s. 3.

**93F Admission of persons from interstate**

**S. 93F(1)**  
substituted by  
No. 76/2003  
s. 26(2).

- (1) A person who may be taken to and detained in an interstate mental health facility under a corresponding law may instead be made subject to an involuntary treatment order or community treatment order under this Act and may be taken to an approved mental health service for that purpose.
- (2) A person may be taken to an approved mental health service under subsection (1) by—
  - (a) a prescribed person; or
  - (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health facility.
- (3) Division 2 of Part 3 applies to a person referred to in subsection (1) and, for that purpose—

**S. 93F(3)(a)**  
amended by  
No. 76/2003  
s. 26(3)(a)(i).

- (a) any document that authorises the detention of the person under the corresponding law is taken to be a request and recommendation under section 9; and

**S. 93F(3)(b)**  
amended by  
No. 76/2003  
s. 26(3)(a)(ii).

- (b) if there is no such document, the person may be detained in the approved mental health service for the minimum time reasonably necessary to allow a request and recommendation to be completed in respect of the person under section 9.

**S. 93F(3)(c)**  
repealed by  
No. 76/2003  
s. 26(3)(a)(iii).

\* \* \* \* \*

**93G Transfer of patients from this State**

- (1) An authorised psychiatrist or the chief psychiatrist may, by order, transfer an involuntary patient to an interstate mental health facility if—

\* \* \* \* \*

S. 93G  
inserted by  
No. 55/1996  
s. 3.

S. 93G(1)(a)  
repealed by  
No. 76/2003  
s. 26(3)(b).

- (b) the authorised psychiatrist or chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment; and
- (c) the transfer is permitted by or under a corresponding law; and
- (d) the interstate authority for the interstate mental health facility agrees to the transfer.
- (2) The authorised psychiatrist or chief psychiatrist must send a copy of a transfer order to the Board for review under this section.
- (3) The Board must review a transfer order without delay, and—
- (a) if the Board considers that the transfer—
- (i) would be of benefit to the patient; or
- (ii) is necessary for the patient's treatment—
- it may confirm the transfer order; or
- (b) otherwise, it must refuse to confirm the transfer order.
- (4) For the purposes of a review under this section, sections 31 to 35 apply as if the review were a review under section 30.

S. 93G(3)(b)  
substituted by  
No. 76/2003  
s. 26(3)(c).

**s. 93G**

**S. 93G(6)**  
**amended by**  
**No. 76/2003**  
**s. 26(3)(d).**

- (5) A transfer order does not take effect unless and until it has been confirmed by the Board.
- (6) A person who is transferred under this section ceases to be an involuntary patient on admission to the interstate mental health facility or on being made subject to a corresponding order.
- (7) A person who is transferred under this section may be taken to the interstate mental health facility by—

**S. 93G(7)(a)**  
**substituted by**  
**Nos 7/2002**  
**s. 45(1),**  
**76/2003**  
**s. 26(3)(e).**

- (a) a prescribed person; or

**S. 93G(7)(b)**  
**substituted by**  
**No. 7/2002**  
**s. 45(1).**

- (b) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or

**S. 93G(7)(c)**  
**inserted by**  
**No. 7/2002**  
**s. 45(1).**

- (c) an employee of the Department authorized by the chief psychiatrist; or

**S. 93G(7)(d)**  
**inserted by**  
**No. 7/2002**  
**s. 45(1).**

- (d) a person who, under the corresponding law, is authorized to take the person to the interstate mental health facility.

**S. 93G(8)**  
**amended by**  
**No. 76/2003**  
**s. 26(3)(f).**

- (8) Section 9B applies to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

**S. 93G(9)**  
**inserted by**  
**No. 76/2003**  
**s. 26(4).**

- (9) This section does not apply to an involuntary patient who is subject to a hospital transfer order, an assessment order or a diagnosis, assessment and treatment order.

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**93H Transfer of patients from interstate**

**S. 93H  
inserted by  
No. 55/1996  
s. 3.**

- (1) A person who is involuntarily detained in an interstate mental health facility under a corresponding law, or who is subject to a corresponding order, may be—
- (a) transferred to this State in accordance with the corresponding law; and
  - (b) made subject to an involuntary treatment order or community treatment order; and
  - (c) taken to an approved mental health service for that purpose, if necessary to do so.
- (2) A person may be taken to an approved mental health service under subsection (1) by—
- (a) a prescribed person; or
  - (b) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or
  - (c) an employee of the Department authorized by the chief psychiatrist; or
  - (d) a person who, under the corresponding law, is authorized to take the person to the approved mental health service.

**S. 93H(1)  
substituted by  
No. 76/2003  
s. 26(5).**

**S. 93H(2)(a)  
substituted by  
Nos 7/2002  
s. 45(2),  
76/2003  
s. 26(6)(a).**

**S. 93H(2)(b)  
substituted by  
No. 7/2002  
s. 45(2).**

**S. 93H(2)(c)  
inserted by  
No. 7/2002  
s. 45(2).**

**S. 93H(2)(d)  
inserted by  
No. 7/2002  
s. 45(2).**

**s. 93I**

(3) Division 2 of Part 3 applies to a person referred to in subsection (1) and, for that purpose—

(a) any document that authorises the transfer under the corresponding law is taken to be a request and recommendation under section 9; and

(b) if there is no such document, the person may be detained in the approved mental health service for the minimum time reasonably necessary to allow a request and recommendation to be completed in respect of the person under section 9.

S. 93H(3)(b) amended by No. 76/2003 s. 26(6)(b)(i).

S. 93H(3)(c) repealed by No. 76/2003 s. 26(6)(b)(ii).

\* \* \* \* \*

**Division 3—Community treatment orders**

S. 93I inserted by No. 55/1996 s. 3.

**93I Extra-territoriality**

A community treatment order—

(a) may be made under section 14 even though the person to whom it relates does not reside in this State; and

(b) may provide for the person to live in a participating State and to receive treatment in that State.

S. 93J inserted by No. 55/1996 s. 3.

**93J Interstate officers may perform functions under an interstate CTO**

A person who is authorised to perform functions or exercise powers under a corresponding order may perform those functions or exercise those powers in this State.



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**Division 4—Apprehension of persons absent without leave**

**93K Apprehension of persons absent from interstate facilities**

S. 93K  
inserted by  
No. 55/1996  
s. 3.

- (1) A person who is absent without leave or other lawful authority from an interstate mental health facility in a participating State and who may be apprehended under a corresponding law in that State may be apprehended in this State by—

S. 93K(1)  
amended by  
No. 7/2002  
s. 45(3)(a).

(a) a person who is authorised to apprehend the person under the corresponding law; or

(b) a prescribed person; or

S. 93K(1)(b)  
substituted by  
Nos 7/2002  
s. 45(3)(b),  
76/2003  
s. 26(6)(c).

(c) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or

S. 93K(1)(c)  
inserted by  
No. 7/2002  
s. 45(3)(b).

(d) an employee of the Department authorized by the chief psychiatrist.

S. 93K(1)(d)  
inserted by  
No. 7/2002  
s. 45(3)(b).

- (2) For the purpose of subsection (1), a warrant or other document that, under the corresponding law, authorises the apprehension of the person in the participating State authorises their apprehension in this State.

- (3) A person who is apprehended under subsection (1) must be taken to an interstate mental health facility in the participating State.

S. 93K(3)  
amended by  
No. 7/2002  
s. 45(4).

- (4) Section 9B applies to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

S. 93K(4)  
amended by  
No. 76/2003  
s. 26(6)(d).

**s. 93L**

S. 93K(5)  
inserted by  
No. 7/2002  
s. 45(5),  
amended by  
No. 76/2003  
s. 26(6)(e).

Note to  
s. 93K(5)  
inserted by  
No. 76/2003  
s. 26(6)(f).

S. 93K(6)  
inserted by  
No. 7/2002  
s. 45(5).

S. 93L  
inserted by  
No. 55/1996  
s. 3.

S. 93L(b)  
substituted by  
Nos 7/2002  
s. 45(6),  
76/2003  
s. 26(6)(g).

S. 93L(c)  
inserted by  
No. 7/2002  
s. 45(6).

S. 93L(d)  
inserted by  
No. 7/2002  
s. 45(6).

- (5) Despite subsection (3), a person who is apprehended under subsection (1) may be detained in an approved mental health service under Division 2 of Part 3 pending his or her return to the participating State.

**Note**

A person detained under subsection (5) is an involuntary patient (see section 3(1)) and is to be treated for his or her mental illness (see section 12AD).

- (6) For the purposes of this section, a person is taken to be absent without lawful authority from an interstate mental health facility if the person did not return to the facility when required to do so under a corresponding law.

**93L Escort of Victorian patients apprehended interstate**

A patient absent without leave from an approved mental health service who is apprehended in a participating State may be taken back to the approved mental health service by—

- (a) a person who, under a corresponding law in that State, is authorised to take the person to an interstate mental health facility in that State; or
- (b) a prescribed person; or
- (c) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or
- (d) an employee of the Department authorized by the chief psychiatrist.

**PART 5B—INTERSTATE SECURITY PATIENTS  
ABSCONDING TO VICTORIA**

Pt 5B  
(Heading and  
ss 93M–93Q)  
inserted by  
No. 7/2002  
s. 46.

**93M Definitions**

S. 93M  
inserted by  
No. 7/2002  
s. 46.

In this Part—

*interstate security patient* means a person who—

- (a) has been convicted of an offence in another State that would be an offence if committed in Victoria; and
- (b) is serving a sentence of imprisonment in any State (other than Victoria) for that offence (whether in a prison or otherwise); and
- (c) is required to take involuntary treatment for mental illness in the State in which they are serving their sentence;

*mental health facility* means a facility for the detention and treatment of persons who are mentally ill;

*relevant State*, in relation to an interstate security patient, means the State in which they are serving their sentence of imprisonment;

*State* includes Territory.

**s. 93N**

**S. 93N**  
inserted by  
No. 7/2002  
s. 46.

**93N Warrant to arrest interstate security patient who absconds to Victoria**

- (1) The Secretary may apply to the Magistrates' Court for a warrant to arrest a person if the Secretary reasonably believes that—
  - (a) the person is an interstate security patient; and
  - (b) the person is in Victoria; and
  - (c) the person could be apprehended in the relevant State, if the person were still in that State, because he or she is absent without leave or other lawful authority from a mental health facility in the relevant State; and
  - (d) one of the following applies—
    - (i) the person cannot be lawfully apprehended in Victoria because a warrant to apprehend or arrest the person has not been or cannot be issued in the relevant State, or such a warrant cannot be executed in Victoria; or
    - (ii) the person cannot be lawfully apprehended in Victoria under section 93K of the **Mental Health Act 1986**; or
    - (iii) although the person could be lawfully apprehended in Victoria, the person would not be able to be returned to the relevant State following the apprehension.
- (2) For the purposes of subsection (1)(c), a person is taken to be absent without lawful authority from a mental health facility in a relevant State if the person did not return to the facility when required to do so under a law of that State.

- (3) If the Magistrates' Court is satisfied by evidence on oath, whether orally or by affidavit, of the matters specified in paragraphs (a) to (d) of subsection (1), the court may order that a warrant to arrest be issued against the person who is the subject of the application.
- (4) Despite section 64(2)(a) of the **Magistrates' Court Act 1989**, a person arrested under a warrant issued under this section must be brought before the Magistrates' Court on the day of his or her arrest or on the next sitting day of the court.

**93O Orders Magistrates' Court may make in respect of interstate security patients**

S. 93O  
inserted by  
No. 7/2002  
s. 46.

- (1) When a person arrested under a warrant issued under section 93N is brought before the Magistrates' Court, the court must make—
  - (a) an order granting the person bail; or
  - (b) an order remanding the person in custody in a prison—unless the court is satisfied that the matters specified in paragraphs (a) to (d) of section 93N(1) are not made out.
- (2) If the court is satisfied that any of the matters specified in paragraphs (a) to (c) of section 93N(1) is not made out, the court must discharge the person.
- (3) If the court is satisfied that the matters specified in paragraphs (a) to (c) of section 93N(1) are made out, but that the person can be returned to the relevant State, the court must order the person to be released into the custody of a person who is authorised to escort the person to the relevant State.

**s. 93P**

**S. 93P**  
inserted by  
No. 7/2002  
s. 46.

**93P Translated sentence for interstate security patient**

- (1) Within 7 days after an interstate security patient is granted bail or remanded in custody in a prison under section 93O(1), the Secretary must apply to the Supreme Court for a translated sentence to be imposed on the interstate security patient.
- (2) The Supreme Court may deal with the application itself or refer it to the County Court.
- (3) On an application under subsection (1), the court must, by order, impose a translated sentence on the interstate security patient and determine the period of that sentence already served, unless the court is satisfied that the interstate security patient can be returned to the relevant State.
- (4) If the court is satisfied that the interstate security patient can be returned to the relevant State, the court must order them to be released into the custody of a person who is authorised to escort them to the relevant State.
- (5) The translated sentence must be a sentence of the same duration as that imposed on the interstate security patient in the relevant State in respect of the offence that resulted in them becoming an interstate security patient.
- (6) In determining the period of the translated sentence already served, the court must take into account—
  - (a) the period of the sentence already served in the relevant State; and
  - (b) the period since the interstate security patient was first arrested in Victoria under a warrant issued under section 93N.

**93Q Provisions relating to translated sentences**

S. 93Q  
inserted by  
No. 7/2002  
s. 46.

- (1) Subject to this section, a translated sentence imposed on an interstate security patient under section 93P has the same effect as if it had been imposed on the interstate security patient under the **Sentencing Act 1991** on conviction for an offence in Victoria.
- (2) If, under the law of the relevant State, a court has fixed a non-parole period in respect of a sentence imposed on the interstate security patient, that non-parole period is taken to have been fixed by the court in Victoria in respect of the translated sentence.
- (3) If the sentence imposed on an interstate security patient, or any non-parole period in respect of that sentence—
  - (a) is varied or quashed on a review by or appeal to a court in the relevant State, the translated sentence or non-parole period is taken to have been varied to the same extent, or to have been quashed, by a corresponding court in Victoria; or
  - (b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in the relevant State, the translated sentence is taken to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in Victoria.

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## PART 6—ADMINISTRATION

Pt 6 Div. 1  
(Heading)  
substituted by  
No. 76/2003  
s. 32(1).

### Division 1—Approved mental health services

S. 94  
(Heading)  
inserted by  
No. 76/2003  
s. 32(2).  
S. 94  
amended by  
No. 42/1988  
s. 17(1)(a)  
(b)(2),  
substituted by  
No. 98/1995  
s. 50.

#### 94 Proclamation of approved mental health services

- (1) The Governor in Council may, by a proclamation published in the Government Gazette, proclaim—
  - (a) any premises (including part of any building or place) at which treatment is to be provided to patients; or
  - (b) any service through which treatment is to be provided to patients—to be an approved mental health service.
- (2) Any premises that immediately before the commencement of section 50 of the **Mental Health (Amendment) Act 1995** were, or were deemed to be, an approved psychiatric hospital or an approved psychiatric unit must be taken (during the period of 2 years from that commencement) to have been proclaimed under subsection (1) to be an approved mental health service.
- (3) A proclamation under subsection (1) may include directions in respect of the Patients Trust Account of the approved mental health service to which the proclamation relates for the purpose of ensuring the equitable management of funds in that account for the benefit of patients.



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**94A Emergency declaration of approved mental health services**

S. 94A  
inserted by  
No. 76/2003  
s. 33.

- (1) The Secretary, by notice published in the Government Gazette, may declare—
  - (a) any premises (including part of any building or place) at which treatment is to be provided to patients; or
  - (b) any service through which treatment is to be provided to patients—to be an approved mental health service.
- (2) The Secretary may make a declaration under subsection (1) only if he or she is satisfied that an emergency exists and it is impracticable in the circumstances for a proclamation to be made under section 94.
- (3) A declaration under this section has effect for the period, not exceeding 7 days, stated in the notice of declaration.

**Division 2—Staff**

**95 Appointment of registered medical practitioners**

The Secretary may employ or engage as many registered medical practitioners as are necessary for the purposes of this Act.

S. 95  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.2)<sup>4</sup>,  
23/1994  
s. 118(Sch. 1  
item 38.18),  
46/1998  
s. 7(Sch. 1),  
substituted by  
No. 76/2003  
s. 34.

## 96 Authorized psychiatrist

S. 96(1)  
amended by  
No. 42/1988  
s. 17(3),  
substituted by  
No. 98/1995  
s. 51(1).

- (1) A qualified psychiatrist is to be appointed to be the authorised psychiatrist for an approved mental health service.

S. 96(1A)  
inserted by  
No. 98/1995  
s. 51(1).

- (1A) The authorised psychiatrist is to be appointed—
- (a) by the Secretary in respect of an approved mental health service operated by the State; or
  - (b) in any other case, by the governing body of the approved mental health service.

S. 96(1B)  
inserted by  
No. 98/1995  
s. 51(1).

- (1B) An approved mental health service must notify the Board and, in the case of an approved mental health service that is not operated by the State, the Secretary of the appointment within 5 days after the appointment is made.

S. 96(2)  
amended by  
Nos 98/1995  
s. 51(2),  
29/1999 s. 7.

- (2) The authorized psychiatrist has such powers, duties, functions and immunities as are conferred or imposed upon the authorized psychiatrist by or under this or any other Act.

S. 96(2A)  
inserted by  
No. 98/1995  
s. 51(3).

- (2A) The authorised psychiatrist of an approved mental health service operated by the State is subject to the general direction and control of the Secretary.

- (3) The authorized psychiatrist may be appointed as the senior officer for the purposes of this Act.

S. 96(4)  
amended by  
No. 7/2002  
s. 47.

- (4) The authorized psychiatrist may by instrument of delegation delegate to a qualified psychiatrist any power, duty or function of the authorized psychiatrist other than this power of delegation or the duty to provide the Forensic Leave Panel with an applicant profile under section 54A of the **Crimes (Mental Impairment and Unfitness to**

**be Tried) Act 1997** and a leave plan or statement under section 54B of that Act.

- (5) The authorised psychiatrist may, by instrument, delegate to a registered medical practitioner, a power, duty or function of the authorised psychiatrist under section 12AC.

S. 96(5)  
inserted by  
No. 32/1990  
s. 22,  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.19) (as  
amended by  
No. 74/2000  
s. 3(Sch. 1  
item 77.4)),  
substituted by  
No. 98/1995  
s. 51(4),  
amended by  
No. 76/2003  
s. 27(1).

- (6) A delegation under subsection (5)—

- (a) must only be made for a period of not more than 96 hours but may be renewed; and
- (b) must be made subject to a condition that the exercise or performance of the power, duty or function must be reviewed by the authorised psychiatrist as soon as practicable after the delegation has expired.

S. 96(6)  
inserted by  
No. 98/1995  
s. 51(4).

## 97 Provision of staff services

- (1) The Secretary may having regard to the objectives and functions of the Department under this Act, make available to a person, association or organization providing mental health services the services of any person or class of persons employed in the Department under the **Public Administration Act 2004**.

S. 97(1)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.3(a)(b)),  
46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 132.1).

S. 97(2)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.4  
(a)–(c)),  
59/1996  
s. 10(Sch. 2  
item 14),  
46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 132.1).

- (2) A person or class of persons whose services are made available under subsection (1) to a person, association or organization remains subject to the **Public Administration Act 2004** but may be subject to the direction and control of the person, association or organization for the purposes of duty in the assigned role to the extent and subject to any conditions determined and agreed to by the Secretary which cannot be less favourable than under the **Public Administration Act 2004**.

Pt 6 Div. 3  
(Heading and  
ss 98–104)  
amended by  
Nos 42/1988  
s. 18, 32/1990  
s. 23(1),  
31/1994  
s. 3(Sch. 1  
items 42.1,  
42.2), 98/1995  
s. 52(1)(2)(a)–  
(c), 46/1998  
s. 7(Sch. 1),  
substituted as  
Pt 6 Div. 3  
(Heading and  
ss 98–100) by  
No. 29/1999  
s. 8.

### Division 3—Community support services

S. 98  
substituted by  
No. 29/1999  
s. 8.

## 98 Definitions

In this Division—

*agency* has the same meaning as in Division 1 of Part 3 of the **Health Services Act 1988**;

*community support services* means services funded by the Secretary to provide care or support designed to assist people with a mental disorder, wherever possible, to live, work and participate in the community and includes psychiatric disability support services.

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**99 Principles for community support services**

**S. 99**  
**substituted by**  
**No. 29/1999**  
**s. 8.**

It is the intention of Parliament that an agency providing community support services operate in accordance with the following principles—

- (a) people receiving the services should be given the best possible care and treatment appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that care and treatment; and
- (b) provision should be made for people who are receiving the services to participate in the planning, operation and evaluation of the services; and
- (c) restrictions on and interference with the rights, privacy, dignity and self-respect of people receiving the services should be kept to the minimum necessary in the circumstances; and
- (d) there should be adequate mechanisms for the assessment and review of people receiving the services; and
- (e) the services provided should be accessible and flexible to meet the needs of people with a mental disorder.

**100 Appointment of administrator**

**S. 100**  
**substituted by**  
**No. 29/1999**  
**s. 8.**

- (1) If the Minister is satisfied that an agency providing community support services—
- (a) is inefficiently or incompetently managed; or
  - (b) has failed to provide effective services in accordance with the principles specified in section 99; or

- (c) has breached or failed to comply with any provision of any funding agreement with the Secretary—

the Minister may recommend to the Governor in Council that an administrator of the agency be appointed.

- (2) If the Minister proposes that an agency should be administered by an administrator, the Minister—
  - (a) must give notice in writing to the agency of his or her proposal; and
  - (b) must consider any submissions, whether oral or in writing, made to the Minister by the agency within 7 days after the giving of the notice; and
  - (c) may consider any other submissions and any other matters the Minister considers appropriate—

before deciding whether or not to recommend the appointment of an administrator.

- (3) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the agency for such period and subject to such terms and conditions as are specified in the appointment.
- (4) An administrator of an agency appointed under this section has and may exercise all the powers and is subject to all the duties of the board or other governing body of the agency.
- (5) On the appointment of an administrator, the members of the board or other governing body of the agency cease to hold office.

- (6) If the Minister recommends to the Governor in Council that the appointment of an administrator of an agency should be revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.
- (7) If a notice is published under subsection (6) in relation to an agency—
- (a) members of the board or other governing body of the agency are to be elected or appointed in accordance with the rules or other constituting document of the agency; and
  - (b) on the date specified in the notice—
    - (i) the appointment of the administrator is revoked; and
    - (ii) the board or other governing body of the agency is re-established.
- (8) The salary of an administrator appointed under this section and any expenses of the administrator necessarily incurred in the administration are to be paid by the Department.

*	*	*	*	*	<b>Ss 101, 102 repealed by No. 29/1999 s. 8.</b>
*	*	*	*	*	<b>S. 103 repealed by No. 42/1988 s. 18.</b>
*	*	*	*	*	<b>Ss 104, 104A repealed by No. 29/1999 s. 8.</b>

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**Division 4—The chief psychiatrist**

**105 The chief psychiatrist**

S. 105(1)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (1) There is to be appointed by the Secretary as chief psychiatrist a qualified psychiatrist appointed under section 95.

S. 105(2)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (2) Subject to the general direction and control of the Secretary the chief psychiatrist—

S. 105(2)(a)  
amended by  
No. 32/1990  
s. 24(a).

- (a) is responsible for the medical care and welfare of persons receiving treatment or care for a mental illness; and

S. 105(2)(b)  
amended by  
No. 29/1999  
s. 9(1)(a).

- (b) has such powers, duties, functions and immunities as are conferred or imposed upon the chief psychiatrist by or under this or any other Act.

- (3) The chief psychiatrist may by instrument of delegation delegate to a qualified psychiatrist appointed under section 95 any power, duty or function of the chief psychiatrist other than this power of delegation.

- (4) A person is not empowered to exercise a power, duty or function delegated under subsection (3) while that person is exercising any power, duty or function as or delegated by the authorized psychiatrist.

S. 105(5)  
inserted by  
No. 98/1995  
s. 53,  
substituted by  
No. 46/1998  
s. 7(Sch. 1),  
amended by  
No. 108/2004  
s. 117(1)  
(Sch. 3  
item 132.1).

- (5) Any employees that are necessary to assist the chief psychiatrist in the performance of his or her powers, duties and functions under this Act are to be employed under Part 3 of the **Public Administration Act 2004**.



**106 Special powers of chief psychiatrist and authorised officers**

S. 106  
amended by  
Nos 42/1988  
s. 19(a)–(c),  
32/1990  
ss 23(2)(a),  
24(b),  
substituted by  
No. 98/1995  
s. 54.

(1) In this Division—

S. 106(1)  
amended by  
No. 29/1999  
s. 9(1)(b).

*authorised officer* means a person who is  
authorised in writing by the chief psychiatrist  
to exercise powers under this section;

S. 106(1)  
def. of  
*authorised  
officer*  
amended by  
No. 46/1998  
s. 7(Sch. 1).

*psychiatric service* means—

S. 106(1)  
def. of  
*psychiatric  
service*  
amended by  
No. 29/1999  
s. 9(2)(a)–(c).

- (a) an approved mental health service;
- (b) a child and adolescent psychiatry  
service;

\* \* \* \* \*

- (d) any premises licensed under section 75;
- (e) a hospital admitting or caring for  
people with a mental disorder;
- (f) a mental health service of a community  
health centre;
- (g) a psychiatric out-patient clinic;
- (h) a community mental health service;
- (i) an agency providing community  
support services;

**s. 106**

**S. 106(1)**  
def. of  
*quality*  
*assurance*  
*committee*  
inserted by  
No. 29/1999  
s. 9(1)(c).

*quality assurance committee* means the  
committee established by section 106AC.

**S. 106(4)**  
substituted by  
No. 29/1999  
s. 9(3).

- (2) The chief psychiatrist must issue an identity card to each authorised officer.
- (3) An authorised officer, in the course of exercising powers under this section, must produce his or her identity card to any person who requests its production.
- (4) The chief psychiatrist or an authorised officer may visit a psychiatric service—
  - (a) if the chief psychiatrist has reason to believe—
    - (i) that a person with a mental disorder is not being provided, or was not provided, with proper medical care by the service; or
    - (ii) that the welfare of a person with a mental disorder is being, or has been, endangered by the service; or
  - (b) if the chief psychiatrist considers it necessary to do so in the course of the duty of the chief psychiatrist or authorised officer as a member of the quality assurance committee.
- (5) Subject to subsection (6), the chief psychiatrist or an authorised officer has the power—
  - (a) when visiting a psychiatric service under subsection (4)—
    - (i) to inspect any part of the premises of that service;

- (ii) to see any person who is receiving treatment or care for a mental disorder in that service;
- (iii) to inspect and make copies of, or take extracts from, any document kept at the premises of that service relating to any person who is receiving or has received treatment or care for a mental disorder in that service, or any record required to be kept under this Act;
- (b) to make enquiries relating to the admission, detention, care, treatment and control of people with a mental disorder in or from a psychiatric service;
- (c) by written notice, to require the production of any document kept by a psychiatric service relating to any person who is receiving or has received treatment or care for a mental disorder in that service or any record required to be kept under this Act;
- (d) to make copies of, or take extracts from, any document or record referred to in paragraph (c).
- (6) A person, other than a patient in an approved mental health service, has the right to refuse—
  - (a) to be seen by the chief psychiatrist or an authorised officer;

**S. 106(6)(a)**  
**amended by**  
**No. 29/1999**  
**s. 9(4)(a).**

\* \* \* \* \*

**S. 106(6)(b)**  
**repealed by**  
**No. 29/1999**  
**s. 9(4)(b).**

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- (7) The chief psychiatrist, by written order directed to the person in charge of a psychiatric service, may direct that the person specified in the order be allowed to see a person specified in the order subject to compliance with any conditions specified in the order.
- (8) If the chief psychiatrist or an authorised officer wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the person in charge and every member of the staff or management of a psychiatric service must provide the chief psychiatrist or authorised officer with any reasonable assistance that the chief psychiatrist or authorised officer requires to perform or exercise that power, duty or function effectively.
- (9) A person in charge or member of the staff or management of a psychiatric service must not—
- (a) unreasonably refuse or neglect to render assistance when required to do so under subsection (8); or
  - (b) refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by the chief psychiatrist or an authorised officer in the performance or exercise of any power, duty or function under this Act; or
  - (c) assault, obstruct, hinder, threaten, intimidate or attempt to obstruct or intimidate the chief psychiatrist or an authorised officer while visiting the premises.

Penalty: 25 penalty units.

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**106AA Chief psychiatrist may give directions to psychiatric services**

**S. 106AA  
inserted by  
No. 98/1995  
s. 55.**

- (1) The chief psychiatrist, by written notice, may direct a psychiatric service—
  - (a) to discontinue, or alter as specified in the notice, a practice, procedure or treatment observed or carried out by the service;
  - (b) to observe or carry out a practice, procedure or treatment specified in the notice;
  - (c) to provide treatment, or a particular treatment specified in the notice, to a person with a mental disorder who is specified in the notice.
- (2) The chief psychiatrist may give a direction to a psychiatric service under subsection (1)(a) or (b) only if he or she is satisfied, following an investigation by the chief psychiatrist or an authorised officer, that the direction is necessary for the medical care or welfare of a person or people who is, are or will be receiving treatment or care for a mental disorder at that service.
- (3) The chief psychiatrist may give a direction to a psychiatric service under subsection (1)(c) only if—
  - (a) he or she is satisfied, following an investigation by the chief psychiatrist or an authorised officer, that the direction is necessary for the medical care or welfare of the person specified in the notice; and
  - (b) the person specified in the notice consents to be treated by the psychiatric service.
- (4) Nothing in this section affects or takes away from any requirement under this Act or any other law in relation to the obtaining of a person's consent to medical treatment.

**s. 106AB**

**S. 106AB**  
inserted by  
No. 98/1995  
s. 55.

**106AB Chief psychiatrist may direct admission of involuntary patient**

**S. 106AB(1)**  
substituted by  
No. 76/2003  
s. 27(2).

- (1) Despite anything to the contrary in Division 2 of Part 3, the chief psychiatrist, by written notice, may direct that a person be made subject to an involuntary treatment order under section 12AA.
- (2) The chief psychiatrist may give a direction under subsection (1) only if, following an investigation by the chief psychiatrist or an authorised officer, the chief psychiatrist—
  - (a) is satisfied that the person in respect of whom the direction is given satisfies the criteria specified in section 8(1); and
  - (b) has taken into account—
    - (i) the availability of adequate facilities and appropriately qualified staff for the treatment of the person in the approved mental health service; and
    - (ii) any adverse effects the admission of the person may have on other patients in the approved mental health service.
- (3) Sections 12AA to 12AC apply to a person in respect of whom a direction is given under subsection (1) as if a request and recommendation had been made under section 9 in respect of that person.

**S. 106AB(3)**  
amended by  
No. 76/2003  
s. 27(3).

**S. 106AC**  
inserted by  
No. 29/1999  
s. 10.

**106AC Quality assurance committee**

- (1) A quality assurance committee is established.
- (2) The committee consists of the chief psychiatrist and each authorised officer within the meaning of section 106(1).
- (3) The function of the committee is to oversee and monitor standards of mental health services.

### 106A Reportable deaths

The authorised psychiatrist of each approved mental health service and the person in charge of any other *psychiatric service* within the meaning of section 106 must report to the chief psychiatrist the death of any person receiving treatment or care for a mental disorder which is a *reportable death* within the meaning of the **Coroners Act 1985**.

Penalty: 2 penalty units.

S. 106A  
inserted by  
No. 42/1988  
s. 20,  
amended by  
Nos 32/1990  
s. 24(c),  
98/1995  
s. 58(1)(a)(b).

### Division 5—Community visitors

### 107 Definitions

In this Division—

*mental health service* means that part (if any) of—

- (a) an approved mental health service; or
- (b) an agency providing community support services—

\* \* \* \* \*

that provides residential services and 24 hour nursing care for people with a mental disorder;

*region* has the same meaning as in the **Health Services Act 1988**;

S. 107 def. of  
*mental health service*  
amended by  
No. 32/1990  
s. 23(2)(b),  
substituted by  
No. 98/1995  
s. 56(1),  
amended by  
No. 29/1999  
s. 11(a).

S. 107 def. of  
*region*  
substituted by  
No. 51/2001  
s. 12.

### 108 Community visitors

- (1) The Governor in Council may on the recommendation of the Minister appoint community visitors for each region.
- (2) Schedule 5 has effect with respect to community visitors.

## 109 Functions of a community visitor

The functions of a community visitor are to visit any mental health service in the region for which the community visitor is appointed and to inquire into—

S. 109(a)  
amended by  
No. 98/1995  
s. 56(2)(a).

(a) the adequacy of services for the assessment and treatment of people with a mental disorder; and

S. 109(b)  
amended by  
Nos 32/1990  
s. 24(d),  
98/1995  
s. 56(2)(b).

(b) the appropriateness and standard of facilities for the accommodation, physical well-being and welfare of persons receiving treatment or care for a mental disorder; and

S. 109(c)  
amended by  
Nos 32/1990  
s. 24(d),  
98/1995  
s. 56(2)(b).

(c) the adequacy of opportunities and facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for a mental disorder; and

S. 109(d)  
substituted by  
Nos 32/1990  
s. 24(e),  
98/1995  
s. 56(2)(c).

(d) the extent to which people receiving treatment or care for a mental disorder are being given the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care; and

(e) any failure to comply with the provisions of this Act; and

(f) any other matter that an official visitor considers appropriate having regard to the objectives specified in section 5; and

S. 109(g)  
amended by  
Nos 32/1990  
s. 24(f),  
98/1995  
s. 56(2)(b).

(g) any complaint made to a community visitor by a person receiving treatment or care for a mental disorder.



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**110 Certain persons deemed to be community visitors**

- (1) Any person who is appointed by the Minister or the Department for the purpose of any investigation in connection with the administration of this Act is by virtue of that office or appointment deemed to be a community visitor for every region and has and may exercise all the powers conferred on a community visitor by this Act.
- (2) Subsection (1) does not require a person deemed to be a community visitor to perform any of the functions or duties of a community visitor.

**111 Visiting of mental health services**

- (1) A community visitor or a panel of community visitors may visit a mental health service with or without any previous notice at such times and for such periods as the community visitor or panel thinks fit.
- (2) Each mental health service that is an approved mental health service must be visited at least once every month by a panel of community visitors for the region in which the approved mental health service is located.

**S. 111(2)  
amended by  
No. 98/1995  
s. 56(3)(a)(b).**

\* \* \* \* \*

**S. 111(3)  
repealed by  
No. 42/1988  
s. 21(a).**

- (4) The Minister may direct a community visitor or a panel of community visitors to visit a mental health service at such times as the Minister directs.

## 112 Powers of inspection

- (1) A community visitor is entitled when visiting a mental health service to—
  - (a) inspect any part of the premises; and
  - (b) see any person who is receiving treatment or care for a mental disorder unless that person has asked not to be seen; and
  - (c) make enquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for a mental disorder; and
  - (d) inspect any document or medical record relating to any person receiving treatment or care for a mental disorder if he or she has given consent in writing and any records required to be kept by or under this Act.
- (2) Where a community visitor wishes to perform or exercise or is performing or exercising any power, duty or function under this Act, the person in charge and every member of the staff or management of the mental health service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.
- (3) Any person in charge or member of the staff or management of a mental health service who—
  - (a) unreasonably refuses or neglects to render assistance when required to do so under subsection (2); or

S. 112(1)(b)  
amended by  
Nos 32/1990  
s. 24(g),  
98/1995  
s. 56(4)(a).

S. 112(1)(c)  
amended by  
Nos 32/1990  
s. 24(h),  
98/1995  
s. 56(4)(b).

S. 112(1)(d)  
amended by  
Nos 32/1990  
s. 24(i),  
98/1995  
s. 56(4)(c)(i)(ii).

- (b) does not give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act; or
- (c) assaults, obstructs, hinders, threatens, intimidates or attempts to obstruct or intimidate a community visitor visiting a mental health service—

is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

### **113 Request to see a panel of community visitors**

- (1) A person who is receiving treatment or care from a mental health service, or a person on behalf of such a person, may request the person in charge of the mental health service to arrange for the person receiving treatment or care to be seen by a community visitor.
- (2) The person in charge of a mental health service must within 7 days of receiving a request under subsection (1) advise one of the community visitors for the region that a request has been made.  
  
Penalty: 2 penalty units.
- (3) After seeing a person who has requested to be seen, the community visitor may submit a report to the chief psychiatrist and the Public Advocate containing such recommendations as he or she considers appropriate.

S. 113(1)  
substituted by  
No. 42/1988  
s. 21(b),  
amended by  
No. 98/1995  
s. 56(5).

S. 113(2)  
amended by  
No. 42/1988  
s. 21(c).

S. 113(3)  
substituted by  
No. 42/1988  
s. 21(d).

### **114 Record of visits**

The person in charge of a mental health service must keep a record specifying the prescribed particulars of visits by community visitors.

Penalty: 2 penalty units.

S. 114  
amended by  
Nos 42/1988  
s. 21(e),  
29/1999  
s. 11(b).

## **115 Reports by community visitors**

S. 115(1A)  
inserted by  
No. 42/1988  
s. 21(f).

- (1) The Minister may require a panel of community visitors to report to the Minister on any matter specified by the Minister at the times and in the manner directed by the Minister.
- (1A) The community visitors for a region must at least twice a year submit a joint report to the Public Advocate on visits made by them to mental health services since the last report under this section.
- (2) A community visitor, panel of community visitors or the community visitors for a region may at any time submit a report to the Minister if the community visitor or community visitors consider that any matter should be considered personally by the Minister.

S. 116  
substituted by  
No. 42/1988  
s. 22.

## **116 Community (Psychiatric Services) Visitors Board**

S. 116(3)  
amended by  
No. 29/1999  
s. 11(c).

- (1) There is established a Board to be known as the Community (Psychiatric Services) Visitors Board.
- (2) The Community (Psychiatric Services) Visitors Board consists of—
  - (a) the Public Advocate; and
  - (b) two community visitors elected by community visitors in accordance with the regulations.
- (3) The functions of the Community (Psychiatric Services) Visitors Board are—
  - (a) to represent community visitors; and
  - (b) to prepare and circulate publications explaining the role of community visitors; and
  - (c) to supervise the training of community visitors; and
  - (d) to prepare an annual report.

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**116A Annual report of visitors**

**S. 116A  
inserted by  
No. 42/1988  
s. 22.**

- (1) The Community (Psychiatric Services) Visitors Board must as soon as practicable after the end of each financial year and not later than the following 31 October submit to the Minister a report on the activities of community visitors during the financial year.
- (2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

**117 Secrecy provision**

**S. 117(1)  
substituted by  
No. 51/2001  
s. 13.**

- (1) Unless subsection (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly—
  - (a) make a record of; or
  - (b) divulge or communicate to any person; or
  - (c) make use of—

any information, that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—
  - (d) to perform any official duties; or
  - (e) to perform or exercise any function or power under this Act.

Penalty: 50 penalty units.

- (2) Subsection (1) does not preclude a person from—
  - (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

**s. 117AA**

- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that subsection; or
- (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

S. 117AA  
inserted by  
No. 51/2001  
s. 14.

**117AA Transitional provision—Community Visitors  
Legislation (Miscellaneous Amendments) Act 2001**

The substitution of the definition of *region* by section 12 of the **Community Visitors Legislation (Miscellaneous Amendments) Act 2001** does not affect anything done under this Division before the commencement of that section for the purposes of a region.

**PART 6A—VICTORIAN INSTITUTE OF FORENSIC  
MENTAL HEALTH**

Pt 6A  
(Heading and  
ss 117A–  
117U)  
inserted by  
No. 77/1997  
s. 5.

**117A Definitions**

S. 117A  
inserted by  
No. 77/1997  
s. 5.

In this Part—

**Council** means Victorian Institute of Forensic  
Mental Health Council established by section  
117E;

**Institute** means Victorian Institute of Forensic  
Mental Health established by section 117B.

**117B Establishment of Institute**

S. 117B  
inserted by  
No. 77/1997  
s. 5.

- (1) The Victorian Institute of Forensic Mental Health is established.
- (2) The Institute—
  - (a) is a body corporate with perpetual succession;
  - (b) has an official seal;
  - (c) may sue and be sued;
  - (d) may acquire, hold and dispose of real and personal property;
  - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (3) All courts must take judicial notice of the seal of the Institute affixed to a document and, until the contrary is proved, must presume that it was duly affixed.
- (4) The seal of the Institute must be kept in such custody as the Council directs and must not be used except as authorised by the Council.

**s. 117C**

**S. 117C**  
**inserted by**  
**No. 77/1997**  
**s. 5.**

**117C Functions and powers of the Institute**

- (1) The functions of the Institute are—
- (a) to provide, promote and assist in the provision and planning of forensic mental health and related services in Victoria and, as far as practicable, oversee and co-ordinate those services;
  - (b) to provide clinical assessment services to courts, the Adult Parole Board and other relevant government agencies;
  - (c) to provide inpatient and outpatient services and specialist treatment programs to patients and other people with a mental disorder;
  - (d) to provide clinical forensic mental health services, service development advice and planning services to government and non-government bodies in accordance with agreements for services between those bodies and the Institute;
  - (e) to provide specialist treatment and support services to victims of criminal offences;
  - (f) to provide community education in relation to the services provided by the Institute and forensic mental health generally;
  - (g) to provide, promote and assist in the undergraduate and post-graduate instruction and training of professionals in the field of forensic psychiatry;
  - (h) to provide, promote and assist in the teaching of and training in clinical forensic mental health within medical, legal, general health and other education programs;



- (i) to conduct research in the fields of forensic mental health, forensic health, clinical forensic medicine and associated fields;
  - (j) any other functions conferred on the Institute by or under this or any other Act.
- (2) The Institute has power to do all things necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.
- (3) Without limiting subsection (2), the Institute has power—
  - (a) to enter into agreements for services provided by the Institute;
  - (b) to impose fees and charges for the provision of services;
  - (c) to seek and accept funds from any person for the purposes of performing its functions.

**117D Institute is an approved mental health service**

The Institute is deemed to have been proclaimed to be an approved mental health service under section 94.

**S. 117D  
inserted by  
No. 77/1997  
s. 5.**

**117E Establishment of Council**

- (1) The Victorian Institute of Forensic Mental Health Council is established.
- (2) The Council—
  - (a) is responsible for the management of the affairs of the Institute; and
  - (b) may exercise the powers of the Institute.

**S. 117E  
inserted by  
No. 77/1997  
s. 5.**

**s. 117F**

**S. 117F**  
**inserted by**  
**No. 77/1997**  
**s. 5.**

**117F Constitution of Council**

- (1) The Council consists of—
  - (a) the Clinical Director of the Institute;
  - (b) the chief executive officer of the Institute;
  - (c) a nominee of the Attorney-General;
  - (d) a nominee of the Minister administering the **Corrections Act 1986**;
  - (e) 6 other members, of whom—
    - (i) at least one is a fellow of the Royal Australian and New Zealand College of Psychiatrists;
    - (ii) at least one is a person who has knowledge of, or experience in, accountancy or financial management;
    - (iii) at least one is appointed to represent the interests of patients.
- (2) The members of the Council, other than the Clinical Director and the chief executive officer, are to be appointed by the Minister on the terms and conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member, other than the Clinical Director or the chief executive officer, holds office for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

**S. 117F(4)**  
**amended by**  
**No. 46/1998**  
**s. 7(Sch. 1),**  
**substituted by**  
**Nos 108/2004**  
**s. 117(1)**  
**(Sch. 3**  
**item 132.2),**  
**80/2006**  
**s. 26(Sch.**  
**item 69.1).**

- (5) The Minister must appoint one of the members as chairperson of the Council.

**117G Resignation and removal**

**S. 117G  
inserted by  
No. 77/1997  
s. 5.**

- (1) A member of the Council, other than the Clinical Director or the chief executive officer, may resign by writing signed by that person and delivered to the Minister.
- (2) The Minister may remove a member of the Council, other than the Clinical Director or the chief executive officer, from office if satisfied that—
- (a) the member is physically or mentally unable to fulfil the role of member; or
  - (b) the member has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the member unsuitable to be a member of the Council; or
  - (c) the member has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or
  - (d) the member is an insolvent under administration.

**S. 117G(2)(d)  
amended by  
Nos 44/2001  
s. 3(Sch.  
item 81),  
4/2008  
s. 32(Sch.  
item 21.1).**

**117H Clinical Director**

**S. 117H  
inserted by  
No. 77/1997  
s. 5.**

- (1) The Minister may appoint as Clinical Director of the Institute—
- (a) the person who holds the Chair in Forensic Psychiatry at Monash University; or
  - (b) a person who holds a similar chair at another Victorian university; or

**s. 117H**

- (c) a qualified psychiatrist with experience in forensic psychiatry.
- (2) The Clinical Director—
  - (a) holds office for the term, not exceeding 5 years, specified in the instrument of appointment;
  - (b) holds office on the terms and conditions determined by the Minister and specified in the instrument of appointment;
  - (c) is eligible for re-appointment.
- (3) The Clinical Director may resign by writing signed by him or her and delivered to the Minister.
- (4) The Minister may remove the Clinical Director from office if satisfied that—
  - (a) the Clinical Director is physically or mentally unable to perform the functions of Clinical Director; or
  - (b) the Clinical Director has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the Clinical Director unsuitable to hold office; or
  - (c) the Clinical Director has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or
  - (d) the Clinical Director is an insolvent under administration.

S. 117H(4)(d)  
amended by  
Nos 44/2001  
s. 3(Sch.  
item 81),  
4/2008  
s. 32(Sch.  
item 21.2).

- (5) The functions of the Clinical Director are—
- (a) to provide clinical care and services;
  - (b) to promote and maintain the quality of clinical care and services provided by the Institute;
  - (c) to develop and maintain the research functions of the Institute and co-ordinate service evaluation in the Institute;
  - (d) to promote the role of the Institute in professional training and community education;
  - (e) any other functions specified by the Minister.

**117I Chief executive officer**

S. 117I  
inserted by  
No. 77/1997  
s. 5.

- (1) The Council may appoint a person as the chief executive officer of the Institute.
- (2) The chief executive officer holds office on the terms and conditions determined by the Council and specified in the instrument of appointment.
- (3) The chief executive officer is responsible to the Council for the following functions—
  - (a) developing the corporate plans for the Institute;
  - (b) ensuring the efficient and effective utilisation of resources by the Institute;
  - (c) service development and planning;
  - (d) any other functions specified by the Council.

**117J Other staff**

S. 117J  
inserted by  
No. 77/1997  
s. 5.

- (1) The Council may employ any other staff necessary for the performance of the functions of the Institute.
- (2) The terms and conditions of employment of staff of the Institute are as determined by the Council.

**s. 117K**

S. 117J(3)  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- (3) An employee of the Institute who, immediately before that employment, was an employee in the public service employed exclusively in connection with the functions of the forensic psychiatry service in the Department of Human Services continues to be an employee in the public service while an employee of the Institute for the purposes of long service leave.
- (4) An employee of the Institute who, immediately before employment, was an officer within the meaning of the **State Superannuation Act 1988** continues, subject to that Act, to be such an officer while an employee of the Institute.

S. 117K  
inserted by  
No. 77/1997  
s. 5.

**117K Procedure of Council**

- (1) The chairperson of the Council or, in his or her absence, a member appointed by the members present, must preside at a meeting of the Council.
- (2) The quorum of the Council is 6 members.
- (3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.
- (4) The Council must ensure that accurate minutes are kept of its meetings.
- (5) Subject to this Act, the Council may regulate its own procedure.

S. 117L  
inserted by  
No. 77/1997  
s. 5.

**117L Validity of acts or decisions**

An act or decision of the Council is not invalid only because—

- (a) of a defect or irregularity in, or in connection with, the appointment of a member; or
- (b) of a vacancy in the office of a member.

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**117M Immunity**

**S. 117M  
inserted by  
No. 77/1997  
s. 5.**

- (1) A member of the Council is not personally liable for anything done or omitted to be done in good faith—
  - (a) in the exercise of a power or the performance of a function or duty under this Act; or
  - (b) in the reasonable belief that the act or omission was in the exercise of a power or performance of a function or duty under this Act.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of the Council attaches instead to the Institute.

**117N Directions**

**S. 117N  
inserted by  
No. 77/1997  
s. 5.**

- (1) The Minister may give to the Institute any written direction that he or she thinks fit.
- (2) As soon as possible after a direction is given, the Minister must cause a copy of it to be published in the Government Gazette.
- (3) The Institute must comply with a direction given under this section, but an act or decision of the Institute or the Council is not invalid only because of a failure to comply with such a direction.

**117O Corporate plan**

**S. 117O  
inserted by  
No. 77/1997  
s. 5.**

- (1) The Council must prepare a corporate plan for the Institute for each financial year.
- (2) The Council must give a copy of the proposed plan to the Minister on or before 31 May in each year.
- (3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and must include—

**s. 117O**

- 
- (a) a statement of corporate intent in accordance with section 117P;
  - (b) a business plan containing such information as the Minister requires;
  - (c) financial statements containing such information as the Minister requires.
- (4) The Council must consider any comments on the proposed plan that are made to it by the Minister within 2 months after the plan was submitted to the Minister.
  - (5) The Council must consult in good faith with the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Minister and the Council and must deliver the completed plan to the Minister within 2 months after the commencement of the financial year.
  - (6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the Council and the Minister.
  - (7) The plan may be modified at any time by the Council with the agreement of the Minister.
  - (8) If the Council, by written notice to the Minister, proposes a modification of the plan, the Council may, within 14 days, make the modification unless the Minister, by written notice to the Council, directs the Council not to make it.
  - (9) The Minister may, from time to time, by written notice to the Council, direct the Council to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.
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- (10) Before giving a direction under this section, the Minister must consult with the Council as to the matters to be referred to in the notice.
- (11) The Council must comply with a direction under this section.
- (12) At any particular time, the statement of corporate intent, the business plan or the financial statements for the Institute are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

**117P Statement of corporate intent: contents**

**S. 117P  
inserted by  
No. 77/1997  
s. 5.**

Each statement of corporate intent must specify for the Institute, in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

- (a) the business objectives of the Institute;
- (b) the main undertakings of the Institute;
- (c) the nature and scope of the activities to be undertaken by the Institute;
- (d) the accounting policies to be applied in the accounts;
- (e) the performance targets and other measures by which the performance of the Institute may be judged in relation to the stated business objectives;
- (f) the kind of information to be provided to the Minister by the Institute during the course of those financial years;
- (g) such other matters as may be agreed on by the Minister and the Council from time to time.

**s. 117Q**

S. 117Q  
inserted by  
No. 77/1997  
s. 5.

**117Q Corporate plan to be followed**

The Institute must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister to do otherwise.

S. 117R  
inserted by  
No. 77/1997  
s. 5.

**117R Nothing void merely because of non-compliance**

Nothing done by the Institute or the Council is void or unenforceable merely because the Institute or the Council has failed to comply with section 117O, 117P or 117Q.

S. 117S  
inserted by  
No. 77/1997  
s. 5.

**117S Council to give notice of significant events**

If the Council forms the opinion that matters have arisen—

- (a) that may prevent, or significantly affect, achievement of the business objectives of the Institute under the corporate plan; or
- (b) that may prevent, or significantly affect achievement of the targets under the plan—

the Council must immediately notify the Minister of its opinion and the reasons for the opinion.

S. 117T  
inserted by  
No. 77/1997  
s. 5.

**117T Reports to Minister**

The Minister may, in writing, require the Institute to give the Minister any information that he or she requires.

S. 117U  
inserted by  
No. 77/1997  
s. 5.

**117U Annual report**

In its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, the Institute must include—

- (a) a copy of each direction given to it during that year under section 117N together with a statement of its response to the direction; and

- 
- (b) a copy of the statement of corporate intent  
last completed.
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**PART 7—GENERAL**

**Division 1—Miscellaneous**

**118 Board may state special case for the opinion of the Supreme Court**

- (1) Where a question of law arises in proceedings before the Board, the Board, of its own motion or on the application of any person who is a party to the proceedings, may reserve the question in the form of a special case stated for the opinion of the Supreme Court.
- (2) Where a question of law has been reserved for the opinion of the Supreme Court under subsection (1), the Board cannot—
  - (a) determine the matter until the opinion of the Supreme Court has been given; or
  - (b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question of law.

S. 119  
repealed by  
No. 110/1986  
s. 140(2).

\* \* \* \* \*

S. 120  
substituted by  
No. 52/1998  
s. 311(Sch. 1  
item 61.7).

**120 Review of certain decisions by Tribunal**

- (1) A person whose interests are affected by a determination of the Board may apply to the Tribunal for review of the determination.
- (2) An application for review must be made within 28 days after the later of—
  - (a) the day on which the determination is made;
  - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the

determination, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

## 120A Confidentiality

(1) In this section—

S. 120A  
inserted by  
No. 32/1990  
s. 25.

*public sector mental health service* means—

S. 120A(1)  
def. of  
*public sector  
mental health  
service*  
inserted by  
No. 76/2003  
s. 35(1)(a).

(a) a relevant psychiatric service that is—

(i) a public hospital, denominational hospital or privately-operated hospital (within the meaning of the **Health Services Act 1988**); and

(ii) funded by the Secretary; or

(b) a relevant psychiatric service that is declared, or to the extent that it is declared, by an Order under subsection (1A) to be a public sector mental health service;

*relevant person* means the following—

S. 120A(1)  
def. of  
*person to  
whom this  
section  
applies*  
amended by  
No. 29/1999  
s. 12(1)(a)(b),  
re-named as  
*relevant  
person* by  
No. 67/2003  
s. 11(a),  
amended by  
No. 76/2003  
s. 35(1)(b).

(a) a relevant psychiatric service;

(b) a person who is or has been a member of the board of a relevant psychiatric service;

(c) a person who is or has been a proprietor of a relevant psychiatric service;

(d) a person who is or has been engaged or employed by or on behalf of a relevant psychiatric service;

**s. 120A**

S. 120A(1)  
def. of  
*relevant  
psychiatric  
service*  
amended by  
Nos 98/1995  
s. 57(1)(a)–(c),  
29/1999  
s. 12(2)(a)–(c),  
76/2003  
s. 35(1)(c)(i)(ii).

*relevant psychiatric service* means a person or body to the extent that he, she or it provides or operates one or more of the following—

- (a) an approved mental health service;
- (b) a child and adolescent psychiatry service;
- (c) an agency providing community support services;

\* \* \* \* \*

- (e) any premises licensed under section 75;
- (f) a hospital admitting or caring for people with a mental disorder;
- (g) any mental health service of a community health centre;
- (h) a psychiatric out-patient clinic;
- (i) a community mental health service.

S. 120A(1A)  
inserted by  
No. 76/2003  
s. 35(2).

(1A) The Governor in Council may, by Order published in the Government Gazette, declare a relevant psychiatric service to be, either wholly or to the extent specified in the Order, a public sector mental health service.

S. 120A(2)  
amended by  
Nos 67/2003  
s. 11(b),  
76/2003  
s. 35(3).

- (2) A relevant person must not, except to the extent necessary—
- (a) to carry out functions under this or any other Act; or
  - (b) to exercise powers under this or any other Act in relation to a relevant psychiatric service; or

- (c) to give any information he or she is expressly authorised or permitted to give under this or any other Act—

give to any other person, whether directly or indirectly, any information acquired by reason of being a relevant person, if a person who is or has been a patient of, or has received psychiatric services from, a relevant psychiatric service could be identified from that information.

Penalty: 50 penalty units.

- (2A) For the purposes of subsection (2)(c), *any other Act* does not include the Health Privacy Principles in the **Health Records Act 2001** or Part 3 or Part 5 of that Act.

S. 120A(2A)  
inserted by  
No. 2/2001  
s. 111(1).

- (2B) Subsection (2) does not apply to a person (other than an independent contractor) who is a relevant person in relation to a relevant psychiatric service who gives information in accordance with HPP2 of the Health Privacy Principles in the **Health Records Act 2001** to another person (other than an independent contractor) who is a relevant person in relation to that relevant psychiatric service.

S. 120A(2B)  
inserted by  
No. 76/2003  
s. 35(4).

- (3) Subsection (2) does not apply—

- (a) to the giving of information with the prior consent (which may be express or implied) of the person to whom it relates or, if that person has died, with the consent (which may be express or implied) of the senior available next of kin of that person; or
- (b) to the giving of information to a court in the course of criminal proceedings; or

S. 120A(3)(a)  
amended by  
No. 67/2003  
s. 11(c).

**s. 120A**

**S. 120A(3)(c)**  
amended by  
No. 76/2003  
s. 35(5)(a).

(c) to the giving of information concerning the condition of a person who is a patient of, or is receiving psychiatric services from, a relevant psychiatric service if the information—

(i) is communicated in general terms; or

**S. 120A(3)**  
(c)(ii)  
repealed by  
No. 98/1995  
s. 57(2).

\* \* \* \* \*

**S. 120A(3)(ca)**  
inserted by  
No. 98/1995  
s. 57(3).

(ca) to the giving of information relating to a person who is, or has been, receiving services from a relevant psychiatric service by a member of the medical staff, or a member of a prescribed class of staff, of that psychiatric service to a guardian, family member or primary carer of the person to whom the information relates if—

(i) the information is reasonably required for the on-going care of the person to whom it relates; and

(ii) the guardian, family member or primary carer will be involved in providing that care; or

(d) to the giving of information to the Australian Red Cross Society for the purpose of tracing blood, or blood products derived from blood, infected with any disease or the donor or recipient of any such blood; or

**S. 120A(3)(e)**  
amended by  
No. 98/1995  
s. 57(4),  
substituted by  
No. 2/2001  
s. 111(2)(a).

(e) to the giving of information—

(i) required in connection with the further treatment of a person with a mental disorder; or



- 
- (ii) subject to the regulations (if any), by a person engaged or employed by or on behalf of a public sector mental health service by means of an electronic records system established and maintained by the Secretary for the purpose of enabling the sharing of information between public sector mental health services for the treatment of persons with a mental disorder at any time; or
- (ea) to the giving of information as described in HPP 2.2(a), 2.2(f), 2.2(h), 2.2(k), 2.2(l) or 2.5 of the Health Privacy Principles in the **Health Records Act 2001**; or
- (eb) to the giving of information relating to a notification, claim or potential claim to a person or body providing insurance or indemnity (including discretionary indemnity) for any liability of the relevant psychiatric service or a person who is a relevant person in relation to the relevant psychiatric service arising from the provision of services by or on behalf of the relevant psychiatric service; or
- (f) to the giving of information to the Australian Statistician; or
- (g) to the giving of information acquired by an agency concerning a person's psychiatric condition or treatment for the purposes of medical or social research if—
- (i) the use to which the information will be put and the research methodology have been approved by an ethics committee of the relevant psychiatric service; and
- S. 120A(3)(e)(ii) substituted by No. 76/2003 s. 35(5)(b).
- S. 120A(3)(ea) inserted by No. 2/2001 s. 111(2)(a), amended by No. 67/2003 s. 11(d).
- S. 120A(3)(eb) inserted by No. 67/2003 s. 11(e), amended by No. 76/2003 s. 35(5)(c).

**s. 120A**

**S. 120A  
(3)(g)(ii)**  
amended by  
No. 2/2001  
s. 111(2)(b)(i).

(ii) the giving of information does not conflict with any prescribed requirements; and

**S. 120A  
(3)(g)(iii)**  
inserted by  
No. 2/2001  
s. 111(2)(b)(ii).

(iii) the giving of information is in accordance with HPP 2.2(g) of the Health Privacy Principles in the **Health Records Act 2001**; or

**S. 120A(3)(ga)**  
inserted by  
No. 39/2000  
s. 13.

(ga) the giving of information to or by a person, or a person in a class of persons, designated under section 141(5) of the **Health Services Act 1988** in the course of carrying out support functions designated under that provision; or

**S. 120A(3)(h)**  
amended by  
No. 52/1998  
s. 311(Sch. 1  
item 61.8).

(h) to the giving of any information required in connection with any proceedings before the Board or the Tribunal; or

**S. 120A(3)(ha)**  
inserted by  
No. 43/1998  
s. 41(5).

(ha) to the giving of any information required in connection with proceedings before the Panel; or

**S. 120A(3)(i)**  
amended by  
No. 98/1995  
s. 57(5).

(i) to the giving of information to a person to whom in the opinion of the Minister it is in the public interest that the information be given; or

**S. 120A(3)(j)**  
inserted by  
No. 98/1995  
s. 57(5).

(j) to the giving of information to the Secretary; or

**S. 120A(3)(k)**  
inserted by  
No. 98/1995  
s. 57(5).

(k) to the giving of information to the Minister; or

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|---|--|
| <p>(l) to the giving of information of a class specified by the Minister by a person who is a member of a class of persons specified by the Minister in circumstances specified by the Minister.</p>  | <p><b>S. 120A(3)(l)</b><br/>inserted by<br/>No. 98/1995<br/>s. 57(5).</p>                        |
| <p>(3A) The Minister may authorise the giving of information under subsection (3)(l) only if he or she considers it necessary to do so in the public interest.</p>  | <p><b>S. 120A(3A)</b><br/>inserted by<br/>No. 98/1995<br/>s. 57(6).</p>                          |
| <p>(3B) A person must not use or collect, or attempt to use or collect, information about a person from an electronic records system referred to in subsection (3)(e)(ii) if that second-mentioned person could be identified from that information unless—</p> | <p><b>S. 120A(3B)</b><br/>inserted by<br/>No. 2/2001<br/>s. 111(3).</p>                          |
| <p style="padding-left: 20px;">(a) the use or collection is—</p>  |  |
| <p style="padding-left: 40px;">(i) by a person engaged or employed by or on behalf of a public sector mental health service; and</p>  | <p><b>S. 120A(3B)</b><br/><b>(a)(i)</b><br/>amended by<br/>No. 76/2003<br/>s. 35(6)(a)(i).</p>   |
| <p style="padding-left: 40px;">(ii) to enable the treatment of that second-mentioned person by that public sector mental health service; and</p>  | <p><b>S. 120A(3B)</b><br/><b>(a)(ii)</b><br/>amended by<br/>No. 76/2003<br/>s. 35(6)(a)(ii).</p> |
| <p style="padding-left: 40px;">(iii) in accordance with the regulations (if any); or</p>  |  |
| <p style="padding-left: 20px;">(ab) the use is by a person referred to in paragraph (a)(i) of information collected in accordance with paragraph (a), being a use that is—</p>  | <p><b>S. 120A(3B)</b><br/><b>(ab)</b><br/>inserted by<br/>No. 76/2003<br/>s. 35(6)(b).</p>       |
| <p style="padding-left: 40px;">(i) necessary for the performance of the person's duties or functions with the public sector mental health service; and</p>  |  |
| <p style="padding-left: 40px;">(ii) in accordance with HPP2 of the Health Privacy Principles in the <b>Health Records Act 2001</b>; or</p>  |  |
-

**s. 120A**

**S. 120A(3B)**  
**(ac)**  
**inserted by**  
**No. 76/2003**  
**s. 35(6)(b).**

- (ac) the use is by the Secretary of information collected in accordance with subsection (3)(e)(ii), being a use that is—
- (i) necessary for the performance of the duties, powers or functions of the Secretary under this Act; and
  - (ii) in accordance with HPP2 of the Health Privacy Principles in the **Health Records Act 2001**; or
- (b) in the case of the Chief Psychiatrist, the Board or the Panel, the use or collection is—
- (i) necessary for the performance of the duties, powers or functions of the Chief Psychiatrist, the Board or the Panel, as the case requires; and
  - (ii) in accordance with the regulations (if any).

Penalty: 50 penalty units.

- (4) A person who receives information by reason of the giving of information under subsection (3)(g) must not give to any other person, whether directly or indirectly, any information so received unless the giving of the information—
- (a) has been approved by the ethics committee referred to in subsection (3); and
  - (b) does not conflict with any prescribed requirements; and

**S. 120A(4)(b)**  
**amended by**  
**No. 2/2001**  
**s. 111(4)(a).**

**S. 120A(4)(c)**  
**inserted by**  
**No. 2/2001**  
**s. 111(4)(b).**

- (c) the giving of information is in accordance with HPP 2.2(g) of the Health Privacy Principles in the **Health Records Act 2001**.

Penalty: 50 penalty units.

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**121 Amendment of documents**

- |   |   |
|---|---|
| (1) If it appears that any document relating to a person becoming an involuntary patient is in any respect incorrect or defective, the person who signed the document may amend it within 21 days after the person to whom it relates becomes an involuntary patient.   | S. 121(1)<br>amended by<br>No. 98/1995<br>s. 58(2),<br>substituted by<br>No. 76/2003<br>s. 27(4). |
| (2) Where the chief psychiatrist considers that any document relating to a person becoming an involuntary patient is in any respect incorrect or defective and the document is not amended to the chief psychiatrist's satisfaction within 21 days of a direction in writing by the chief psychiatrist requiring the amendment of the document the chief psychiatrist may order that the involuntary patient be discharged. | S. 121(2)<br>amended by<br>No. 76/2003<br>s. 27(5)(a)(i).   |
| (3) If in any proceedings before the Board or the Supreme Court it appears that any document relating to a person becoming an involuntary patient is in any respect incorrect or defective the Board or the Supreme Court may if it thinks fit amend the document and the document becomes as valid and effectual as it would have been if it had been made as amended.   | S. 121(3)<br>amended by<br>Nos 98/1995<br>s. 58(2),<br>76/2003<br>s. 27(5)(a)(ii).                |

**122 Immunity from suit**

No civil or criminal proceedings lies against any person for anything done in good faith and with reasonable care in reliance on any authority or document apparently given or made in accordance with the requirements of this Act.

**s. 123**

S. 123  
substituted by  
No. 32/1990  
s. 26(1).

**123 Registered medical practitioner to specify facts**

S. 123(1)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.20),  
98/1995  
s. 58(2),  
76/2003  
s. 27(5)(b)(i).

- (1) A registered medical practitioner who signs any recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service must—
  - (a) specify the facts upon which the opinion that the person to whom the recommendation or certificate relates is mentally ill is based; and
  - (b) distinguish the facts personally observed from—
    - (i) facts not personally observed; and
    - (ii) facts communicated to the registered medical practitioner by any other person.

S. 123(1)(b)(ii)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.20).

S. 123(2)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.20),  
98/1995  
s. 58(2),  
76/2003  
s. 27(5)(b)(ii).

- (2) A person may be made subject to an involuntary treatment order or admitted to an approved mental health service on a recommendation or certificate which relies upon facts not personally observed by the registered medical practitioner if the registered medical practitioner—
  - (a) has reasonable grounds for relying on those facts; and
  - (b) has—
    - (i) personally observed some fact which supports the recommendation or certificate; or

- (ii) relied upon facts personally observed by another registered medical practitioner within 28 days of the recommendation or certificate and communicated directly by that registered medical practitioner to the registered medical practitioner signing the recommendation or certificate. **S. 123(2)(b)(ii) amended by No. 23/1994 s. 118(Sch. 1 item 38.20).**
- (3) If the registered medical practitioner signing the recommendation or certificate has relied upon the facts of the kind specified in subsection (2)(b)(ii) the recommendation or certificate must specify the name and address of the other registered medical practitioner. **S. 123(3) amended by No. 23/1994 s. 118(Sch. 1 item 38.20).**

**124 Recommendation or certificate not to be signed without examination**

- (1) A registered medical practitioner who signs a recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service without complying with section 123 is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so. **S. 124(1) substituted by No. 32/1990 s. 26(2), amended by Nos 23/1994 s. 118(Sch. 1 item 38.21(a)), 98/1995 s. 58(2), 55/1996 s. 4(1)(e), 76/2003 s. 27(5)(c).**
- (2) A registered medical practitioner who wilfully and falsely states in writing that any person is mentally ill is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so. **S. 124(2) amended by No. 23/1994 s. 118(Sch. 1 item 38.21 (a)(b)).**

**s. 125**

S. 125  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.22),  
98/1995  
s. 58(2),  
76/2003  
s. 27(5)(c).

**125 Persons prohibited from signing recommendation or certificate**

A recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service is not valid if it is signed by a registered medical practitioner who is—

- (a) a relative or guardian of that person; or
- (b) the person by whom the request is made.

**126 Offences in relation to recommendations or certificates**

S. 126(1)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.23(a)  
(b)), 98/1995  
s. 58(2),  
76/2003  
s. 27(5)(c).

- (1) A registered medical practitioner who wilfully and falsely states or certifies anything in a recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.

S. 126(2)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.24),  
98/1995  
s. 58(2),  
76/2003  
s. 27(5)(c).

- (2) Any person not being a registered medical practitioner who signs a recommendation or certificate in connection with the making of an involuntary treatment order or the admission of any person to an approved mental health service is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

S. 127  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.25),  
46/1998  
s. 7(Sch. 1).

**127 Payment for recommendation**

Where a registered medical practitioner makes a recommendation under section 9 and is not entitled to receive payment for making the recommendation other than under this section, the registered medical practitioner may apply to the Secretary for payment of the prescribed recommendation fee.



## 128 Special payments and grants

- (1) Where the Secretary is satisfied that it would be beneficial to the treatment of a person with a mental disorder for the person to be provided with specified services outside an approved mental health service the Secretary may make such payments as he or she considers appropriate to enable the provision of those services.
- (2) The Secretary may having regard to the Department's objectives and functions under this Act make grants to self-help organizations out of money available for the purpose.

S. 128(1)  
amended by  
Nos 98/1995  
s. 58(3)(a)(b),  
46/1998  
s. 7(Sch. 1).

S. 128(2)  
amended by  
Nos 31/1994  
s. 3(Sch. 1  
item 42.3),  
46/1998  
s. 7(Sch. 1).

## 129 Provisions relating to private patients

Where a person is admitted to an approved mental health service as a private patient the following provisions apply—

- (a) a private psychiatrist approved by the authorized psychiatrist may treat the patient and charge the patient for the services provided by the private psychiatrist;
- (b) the private psychiatrist may use only treatment approved by the Department and which is in accordance with the treatment policies of the approved mental health service;
- (c) the private psychiatrist must attend the patient at such times as may be specified by the authorized psychiatrist;
- (d) the approved mental health service may charge the private psychiatrist for the cost of services provided by the approved mental health service to the patient.

S. 129  
amended by  
No. 98/1995  
s. 58(2).

S. 129(b)  
amended by  
No. 98/1995  
s. 58(4).

S. 129(d)  
amended by  
No. 98/1995  
s. 58(4).

### 130 Contempt of Board or Psychosurgery Review Board

A person must not—

- (a) insult a member of the Board or the Psychosurgery Review Board in or in relation to the exercise of the powers or functions as a member; or
- (b) repeatedly interrupt the proceedings of the Board or the Psychosurgery Review Board; or
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Board or the Psychosurgery Review Board is sitting; or
- (d) do any other act or thing that would, if the Board or the Psychosurgery Review Board were a Court of Record, constitute a contempt of that Court.

Penalty: 10 penalty units.

S. 130A  
inserted by  
No. 32/1990  
s. 27.

#### 130A Protection of members, persons and witnesses

- (1) A member of the Board or the Psychosurgery Review Board has in the performance of duties as a member the same protection and immunity as a Judge of the Supreme Court.
- (2) An Australian legal practitioner or other person appearing before the Board or the Psychosurgery Review Board on behalf of another person has the same protection and immunity as an Australian legal practitioner has in appearing for a party in proceedings in the Supreme Court.

S. 130A(2)  
amended by  
No. 35/1996  
s. 453(Sch. 1  
item 58),  
substituted by  
No. 18/2005  
s. 18(Sch. 1  
item 67.2).

- (2A) In subsection (2)—

*Australian legal practitioner* has the same meaning as in the **Legal Profession Act 2004**.

S. 130A(2A)  
inserted by  
No. 18/2005  
s. 18(Sch. 1  
item 67.2).

- (3) Subject to this Act, a person summoned to attend or appearing before the Board or the Psychosurgery Review Board as a witness has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

**131 Costs**

S. 131  
amended by  
No. 32/1990  
s. 28(a).

- (1) Where the Board or the Psychosurgery Review Board is of the opinion in a particular case that there are circumstances which are contemptuous or vexatious and which justify the Board or the Psychosurgery Review Board in doing so, the Board or the Psychosurgery Review Board may make such orders as to costs as the Board or the Psychosurgery Review Board thinks just.

S. 131(1)  
amended by  
No. 42/1993  
s. 31.

- (2) The person to whom payment is to be made under an order as to costs may enforce the order by filing free of charge in the Magistrates' Court—

S. 131(2)  
inserted by  
No. 32/1990  
s. 28(b).

(a) a copy of the order certified to be a true copy by the executive officer of the Board or the Psychosurgery Review Board; and

(b) his or her affidavit as the person to whom payment is to be made under the order as to the amount not paid under the order.

- (3) As from the filing of the order the order is deemed to be an order duly made by the Magistrates' Court requiring the payment of money and may be enforced accordingly.

S. 131(3)  
inserted by  
No. 32/1990  
s. 28(b).

## 132 Giving of notice

S. 132(1)  
amended by  
Nos 74/1987  
s. 13(a),  
42/1988  
s. 23(1).

S. 132(1)(a)  
amended by  
Nos 98/1995  
s. 58(2),  
substituted by  
No. 76/2003  
s. 27(5)(d).

S. 132(1)(b)  
amended by  
No. 98/1995  
s. 59.

- (1) The notice required to be given to the person specified in section 32(1)(a) or 59(2)(b) must be given personally to that person in accordance with this section unless—
  - (a) the person is absent from an approved mental health service in accordance with section 40 or 41 or is subject to a community treatment order or restricted community treatment order; or
  - (b) the Board has dispensed with the requirement to give notice under section 32(3)(b).
- (2) The contents of any notice referred to in subsection (1) must be explained by the person serving the notice to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand.
- (3) An explanation given under subsection (2) must where possible be given both orally and in writing.
- (4) Where a notice is required to be given to a person other than a person to whom subsection (1) applies the notice may be given to that person by sending the notice by pre-paid post to that person at the person's usual or last known place of residence or business.
- (5) Unless the contrary is proved, a notice sent by pre-paid post is deemed to have been given to that person at the time at which the notice would be delivered in the ordinary course of post.

- (6) Where except for this subsection notice would be required to be given to a person in more than one capacity it is sufficient compliance with this Act if notice is given to that person in one of those capacities.

**133 Hearing not to be invalidated by failure to give notice**

S. 133  
amended by  
Nos 74/1987  
s. 13(b),  
42/1988  
s. 23(2).

A hearing or determination of the Board or the Psychosurgery Review Board is not invalidated or affected by reason only of a failure to give notice to a person other than the person specified in section 32(1)(a) or 59(2)(b) as required by section 132.

**134 Judicial notice**

All courts and persons acting judicially must take judicial notice of—

- (a) the signature of any person who is or has been the President or executive officer or a member of the Board and of the fact that that person is or was the President, executive officer or a member (as the case may be); and
- (b) the signature of any person who is or has been the chairperson or a member of the Psychosurgery Review Board and of the fact that that person is or was the chairperson or a member (as the case may be).

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Ss 135–139  
repealed by  
No. 31/1994  
s. 4(Sch. 2  
item 55).

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## **140 General penalty**

A person who contravenes any provision of this Act is guilty of an offence against this Act and liable if no penalty is expressly provided to a penalty of not more than 20 penalty units.

## **141 Offences by bodies corporate**

- (1) Where a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with a like offence.
- (2) Where a body corporate is convicted of an offence against this Act a person charged under this section with the like offence may also be convicted of that offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.

## **Division 2—Regulations**

## **142 Regulations**

- (1) The Governor in Council may make regulations for or with respect to—
  - (a) prescribing forms to be used for the purposes of this Act; and
  - (b) prescribing fees for the purposes of this Act; and
  - (c) prescribing scales of fees or charges for the accommodation or care of or for services rendered to any person by a psychiatric service within the meaning of section 106 which is operated by the Secretary; and

S. 142(1)(c)  
substituted by  
No. 42/1988  
s. 24(1)(a),  
amended by  
No. 46/1998  
s. 7(Sch. 1).

- 
- (d) the design, construction, equipping, furnishing, maintenance, administration and staffing of and the provision of facilities and services by approved mental health services; and
- (e) the functions, responsibilities, obligations and liabilities of authorized psychiatrists; and
- (f) the procedure to be followed by the Board; and
- (g) the procedure to be followed by the Psychosurgery Review Board; and
- (h) standards of care for persons receiving services from a psychiatric service within the meaning of section 106; and
- (i) matters relating to the rights and privileges of patients including the visiting of patients; and
- (j) prescribing the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act; and
- (ja) requirements or conditions relating to the giving or the use or collection of information for the purposes of section 120A(3)(e)(ii) or 120A(3B) including, but not limited to, prescribing a class or classes of person who may give, collect or use that information;
- (k) any matter or thing authorized or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- S. 142(1)(d) amended by No. 98/1995 s. 58(5).**
- S. 142(1)(h) substituted by No. 42/1988 s. 24(1)(b).**
- S. 142(1)(ja) inserted by No. 2/2001 s. 111(5).**

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- (2) Regulations made under this Act—
- (a) may be of general or of specially limited application; and
  - (b) may differ according to differences in time, place or circumstance; and
  - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council or public authority or by any officer thereof; and
  - (d) may confer powers or impose duties in connection with the regulations on any government department, municipal council or public authority or any officer thereof; and
  - (e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
  - (f) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and
  - (g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
- (3) The Secretary may in a particular case waive any fees or charges that would otherwise be payable under subsection (1)(c).

S. 142(3)  
inserted by  
No. 42/1988  
s. 24(2),  
amended by  
No. 46/1998  
s. 7(Sch. 1).



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**Division 3—Repeals, amendments and transitional**

**143 Transitional**

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S. 143(1)(2)  
repealed by  
No. 124/1993  
s. 24(a).

- (3) Except as in this Act expressly or by necessary implication provided—
- (a) all persons, things and circumstances appointed or created by or under the **Mental Health Act 1959** or existing or continuing under that Act immediately before the commencement of this section continue under and subject to this Act and the **Intellectually Disabled Persons' Services Act 1986** to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed; and
  - (b) in particular and without affecting the generality of the foregoing paragraph, such repeal does not disturb the continuity of, status, operation or effect of any proclamation, regulation, rule, order, application, determination, declaration, petition, certificate, approval, consent, recommendation, appointment, commission, enquiry, warrant, condition, notice, admission, detention, request, discharge, authority, information, examination, complaint, proceedings, transfer, trial leave, parole, fee, liability or rights made, effected, issued, granted, given, presented, passed, fixed, accrued, incurred or acquired or existing or continuing by or under that Act before the commencement of this section.

S. 144  
inserted by  
No. 74/1987  
s. 14.

## 144 Review of existing patients

- (1) In this section—

***Mental Health Act 1959*** means the **Mental Health Act 1959** as in force immediately before the commencement of section 143;

***prescribed period*** means the period ending 3 months after the commencement of section 143 or ending at a subsequent day as may be determined by the Minister and specified in a notice published in the Government Gazette.

- (2) A person admitted and detained as at the commencement of section 143 as—
- (a) a recommended patient under the **Mental Health Act 1959** is deemed to be an involuntary patient admitted under this Act; and
  - (b) a repatriation patient under the **Mental Health Act 1959** is deemed to be a repatriation patient admitted under this Act; and
  - (c) a security patient under the **Mental Health Act 1959** is deemed to be a security patient admitted under this Act—

for the prescribed period or until the person is reviewed under subsection (5) or (6).

- (3) A person admitted and detained as at the commencement of section 143 as a voluntary patient under the **Mental Health Act 1959** is deemed to be a voluntary patient admitted under this Act.
- (4) Section 30(a) does not apply to an involuntary patient or security patient referred to in this section.

- (5) Within the prescribed period, the authorised psychiatrist at each psychiatric in-patient service must review the admission of each involuntary patient or repatriation patient admitted as an involuntary patient to which subsection (2) applies and cause the person to be—
  - (a) admitted as a patient in accordance with this Act; or
  - (b) discharged.
- (6) Within the prescribed period, the chief psychiatrist must review the admission of each security patient to which subsection (2) applies in accordance with section 45.
- (7) If after a review under subsection (6)—
  - (a) the chief psychiatrist does not make a recommendation under section 45; or
  - (b) the Minister does not do all such things as are necessary to give effect to the recommendation under section 46—the person is deemed to have been admitted as a patient in accordance with this Act.

#### 145 Protection against breach of trust

S. 145  
inserted by  
No. 42/1988  
s. 25.

- (1) A cause of action does not lie in respect of any breach of trust or fiduciary duty by reason of any failure to pay to, or credit to the account of, a patient in a relevant hospital any money earned on the investment of money held in trust by that relevant hospital for that patient.
- (2) In subsection (1), **relevant hospital** means any psychiatric hospital or mental hospital under the **Mental Health Act 1959** or any similar institution under any corresponding previous enactment.

s. 146

S. 146  
inserted by  
No. 2/2001  
s. 112.

**146 Transitional provisions—Health Records Act 2001**

- (1) Section 120A(3)(g) as amended by the **Health Records Act 2001** does not apply to the giving of information for the purposes of medical or social research if the use to which the information will be put and the research methodology has been approved by an ethics committee under that section before the commencement of that amendment even if the giving of the information occurs after that commencement.
- (2) Section 120A(4) as amended by the **Health Records Act 2001** does not apply to the giving of information, the giving of which has been approved as required by that section before the commencement of that amendment, even if the giving of the information occurs after that commencement.

S. 147  
inserted by  
No. 7/2002  
s. 48.

**147 Transitional provisions—Forensic Health Legislation (Amendment) Act 2002**

- (1) Subsections (4), (5) and (6) of section 51, as in force immediately before the commencement of section 41 of the **Forensic Health Legislation (Amendment) Act 2002**, continue to apply in respect of a refusal to grant or extend leave or a revocation of leave that occurred before that commencement.
- (2) Any appeal under section 51(4), as in force immediately before the commencement of section 41 of the **Forensic Health Legislation (Amendment) Act 2002**, that had not been determined before that commencement is to be determined as if that section 41 had not come into operation.

**148 Transitional provision—Guardianship and Administration (Amendment) Act 2002**

S. 148  
inserted by  
No. 41/2002  
s. 42.

Despite the repeal of section 84(1)(e) by section 39(1) of the **Guardianship and Administration (Amendment) Act 2002**, a person is taken not to perform, or cause or permit the performance of, non-psychiatric treatment on a patient contrary to section 84 of this Act if—

- (a) before that repeal, the person obtained the registered medical practitioner's consent under section 12(1) of this Act to the performance of the treatment on the patient; and
- (b) after that repeal, the person performs the treatment, or causes or permits the treatment to be performed, on the patient in accordance with that consent.

**149 Transitional provisions—Mental Health (Amendment) Act 2003**

S. 149  
inserted by  
No. 76/2003  
s. 36,  
amended by  
No. 76/2003  
s. 28 (ILA  
s. 39B(1)).

- (1) Clause 2(1)(a) of Schedule 3, as in force immediately before the commencement of section 37(3)(b) of the **Mental Health (Amendment) Act 2003**, continues to apply with respect to the person appointed as a member of the Psychosurgery Review Board under that clause until the expiry of that person's current term of membership.
- (2) A person who, immediately before the commencement day, was detained in an approved mental health service under section 12 (as in force at that time) is to be taken, on and after the commencement day, to have been placed on an involuntary treatment order at the time the person was admitted to the approved mental health service.

S. 149(2)  
inserted by  
No. 76/2003  
s. 28.

**s. 149**

**S. 149(3)**  
**inserted by**  
**No. 76/2003**  
**s. 28.**

- (3) A person who, immediately before the commencement day, was subject to a hospital order made under section 16(3)(a) (as in force at that time) is taken, on and after the commencement day, to be subject to a hospital transfer order under section 16(3)(a) as substituted by section 16(2) of the amending Act.

**S. 149(4)**  
**inserted by**  
**No. 76/2003**  
**s. 28.**

- (4) A person who, immediately before the commencement day, was subject to a restricted hospital order made under section 16(3)(b) (as in force at that time) is taken, on and after the commencement day, to be subject to a restricted hospital transfer order under section 16(3)(b) as substituted by section 16(2) of the amending Act.

**S. 149(5)**  
**inserted by**  
**No. 76/2003**  
**s. 28.**

- (5) A reference in any instrument to a hospital order made under section 16(3)(a) or a restricted hospital order made under section 16(3)(b) is taken, in relation to anything occurring on or after the commencement day, to be a reference respectively to a hospital transfer order or restricted hospital transfer order.

**S. 149(6)**  
**inserted by**  
**No. 76/2003**  
**s. 28.**

- (6) Section 19A (treatment plans) applies in respect of a patient, whether he or she became a patient before, on or after the commencement day and, if he or she became a patient before the commencement day, the treatment plan must be prepared within 6 months after that day.

**S. 149(7)**  
**inserted by**  
**No. 76/2003**  
**s. 28.**

- (7) For the period of 6 months after the commencement day, section 35A (review of treatment plans) does not apply on an appeal or review for a person who became a patient before the commencement day unless a treatment plan has been prepared for the patient.

(8) In this section—

*amending Act* means the **Mental Health (Amendment) Act 2003**;

*commencement day* means the day on which section 28 of the amending Act comes into operation.

S. 149(8)  
inserted by  
No. 76/2003  
s. 28.

**150 Transitional provision—Sentencing and Mental Health Acts (Amendment) Act 2005**

S. 150  
inserted by  
No. 69/2005  
s. 25.

- (1) This Act, as in force immediately before the commencement day, continues to apply on and after that day to a person who, immediately before that day, was the subject of a hospital order made under section 93(1)(d) of the **Sentencing Act 1991** or a restricted community treatment order made under section 15A of this Act as in force before that day.
- (2) On and from the commencement day a person who immediately before that day is detained in an approved mental health service under an order made under section 16 and who, immediately before the making of that order, had been detained in a prison under an order made under section 93(5) of the **Sentencing Act 1991** must be taken to be detained in that service under a hospital security order.
- (3) Subsection (2) applies irrespective of the number of times the person has been transferred between a prison and an approved mental health service.
- (4) Subsection (1) ceases to have effect 2 years after the commencement day.

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(5) In this section—

*commencement day* means the day on which  
section 25 of the **Sentencing and Mental  
Health Acts (Amendment) Act 2005** comes  
into operation.

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## SCHEDULES

### SCHEDULE 1

#### PROVISIONS WITH RESPECT TO MEMBERS OF THE BOARD

##### 1 The President

The President—

- (a) is to be appointed by the Governor in Council; and
- (b) holds office for a period of five years; and

Sch. 1 cl. 1(b)  
amended by  
No. 32/1990  
s. 29(a)(i).

- (c) is eligible for re-appointment at the end of the term of office; and

- (d) is entitled to be paid—

- (i) such remuneration as is from time to time fixed by the Governor in Council; and

- (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

- (e) is in respect of the office of President subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

Sch. 1 cl. 1(e)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.5),  
46/1998  
s. 7(Sch. 1),  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 132.3),  
80/2006  
s. 26(Sch.  
item 69.2).

Sch. 1
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## 2 Ordinary members

- (1) Each member of the Board other than the President—
- (a) is to be appointed by the Governor in Council on the nomination of the Minister; and
  - (b) holds office for the term, not exceeding 5 years, specified in his or her instrument of appointment; and
  - (c) is eligible for re-appointment at the end of the term of office; and
  - (d) is entitled to be paid—
    - (i) such remuneration as is from time to time fixed by the Governor in Council; and
    - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
  - (e) is in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

Sch. 1  
cl. 2(1)(b)  
substituted by  
Nos 98/1995  
s. 60, 76/2003  
s. 37(1).

Sch. 1  
cl. 2(1)(e)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.6),  
46/1998  
s. 7(Sch. 1) (as  
amended by  
No. 12/1999  
s. 3(Sch. 1  
item 22)),  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 132.4),  
80/2006  
s. 26(Sch.  
item 69.3).

- (2) In nominating persons for appointment to the Board, the Minister must have regard to—
- (a) the matters which the Board has jurisdiction to hear and determine; and
  - (b) the need for the Board to be comprised of both males and females so qualified by knowledge and experience that the Board is capable of exercising the jurisdiction and performing the functions conferred on it;

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Sch. 1  
cl. 2(2)(b)  
amended by  
No. 32/1990  
s. 30(a).

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Sch. 1  
cl. 2(2)(c)  
repealed by  
No. 32/1990  
s. 30(b).

Sch. 1  
cl. 2(3)  
repealed by  
No. 29/1999  
s. 13(a).

### 3 Acting members

- (1) Where a member is unable, whether on account of illness or otherwise, to perform the duties of office, the Governor in Council may appoint an eligible person to act as that member during the period of inability.
- (2) Where a person has been appointed to act as a member during the period of inability of a member and that member ceases to hold office without having resumed the performance of the duties of office, the period of appointment of the person so appointed is deemed to continue until the appointment is terminated by the Governor in Council or until the expiration of the period of twelve months after the date on which the member ceases to hold office, whichever first occurs.

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- (3) A person appointed to act as a member while so acting—
- (a) has all the powers and may perform all the duties of the member for whom that person is acting; and
  - (b) is entitled to be paid—
    - (i) such remuneration as is from time to time fixed by the Governor in Council; and
    - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council.
- (4) Where a person has been appointed to act as a member and the appointment to act as such expires (whether by reason of the effluxion of time or of the fact that the member for whom that person is acting has resumed the performance of the duties of the office or the relevant vacancy has been filled) at a time when the acting member is engaged in the hearing of any matter by the Board, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Board.

**4 Removal of President from office**

- (1) The Governor in Council may suspend or remove the President from office.
- (2) If the President engages in Victoria or elsewhere in paid employment outside the duties of the office of President without the approval of the Governor in Council the office of President becomes vacant.

**5 General provisions as to members**

- (1) The Governor in Council may in the instrument of appointment of a person as a member specify terms and conditions of appointment.

- (2) The Governor in Council may, on the recommendation of the Minister made after consultation with the President remove or suspend any member other than the President from office.
- (3) A member may resign from the office of member by writing signed by the member and delivered to the Governor in Council.

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Sch. 1 cl. 5(4)  
repealed by  
No. 32/1990  
s. 29(a)(ii).

- (5) If any member—
- (a) becomes bankrupt; or
- (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
- (c) becomes incapable of performing the duties of a member; or
- (d) is removed from office or resigns; or

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Sch. 1  
cl. 5(5)(e)  
repealed by  
No. 32/1990  
s. 29(a)(iii).

- (f) dies—
- the office held by that member becomes vacant.
- (6) If the appointment of any member expires at a time when that member is engaged in the hearing of any matter by the Board, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Board.

Sch. 1 cl. 5(6)  
amended by  
No. 32/1990  
s. 29(a)(iv).

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**SCHEDULE 2**

**PROVISIONS WITH RESPECT TO THE PROCEDURE OF  
THE BOARD**

**1 Board to sit in divisions**

- (1) The jurisdiction, powers and duties conferred or imposed upon the Board may be exercised by divisions of the Board.

(1A) A division consists of—

- (a) in the case of—

Sch. 2  
cl. 1(1A)  
inserted by  
No. 42/1993  
s. 32(1)(a),  
amended by  
No. 98/1995  
s. 61(a),  
substituted by  
No. 55/1996  
s. 4(2).

- (i) a review under section 93G(3)  
(interstate transfer); or

Sch. 2  
cl. 1(1A)(a)(i)  
amended by  
No. 29/1999  
s. 13(b).

- (ii) a review under section 30(3) (periodic  
review); or

Sch. 2  
cl. 1(1A)(a)(ii)  
substituted by  
No. 76/2003  
s. 37(2).

- (iii) a review under section 30(4) of the  
extension of a community treatment  
order—

Sch. 2  
cl. 1(1A)(a)(iii)  
substituted by  
No. 76/2003  
s. 37(2).

either 1 member or 3 members selected by  
the President; or

- (b) in any other case, 3 members selected by the  
President.

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(1B) The size of a division in the case of a review referred to in subclause (1A)(a) is to be determined by the President.

Sch. 2  
cl. 1(1B)  
inserted by  
No. 42/1993  
s. 32(1)(a),  
amended by  
No. 98/1995  
s. 61(a),  
substituted by  
No. 55/1996  
s. 4(2).

(2) In the case of a division consisting of 3 members—

Sch. 2 cl. 1(2)  
amended by  
No. 42/1993  
s. 32(1)(b).

(a) one member who is to be the chairperson of the division must be a person who has been admitted to legal practice, whether in Victoria or elsewhere in Australia, for not less than 5 years; and

Sch. 2  
cl. 1(2)(a)  
amended by  
No. 76/2003  
s. 37(3)(a).

(b) one member must be a registered medical practitioner who is a psychiatrist but not the authorized psychiatrist of any approved mental health service where the division is to sit; and

Sch. 2  
cl. 1(2)(b)  
amended by  
Nos 23/1994  
s. 118(Sch. 1  
item 38.26),  
98/1995  
s. 61(b).

(c) one member must be a person appointed to the Board to represent the views and opinions of members of the community.

(2A) A division of 1 member must consist of a person having any 1 or more of the qualifications set out in subclause (2)(a), (b) and (c).

Sch. 2  
cl. 1(2A)  
inserted by  
No. 42/1993  
s. 32(1)(c).

(3) In selecting the members of a division of 3 members the President must have regard to—

Sch. 2 cl. 1(3)  
amended by  
No. 42/1993  
s. 32(1)(d).

(a) the desirability of constituting divisions of both males and females and of different age groups; and

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- (b) the nature of the matter to be considered by that division; and
- (c) the need for the members of that division to have appropriate knowledge and experience.
- (4) The President may act as a member of a division, and, if the President fulfils the requirements of subclause (2)(a) may act as the chairperson of a division.

## **2 Procedure of divisions**

- (1) Unless clause 3 applies, a matter arising for determination by a division is to be determined by a majority of votes of the members of the division.
- (2) An act or decision of a division is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the selection of that person as a member of a division or, in the case of a person appointed to act as a member under clause 3 of Schedule 1, on the ground that the occasion for so acting had not arisen or had ceased.
- (3) Subject to this Act and the regulations, the procedure of a division is in its discretion.

## **3 Determination of questions of law by divisions**

- (1) Where a question of law arises in proceedings before a division of 3 members the chairperson of that division must determine the question.
- (2) Where a question of law arises in proceedings before a division of 1 member who is not eligible to act as a chairperson of a 3 member division, the member must refer the question to a member who is eligible to act as a chairperson of a 3 member division for determination.

Sch. 2 cl. 3  
amended by  
No. 42/1993  
s. 32(2)(a)(b).

Sch. 2 cl. 3(2)  
inserted by  
No. 42/1993  
s. 32(2)(c).



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**4 Directions as to arrangement of business and procedure**

Sch. 2 cl. 4  
amended by  
No. 32/1990  
s. 31(a).

- (1) The President after consultation with the other members of the Board may give directions as to—
  - (a) the arrangement of the business of the Board; and
  - (b) the procedure of the Board.
- (2) The President may by instrument of delegation delegate to a member any power or function of the President under this Act other than this power of delegation.

Sch. 2 cl. 4(2)  
inserted by  
No. 32/1990  
s. 31(b).

**5 Sitzings of the Board**

- (1) The Board is to sit—
  - (a) at such times as the President determines; and
  - (b) at the approved mental health service where the patient is detained unless the President determines otherwise.
- (2) The President may determine that there is to be a special sitting of the Board in the case of an emergency.

Sch. 2  
cl. 5(1)(b)  
amended by  
No. 98/1995  
s. 61(b).

**5A Powers of the Board**

Sch. 2 cl. 5A  
inserted by  
No. 32/1990  
s. 31(c).

The Board has power to—

- (a) order that any person who in the opinion of the Board ought to be a party in any proceedings be added as a party or substituted for a party; and
- (b) order that any person who in the opinion of the Board is not a proper or a necessary party in any proceedings cease to be a party; and

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- (c) adjourn the hearing of any proceedings—
  - (i) to any time and place; and
  - (ii) for any purpose; and
  - (iii) on any terms as to costs or otherwise—  
as the Board considers necessary or just in the circumstances; and
- (d) reserve its decision in any proceedings to a date to be advised by the Board; and
- (e) make an order that operates at a date after the making of the order as is specified in the order.

## 6 Determination of the Board

Sch. 2 cl. 6(1)  
amended by  
No. 42/1993  
s. 32(3)(a).

- (1) A determination of the Board must be in writing and signed by the member or members of the Board who constituted the division that made the determination.

Sch. 2 cl. 6(2)  
amended by  
No. 42/1993  
s. 32(3)(b).

- (2) Where one or more of the members who constituted a division of 3 members is or are unavailable for the purpose of signing a determination made by that division, any other member or members of that division may sign the determination and that determination has the same force and effect as if it had been signed by all the members who constituted the division that made the determination.
- (3) The production in any proceedings of a document purporting to be a copy of a determination made by the Board and purporting to be signed by a member or members of the Board is conclusive evidence of the due making and existence of the determination.

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## **7 Power to amend determination**

The Board may at any time of its own motion or on the application of any person, make a determination correcting a determination made by the Board where there is in the determination—

- (a) a clerical mistake or an error arising from any accidental slip or omission; or
  - (b) any evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the determination.
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**SCHEDULE 3**

**PROVISIONS WITH RESPECT TO THE CONSTITUTION,  
MEMBERS AND PROCEDURES OF THE PSYCHOSURGERY  
REVIEW BOARD**

**1 Constitution of Psychosurgery Review Board**

- (1) The Psychosurgery Review Board is to consist of 5 members appointed by the Governor in Council on the recommendation of the Minister.
- (2) The Governor in Council is to appoint one of the members as chairperson and another as deputy chairperson.

**2 Nomination of members**

- (1) The membership of the Psychosurgery Review Board is to be made up of both males and females and consist of—
  - (a) a person who has been admitted to legal practice, whether in Victoria or elsewhere in Australia, for not less than 5 years; and
  - (b) a person who is a neurosurgeon nominated by the Royal Australasian College of Surgeons; and
  - (c) a person who is a psychiatrist nominated by the Minister; and
  - (d) a person who is a psychiatrist nominated by the Royal Australian and New Zealand College of Psychiatrists; and
  - (e) a person who is a member of the public nominated by the Victorian Council for Civil Liberties Inc.

Sch. 3  
cl. 2(1)(a)  
substituted by  
No. 76/2003  
s. 37(3)(b).

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- (2) The Minister is to recommend the members to be appointed under subclause (1)(b), (1)(d) and (1)(e) after the Minister has considered panels of names of persons each containing five names submitted by the appropriate body or organization to the Minister at the invitation of the Minister.
  - (3) A submission made under subclause (2) is to be made in writing so as to reach the Minister on or before the date determined by the Minister as the last date for that submission.
  - (4) The failure of a body or organization to submit a panel of names of persons in accordance with this clause does not preclude the Minister from making a recommendation under clause 1.

### **3 Alternate members**

- (1) The Minister must include with the recommendation of a member the name of a person to be appointed by the Governor in Council as an alternate member to act during the absence or illness of that member.
- (2) A person to be appointed as an alternate member must hold the same qualifications and be nominated in the same manner as the member for whom the alternate member is to act.
- (3) An alternate member has all the powers and may perform all the duties of the member for whom the alternate member is acting.

### **4 Terms and conditions of office of members and alternate members**

- (1) Each member of the Psychosurgery Review Board—
  - (a) holds office for the term, not exceeding 5 years, specified in his or her instrument of appointment; and

Sch. 3  
cl. 4(1)(a)  
substituted by  
No. 76/2003  
s. 37(3)(c).

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Sch. 3

Sch. 3  
cl. 4(1)(b)  
amended by  
No. 98/1995  
s. 62.

(b) is eligible for re-appointment at the end of  
the term of office; and

(c) is entitled to be paid—

(i) such remuneration as is from time to  
time fixed by the Governor in Council;  
and

(ii) such travelling and other allowances as  
are from time to time fixed by the  
Governor in Council; and

Sch. 3  
cl. 4(1)(d)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.7),  
46/1998  
s. 7(Sch. 1),  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 132.5),  
80/2006  
s. 26(Sch.  
item 69.4).

(d) is in respect of the office of member subject  
to the **Public Administration Act 2004**  
(other than Part 3 of that Act).

Sch. 3 cl. 4(2)  
repealed by  
No. 76/2003  
s. 37(3)(d).

\* \* \* \* \*

(3) An alternate member of the Psychosurgery  
Review Board—

(a) holds office for the same period as the  
member for whom the alternate member is to  
act; and

- (b) is entitled to be paid—
- (i) such remuneration as is from time to time fixed by the Governor in Council; and
  - (ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and
- (c) is in respect of the office of alternate member subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

Sch. 3  
cl. 4(3)(c)  
amended by  
Nos 68/1992  
s. 114(Sch. 7  
item 2.8),  
46/1998  
s. 7(Sch. 1),  
substituted by  
Nos 108/2004  
s. 117(1)  
(Sch. 3  
item 132.6),  
80/2006  
s. 26(Sch.  
item 69.5).

## 5 General provisions as to members and alternate members

- (1) The Governor in Council may in the instrument of appointment of a person as a member or alternate member specify terms and conditions of appointment.
- (2) The Governor in Council may on the recommendation of the Minister remove or suspend any member or alternate member from office.
- (3) A member may resign from the office of member or alternate member by writing signed by the member or alternate member and delivered to the Governor in Council.

\* \* \* \* \*

Sch. 3 cl. 5(4)  
repealed by  
No. 32/1990  
s. 29(b)(i).

Sch. 3

Sch. 3  
cl. 5(5)(e)  
repealed by  
No. 32/1990  
s. 29(b)(ii).

- (5) If any member or alternate member—
- (a) becomes bankrupt; or
  - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
  - (c) becomes incapable of performing the duties of a member or alternate member; or
  - (d) is removed from office or resigns; or

\* \* \* \* \*

- (f) dies—  
the office held by that member or alternate member becomes vacant.

**6 Procedure of Psychosurgery Review Board**

- (1) The Psychosurgery Review Board must sit at such times as the chairperson determines.
- (2) Meetings of the Psychosurgery Review Board are to be presided over by the chairperson or if the chairperson is absent by the deputy chairperson.
- (3) At a meeting of the Psychosurgery Review Board, 4 members constitute a quorum.
- (4) Subject to the presence of a quorum, a matter arising for determination by the Psychosurgery Review Board can be determined by a majority of votes of the members present.
- (5) An act or decision of the Psychosurgery Review Board is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the case of an alternate member on the ground that the occasion for so acting had not arisen or had ceased.



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(6) Subject to this Act and the regulations, the procedure of the Psychosurgery Review Board is in its discretion.

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Sch. 4  
amended by  
No. 32/1990  
ss 32(a)–(g),  
33(g),  
repealed by  
No. 68/1992  
s. 114(Sch. 7  
item 2.9).

Sch. 5

Sch. 5  
amended by  
No. 42/1988  
s. 26(a)(b).

SCHEDULE 5

PROVISIONS WITH RESPECT TO COMMUNITY VISITORS

1 Community visitors

(1) Each community visitor—

- (a) is to hold office for a period of three years;  
and
- (b) is to be eligible for re-appointment at the end  
of the term of office; and
- (c) is entitled to be paid such fees and travelling  
and other allowances as are from time to  
time fixed by the Governor in Council; and
- (d) is not in respect of the office of community  
visitor subject to the provisions of the **Public  
Administration Act 2004**.

Sch. 5  
cl. 1(1)(d)  
amended by  
Nos 46/1998  
s. 7(Sch. 1),  
108/2004  
s. 117(1)  
(Sch. 3  
item 132.7).

(2) A person cannot be appointed as a community  
visitor if that person—

- (a) holds any appointment or employment with  
the Department; or
- (b) has a direct interest in any contract with the  
Department or an approved mental health  
service; or
- (c) has any financial interest in a private  
hospital.

Sch. 5  
cl. 1(2)(b)  
amended by  
No. 98/1995  
s. 63.

Sch. 5  
cl. 1(2)(c)  
amended by  
No. 51/2001  
s. 15(a).

Sch. 5
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Sch. 5  
cl. 1(2)(d)  
repealed by  
No. 51/2001  
s. 15(b).

(3) In nominating persons for appointment as community visitors for a region the Minister must as far as practicable nominate an equal number of males and females.

(4) At least one of the persons for the time being appointed as community visitors for a region must be a registered medical practitioner.

Sch. 5 cl. 1(4)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.27(a)).

(5) Any three community visitors for a region constitute a panel of community visitors for that region.

## 2 General provisions as to community visitors

(1) The Governor in Council may, in the instrument of appointment of a person as a community visitor, specify terms and conditions of appointment.

(2) The Governor in Council may on the recommendation of the Minister remove a community visitor from office and in the case of a community visitor who is a registered medical practitioner appoint a person who is a registered medical practitioner as the replacement.

Sch. 5 cl. 2(2)  
amended by  
No. 23/1994  
s. 118(Sch. 1  
item 38.27(b)).

(3) A person may resign from the office of community visitor by writing signed by that person and delivered to the Governor in Council.

\* \* \* \* \*

Sch. 5 cl. 2(4)  
repealed by  
No. 42/1988  
s. 26(a).

**Sch. 5**

(5) If a community visitor—

- (a) becomes bankrupt; or
- (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
- (c) becomes incapable of performing the duties of the office of community visitor; or
- (d) is removed from office or resigns from office; or

Sch. 5  
cl. 2(5)(e)  
repealed by  
No. 42/1988  
s. 26(b).

\* \* \* \*

(f) dies—

the office of that community visitor becomes vacant.

Sch. 6  
repealed by  
No. 124/1993  
s. 24(b).

\* \* \* \*

Sch. 7  
amended by  
No. 50/1988  
s. 93(1),  
repealed by  
No. 32/1990  
s. 33(h).

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## ENDNOTES

### 1. General Information

*Minister's second reading speech—*

*Legislative Assembly: 28 November 1985*

*Legislative Council: 26 March 1986*

The long title for the Bill for this Act was "A Bill to provide for the care, treatment and protection of persons who are mentally ill, to establish a Mental Health Review Board, to define the role of the Department of Health with respect to mental health, to repeal the **Mental Health Act 1959** and for other purposes."

The **Mental Health Act 1986** was assented to on 3 June 1986 and came into operation as follows:

Sections 1–3, 21, 23, Schedule 1 on 19 June 1987: Government Gazette  
17 June 1987 page 1538; rest of Act on 1 October 1987: Government Gazette  
30 September 1987 page 2585.

## 2. Table of Amendments

This Version incorporates amendments made to the **Mental Health Act 1986** by Acts and subordinate instruments.

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### **Supreme Court Act 1986, No. 110/1986**

*Assent Date:* 16.12.86  
*Commencement Date:* 1.1.87: s. 2  
*Current State:* All of Act in operation

### **State Concessions (Amendment) Act 1987, No. 48/1987**

*Assent Date:* 15.9.87  
*Commencement Date:* 1.12.87: Government Gazette 18.11.87 p. 3072  
*Current State:* All of Act in operation

### **Intellectually Disabled Persons' Services (Amendment) Act 1987, No. 74/1987**

*Assent Date:* 24.11.87  
*Commencement Date:* 24.11.87: Special Gazette (No. 50) 24.11.87 p. 1  
*Current State:* All of Act in operation

### **Mental Health (Amendment) Act 1988, No. 42/1988 (as amended by No. 1/1989)**

*Assent Date:* 24.5.88  
*Commencement Date:* S. 15(1) on 1.10.87: s. 2(1); s. 17(1) on 1.10.87: s. 2(1A); rest of Act on 3.10.88: Government Gazette 28.9.88 p. 2898  
*Current State:* All of Act in operation

### **State Superannuation Act 1988, No. 50/1988**

*Assent Date:* 24.5.88  
*Commencement Date:* S. 93(3) on 1.7.87: s. 2(1); s. 93(4) on 27.11.87: s. 2(2); Pt 1, Pt 6 Div. 2, s. 91 on 1.1.88: s. 2(3); rest of Act on 1.7.88: Government Gazette 1.6.88 p. 1487  
*Current State:* All of Act in operation

### **Guardianship and Administration Board (Amendment) Act 1989, No. 33/1989**

*Assent Date:* 6.6.89  
*Commencement Date:* 6.6.89  
*Current State:* All of Act in operation

### **Mental Health (General Amendment) Act 1990, No. 32/1990**

*Assent Date:* 13.6.90  
*Commencement Date:* Ss 1–3, 22, 31 on 9.8.90: Government Gazette 8.8.90 p. 2416; rest of Act on 1.1.91: Special Gazette (No. 68) 20.12.90 p. 1  
*Current State:* All of Act in operation

### **Sentencing Act 1991, No. 49/1991**

*Assent Date:* 25.6.91  
*Commencement Date:* 22.4.92: Government Gazette 15.4.92 p. 898  
*Current State:* All of Act in operation

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**Public Sector Management Act 1992, No. 68/1992**

*Assent Date:* 19.11.92  
*Commencement Date:* S. 114(Sch. 7 items 2.1–2.9) on 24.11.92: Special Gazette (No. 62) 24.11.92 p. 1  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Children and Young Persons (Amendment) Act 1992, No. 69/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* S. 36 on 22.2.93: Government Gazette 28.1.93 p. 174  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Employee Relations Act 1992, No. 83/1992**

*Assent Date:* 24.11.92  
*Commencement Date:* S. 184(Sch. 6 item 13) on 1.3.93: Special Gazette (No. 63) 27.11.92 p. 1  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health and Community Services (General Amendment) Act 1993, No. 42/1993**

*Assent Date:* 1.6.93  
*Commencement Date:* Pt 4 (ss 24–32) on 1.10.93: Government Gazette 16.9.93 p. 2548  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health and Community Services (Further Amendment) Act 1993, No. 124/1993**

*Assent Date:* 7.12.93  
*Commencement Date:* All of Act (*except* Pt 3 (ss 4–8)) on 7.12.93: s. 2(1); Pt 3 on 18.12.94: Government Gazette 15.12.94 p. 3308  
*Current State:* All of Act in operation

**Medical Practice Act 1994, No. 23/1994** (as amended by No. 74/2000)

*Assent Date:* 17.5.94  
*Commencement Date:* Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672  
*Current State:* All of Act in operation

**Financial Management (Consequential Amendments) Act 1994, No. 31/1994**

*Assent Date:* 31.5.94  
*Commencement Date:* S. 3(Sch. 1 items 42.1–42.3) on 7.7.94: Government Gazette 7.7.94 p. 1878—see **Interpretation of Legislation Act 1984**; s. 4(Sch. 2 item 55) on 1.1.95: Government Gazette 28.7.94 p. 2055  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

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**Legal Aid Commission (Amendment) Act 1995, No. 48/1995**

*Assent Date:* 14.6.95  
*Commencement Date:* Pt 1 (ss 1–3) on 14.6.95: s. 2(1); rest of Act on 14.12.95: s. 2(3)  
*Current State:* All of Act in operation

**Mental Health (Amendment) Act 1995, No. 98/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* Ss 1, 2 on 5.12.95: s. 2(1); s. 60 on 26.5.96: Government Gazette 9.5.96 p. 1099; rest of Act on 1.7.96: Government Gazette 27.6.96 p. 1593  
*Current State:* All of Act in operation

**Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995**

*Assent Date:* 5.12.95  
*Commencement Date:* 1.1.96: s. 2  
*Current State:* All of Act in operation

**Health Acts (Amendment) Act 1996, No. 19/1996**

*Assent Date:* 2.7.96  
*Commencement Date:* Pt 2 (ss 3, 4) on 1.7.96: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Legal Practice Act 1996, No. 35/1996**

*Assent Date:* 6.11.96  
*Commencement Date:* S. 453(Sch. 1 item 58) on 1.1.97: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Corrections (Amendment) Act 1996, No. 45/1996**

*Assent Date:* 26.11.96  
*Commencement Date:* S. 18(Sch. 2 items 10.1–10.16) on 6.2.97: Government Gazette 6.2.97 p. 257  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Mental Health (Interstate Provisions) Act 1996, No. 55/1996**

*Assent Date:* 10.12.96  
*Commencement Date:* 10.12.96: s. 2  
*Current State:* All of Act in operation

**Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996**

*Assent Date:* 12.12.96  
*Commencement Date:* S. 10(Sch. 2 item 14) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**



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**Health Acts (Further Amendment) Act 1996, No. 68/1996**

*Assent Date:* 17.12.96  
*Commencement Date:* Pt 5 (s. 17) on 16.5.95: s. 2(2); Pts 1 (ss 1, 2), 3 (ss 8–15), 4 (s. 16), 6 (ss 18–36), 7 (s. 37) on 17.12.96: s. 2(1); Pt 2 (ss 3–7) on 31.12.96: s. 2(3)  
*Current State:* All of Act in operation

**Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997**

*Assent Date:* 18.11.97  
*Commencement Date:* Ss 86–88 on 18.4.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Mental Health (Victorian Institute of Forensic Mental Health ) Act 1997, No. 77/1997**

*Assent Date:* 25.11.97  
*Commencement Date:* Ss 3–5 on 1.1.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Miscellaneous Acts (Omnibus No. 1) Act 1998, No. 43/1998**

*Assent Date:* 26.5.98  
*Commencement Date:* S. 41 on 18.4.98: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998**  
(as amended by No. 12/1999)

*Assent Date:* 26.5.98  
*Commencement Date:* S. 7(Sch. 1) on 1.7.98: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998**

*Assent Date:* 2.6.98  
*Commencement Date:* S. 311(Sch. 1 item 61) on 1.7.98: Government Gazette 18.6.98 p. 1512  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**International Transfer of Prisoners (Victoria) Act 1998, No. 67/1998**

*Assent Date:* 4.11.98  
*Commencement Date:* S. 16 on 8.8.02: Government Gazette 8.8.02 p. 2162  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Public Sector Reform (Further Amendments) Act 1999, No. 12/1999**

*Assent Date:* 11.5.99  
*Commencement Date:* S. 4(Sch. 2 item 9) on 11.5.99: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

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**Mental Health (Amendment) Act 1999, No. 29/1999**

*Assent Date:* 1.6.99  
*Commencement Date:* Ss 1–3 on 1.6.99: s. 2(1); rest of Act on 1.6.00: s. 2(3)  
*Current State:* All of Act in operation

**Guardianship and Administration (Amendment) Act 1999, No. 40/1999**

*Assent Date:* 8.6.99  
*Commencement Date:* S. 26 on 1.1.00: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health Services (Governance) Act 2000, No. 39/2000**

*Assent Date:* 6.6.00  
*Commencement Date:* S. 13 on 30.6.00: Special Gazette (No. 88) 23.6.00 p. 11  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health Records Act 2001, No. 2/2001**

*Assent Date:* 10.4.01  
*Commencement Date:* S. 111(2)(a)(3)(5) on 16.11.01: Government Gazette 15.11.01 p. 2839; s. 111(1) on 1.3.02: Government Gazette 28.2.02 p. 318; ss 111(2)(b)(4), 112 on 1.7.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001**

*Assent Date:* 8.5.01  
*Commencement Date:* S. 3(Sch. item 50) on 1.6.01: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Statute Law Amendment (Relationships) Act 2001, No. 27/2001**

*Assent Date:* 12.6.01  
*Commencement Date:* S. 6(Sch. 4 item 6) on 28.6.01: Government Gazette 28.6.01 p. 1428  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Corporations (Consequential Amendments) Act 2001, No. 44/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 3(Sch. item 81) on 15.7.01: s. 2  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Corrections (Custody) Act 2001, No. 45/2001**

*Assent Date:* 27.6.01  
*Commencement Date:* S. 44 on 1.3.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

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**Community Visitors Legislation (Miscellaneous Amendments) Act 2001, No. 51/2001**

*Assent Date:* 25.9.01  
*Commencement Date:* Ss 12–15 on 1.2.02: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Forensic Health Legislation (Amendment) Act 2002, No. 7/2002**

*Assent Date:* 9.4.02  
*Commencement Date:* S. 51 on 10.4.02: s. 2(1); ss 36–48 on 1.7.02: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Guardianship and Administration (Amendment) Act 2002, No. 41/2002**

*Assent Date:* 17.9.02  
*Commencement Date:* Ss 29–42 on 1.1.03: s. 2(2)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health Legislation (Amendment) Act 2003, No. 67/2003**

*Assent Date:* 14.10.03  
*Commencement Date:* Ss 10, 11 on 15.10.03: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Mental Health (Amendment) Act 2003, No. 76/2003**

*Assent Date:* 21.10.03  
*Commencement Date:* Ss 29–37 on 22.10.03: s. 2(1); ss 4–28 on 6.12.04: Government Gazette 2.12.04 p. 3221  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Mental Health Legislation (Commonwealth Detainees) Act 2004, No. 44/2004**

*Assent Date:* 16.6.04  
*Commencement Date:* Ss 3–5 on 17.6.04: s. 2  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Public Administration Act 2004, No. 108/2004**

*Assent Date:* 21.12.04  
*Commencement Date:* S. 117(1)(Sch. 3 item 132) on 5.4.05: Government Gazette 31.3.05 p. 602  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Legal Profession (Consequential Amendments) Act 2005, No. 18/2005**

*Assent Date:* 24.5.05  
*Commencement Date:* S. 18(Sch. 1 item 67) on 12.12.05: Government Gazette 1.12.05 p. 2781  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

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**Health Legislation (Miscellaneous Amendments) Act 2005, No. 42/2005**

*Assent Date:* 2.8.05  
*Commencement Date:* Ss 15–19 on 3.8.05: s. 2  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Sentencing and Mental Health Acts (Amendment) Act 2005, No. 69/2005**

*Assent Date:* 11.10.05  
*Commencement Date:* S. 8 on 12.10.05: s. 2(1); ss 7, 9–25 on 1.10.06: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Health Professions Registration Act 2005, No. 97/2005**

*Assent Date:* 7.12.05  
*Commencement Date:* S. 182(Sch. 4 item 37) on 1.7.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Guardianship and Administration (Further Amendment) Act 2006, No. 3/2006**

*Assent Date:* 7.3.06  
*Commencement Date:* S. 12 on 15.7.06: Government Gazette 6.7.06 p. 1391  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006**

*Assent Date:* 15.8.06  
*Commencement Date:* S. 42(Sch. item 27) on 23.4.07: s. 2(3)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006**

*Assent Date:* 10.10.06  
*Commencement Date:* S. 26(Sch. item 69) on 11.10.06: s. 2(1)  
*Current State:* This information relates only to the provision/s amending the **Mental Health Act 1986**

**Motor Car Traders Amendment Act 2008, No. 4/2008**

*Assent Date:* 4.3.08  
*Commencement Date:* S. 32(Sch. item 21) on 1.12.08: s. 2(2)  
*Current State:* The information relates only to the provision/s amending the **Mental Health Act 1986**

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### 3. Explanatory Details

<sup>1</sup> S. 64(1)(c)–64(2):

S. 64(1)(c) repealed by No. 42/1988 s. 15(4)(b).

S. 64(1)(d)(e) amended by No. 110/1986 s. 140(2), repealed by No. 42/1988 s. 15(4)(b).

S. 64(2) inserted by No. 42/1988 s. 15(4)(c), repealed by No. 98/1995 s. 37(7).

<sup>2</sup> Ss 68, 69:

S. 68 amended by No. 110/1986 s. 140(2), repealed by No. 42/1988 s. 15(5).

S. 69 repealed by No. 42/1988 s. 15(5).

<sup>3</sup> Pt 5 Div. 6: Section 49 of the **Mental Health (Amendment) Act 1995**, No. 98/1995 reads as follows:

#### 49 Transitional provision—amenities accounts

- (1) As soon as practicable after the commencement of this section, the senior officer of a psychiatric in-patient service (within the meaning of the Principal Act as in force immediately before the commencement of section 4 of this Act) or an approved mental health service must pay any amount held in the patients amenities account established in the Patients Trust Account of that service to the Trust Fund.
- (2) In this section, ***Trust Fund*** means the trust fund known as the Psychiatric Illness and Intellectual Disabilities Donations Trust Fund, which was established as the Mental Health Donations Trust Fund by declaration of trust dated 11 July 1956.

<sup>4</sup> S. 95(2) (*repealed*): The amendment proposed by section 184(Sch. 6 item 13) of the **Employee Relations Act 1992**, No. 83/1992 is not included in this publication, because section 95(2) was repealed before this amendment came into operation.