



New South Wales

EXPOSURE DRAFT BILL

Mental Health Bill 2006

August 2006



New South Wales

Mental Health Bill 2006

Explanatory note

Overview of Bill

The objects of this Bill are to make provision with respect to the care, treatment and control of mentally ill persons and mentally disordered persons and other matters relating to mental health. The Bill re-enacts the provisions of the *Mental Health Act 1990*, with amendments, generally in accordance with proposals relating to patients (other than forensic patients) arising from a statutory review of that Act.

The Bill is divided into Chapters, Parts and Divisions. Each Chapter deals with a discrete subject-matter relating to mental health.

Outline of provisions

Chapter 1 Preliminary

Chapter 1 (proposed sections 1–4) contains provisions relating to the citation and commencement of the proposed Act, as well as provisions defining words and expressions used in the proposed Act. The proposed Chapter also sets out the objects of the proposed Act in relation to the care, treatment and control of mentally ill persons and mentally disordered persons.

exposure draft

Mental Health Bill 2006

Explanatory note

Chapter 2 Voluntary admission to facilities

Chapter 2 (proposed sections 5–11) sets out the circumstances in which a person may be admitted voluntarily to a mental health facility as a voluntary patient under the proposed Act. It also sets out the additional requirements relating to the voluntary admission of children and persons under guardianship. An *authorised medical officer* (that is, a medical superintendent of a mental health facility or a medical officer nominated by the medical superintendent) may refuse to admit a person as a voluntary patient and may discharge a person as a voluntary patient. A right of appeal is provided to the medical superintendent against any such decision by a medical officer nominated by the medical superintendent. The case of a voluntary patient must be reviewed at least once a year, if the patient remains in a mental health facility.

Chapter 3 Involuntary admission and treatment in and outside facilities

Part 1 Requirements for involuntary admission, detention and treatment

The Part (proposed sections 12–16) provides that a person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person and that the person is a mentally ill person or a mentally disordered person. An authorised medical officer has a duty to discharge a person if not of that opinion. The Part sets out the criteria which a person who is suffering from mental illness or who is mentally disordered must satisfy before being considered to be a mentally ill person or mentally disordered person for the purpose of involuntary detention under the proposed Act or being made subject to a community treatment order under the proposed Act.

Part 2 Involuntary detention and treatment in mental health facilities

Division 1 Preliminary

The Division (proposed section 17) defines expressions used in the proposed Part.

Division 2 Admission to and initial detention in mental health facilities

The Division (proposed sections 18–33) sets out the circumstances in which a person may be brought to, and detained involuntarily in, a mental health facility under the proposed Act. The Division specifies the requirements that are to be satisfied before

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Mental Health Bill 2006

Explanatory note

a person can be taken to and detained in a mental health facility, including on the certificate of a medical practitioner or other person accredited by the Director-General of the Department of Health (the *Director-General*), on the information of an ambulance officer, after apprehension by a police officer, following the making of an order by a Magistrate or other authorised person in the case of a person who is physically inaccessible to ordinary medical examination or observation, on an order of a court or bail officer, on transfer from another health facility or at the request of a primary carer, relative or friend.

The Division also sets out the steps to be taken following the involuntary detention of a person in a mental health facility, including the carrying out of medical examinations and the notification of friends and relatives of the person's detention. A person who is found, after those steps are taken, to be a mentally ill person (an *assessable person*) must be the subject of a Magistrate's inquiry (a *mental health inquiry*). A person who is found, after those steps are taken, to be a mentally disordered person must not be detained for a period of more than 3 days (not including weekends and public holidays). A person who is not found, after those steps are taken, by 2 medical practitioners to be either a mentally ill person or a mentally disordered person, must be released. The Division provides for further limited detention to enable police to take action in relation to certain persons.

Division 3 Continuing detention in mental health facilities

The Division (proposed sections 34–45) provides for the procedures and purpose of mental health inquiries to determine whether an assessable person is, on the balance of probabilities, a mentally ill person and the course of action to be taken in respect of the person. On a finding that a person is a mentally ill person, the Magistrate must, if of the opinion that it is appropriate to do so, order that the person be detained in a mental health facility as an involuntary patient for a period not exceeding 3 months. If not of that opinion, the Magistrate may order the person's discharge or make a community treatment order for the person.

The Division also deals with the periodic review (every 3 months) by the Mental Health Review Tribunal (the *Tribunal*) of persons who are found at an inquiry to be mentally ill persons requiring detention. The Tribunal must order the discharge of a patient on a review if it does not determine that the patient is a mentally ill person and that no other care of a less restrictive kind is appropriate and reasonably available to the person. An involuntary patient must be examined by an authorised medical officer at least once every 3 months.

The Division sets out other circumstances in which an involuntary patient may cease to be involuntarily detained in a mental health facility, including on re-classification as a voluntary patient, when a community treatment order is made and by discharge after an application by the patient or the primary carer or another person.

Division 4 Leave of absence from mental health facilities

The Division (proposed sections 46–49) provides for leave of absence from detention in a mental health facility to be granted to patients and detained persons and for the

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Mental Health Bill 2006

Explanatory note

apprehension of patients or persons who fail to return after leave of absence expires or to comply with a condition of leave of absence.

Part 3 Involuntary treatment outside mental health facilities

The Part establishes a scheme for the mandatory treatment of persons outside hospitals under community treatment orders.

Division 1 Applications for and making of community treatment orders

The Division (proposed sections 50–56) enables the Tribunal, on application or on its own motion, or a Magistrate holding a mental health inquiry, to make a community treatment order in respect of a person (the *affected person*). The Division specifies that such an order may not be made in respect of a person unless specified criteria relating to the person's previous history and treatment are met, a treatment plan is proposed by a declared mental health facility and the Tribunal or Magistrate is satisfied that the facility is capable of implementing it. The Division also specifies requirements for treatment plans and provides for the form and duration of community treatment orders. A community treatment order may not last for more than 12 months.

Division 2 Operation of community treatment orders

The Division (proposed sections 57–64) provides for the operation and enforcement of community treatment orders. An affected person is required to attend at a specified place to receive treatment by a specified mental health facility. Medication may be administered to an affected person without consent for the purposes of an order. A person who breaches an order may be taken to the relevant mental health facility or another mental health facility and may be given treatment there or assessed for involuntary admission to a mental health facility. A person who refuses treatment after being taken to the supervising mental health facility may be taken to another mental health facility. A person taken to such a mental health facility may be detained there for the duration of the community treatment order but must be released in specified circumstances. The Tribunal is to review the case of an affected person detained after breach of a community treatment order every 3 months.

Division 3 Revocation, variation and review of community treatment orders

The Division (proposed sections 65–67) provides for the variation and revocation of community treatment orders and for appeals against community treatment orders.

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Mental Health Bill 2006

Explanatory note

Chapter 4 Care and treatment

Part 1 Rights of patients or detained persons and primary carers

Division 1 General

The Division (proposed sections 68–72) sets out general principles for the care and treatment of people with a mental illness or mental disorder, including the principle that people with a mental illness or a mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given. The Division makes it an offence for an authorised medical officer or an employee at a mental health facility wilfully to strike, wound, ill-treat or neglect a patient or detained person. It also requires interpreters to be provided for medical examinations if a person cannot communicate adequately in English and for primary carers under the proposed Act, including the process for nominating primary carers.

Division 2 Notification and information sharing

The Division (proposed sections 73–79) contains provisions setting out the rights of patients and persons detained in mental health facilities, and their primary carers, to be notified of events affecting those patients and persons and of their rights under the proposed Act. The rights include the right to be informed about medication and medication dosages, to be given an oral and written explanation of rights under the Act, to be notified about mental health inquiries and appeal rights and to be consulted in discharge planning. In addition, a primary carer will have the right to be notified of a person's initial detention and other events affecting the person, including absences, transfer to other facilities, medical treatments and re-classification.

Division 3 Transfer of patients

The Division (proposed sections 80 and 81) enables the transfer of patients and persons to and from mental health facilities and other mental health facilities or health facilities. It also sets out the persons who may take or transfer a person to or from a mental health facility, including members of staff of the NSW health service, ambulance officers and police officers and confers powers on them to use reasonable force and to restrain persons in ways that are reasonably necessary in the circumstances. A search power is also conferred on these persons.

Part 2 Mental health treatments

Division 1 Preliminary

The Division (proposed section 82) defines expressions used in the proposed Part.

exposure draft

Mental Health Bill 2006

Explanatory note

Division 2 General provisions about mental health treatments

The Division (proposed sections 83–86) prohibits the administration of deep sleep therapy, insulin coma therapy, psychosurgery and other prescribed operations or treatments and provides for the regulation of the administration of drugs. It also authorises an authorised medical officer (subject to the proposed Act) to treat patients or persons detained in mental health facilities. It will be an offence for a medical practitioner to administer excessive or inappropriate dosages of drugs in relation to a mental illness or mental condition. An internal review system must be established to monitor and review the prescription of drugs in a mental health facility.

Division 3 Electro convulsive therapy

The Division (proposed sections 87–97) regulates the administration of electro convulsive therapy. Any such treatment must be given in accordance with the Division, which specifies that it must be given by a medical practitioner in the presence of at least 1 other medical practitioner, 1 of whom must be experienced in electro convulsive therapy and 1 of whom must be experienced in anaesthesia. The Division specifies the circumstances in which such treatment may be administered without consent to an involuntary patient, after an inquiry by the Tribunal, and a finding that informed consent has been given or that the treatment is a reasonable and proper treatment and is necessary and desirable for the safety and welfare of the patient. For a person other than an involuntary patient, the Division requires treatment to be given only after informed consent is given and a certificate is given by at least 2 medical practitioners (including at least 1 psychiatrist) that the treatment is reasonable and proper treatment to be administered to the person and necessary or desirable for the person's safety or welfare. The Tribunal may determine whether informed consent has been given. A register of treatments is to be kept in relation to each place at which electro convulsive therapy is administered.

Part 3 Other medical treatments

The Part (proposed sections 98–104) regulates the performance of certain surgical operations on persons involuntarily detained in a mental health facility and the performance of special medical treatment (including procedures to render a person infertile) on such persons. A medical practitioner authorised by the Director-General may, in the case of an emergency, consent to the performance of a surgical operation on a patient where the patient is incapable of giving, or fails or refuses to give, consent. A medical practitioner may carry out special medical treatment on a patient, in case of emergency. Provision is made, in other cases, for an authorised medical officer of a mental health facility to apply, after the giving of notice to certain persons, to the Tribunal for consent to perform surgical operations or to the Tribunal for consent to carry out special medical treatment in relation to persons involuntarily detained in a mental health facility.

exposure draft

Mental Health Bill 2006

Explanatory note

Chapter 5 Administration

Part 1 Administrative objectives and functions

The Part (proposed sections 105–108) sets out the objectives of NSW Health in relation to mental health services as well as the general functions of the Director-General under the proposed Act. It also contains other administrative provisions, including the Director-General's delegation power and the requirement for the Director-General to prepare an annual report for the Minister about patients and mental health facilities and other matters.

Part 2 Mental health facilities

Division 1 Declared mental health facilities

The Division (proposed sections 109–114) provides for the establishment of declared mental health facilities under the proposed Act and the appointment of medical superintendents and deputy medical superintendents of those facilities. It also provides for the appointment of directors and deputy directors of community treatment and psychiatric case managers for the purposes of community treatment orders.

Division 2 Private mental health facilities

The Division (proposed sections 115–127) provides for the licensing of persons, including operators of private mental health facilities, for medical supervision of those facilities and for the appointment of medical superintendents and deputy medical superintendents to those facilities.

Part 3 Official visitors and accredited persons

The Part (proposed sections 128–136) provides for the appointment and functions of official visitors and accredited persons. Official visitors and a Principal official visitor may be appointed by the Minister to inspect mental health facilities and make inquiries with regard to the care, treatment and control of patients. Among other functions, the Principal official visitor is to oversee the official visitor program and to act as an advocate to the Minister for consumers of mental health care. The Part sets out the inspection obligations of official visitors and the requirement for medical superintendents and administrators to facilitate the inspection of premises and interviews of patients or detained persons and to produce relevant registers and other records.

The Part also provides for the appointment of accredited persons by the Director-General.

exposure draft

Mental Health Bill 2006

Explanatory note

Part 4 Inspection powers

The Part (proposed sections 137–139) enables the Director-General to inquire into the administration, management and services of a mental health facility and, for that purpose, to cause inspections of facilities to be carried out. The Part sets out the powers of the authorised officers who carry out the inspections to require persons to attend and give evidence or produce books and other records and contains a provision protecting a person who gives self-incriminating evidence.

Chapter 6 Mental Health Review Tribunal

Part 1 The Tribunal

The Part (proposed sections 140–148) constitutes the Mental Health Review Tribunal and makes general provision in relation to the Tribunal, including provision for the qualifications of members to be appointed by the Tribunal and the appointment of a Registrar and staff. The Part also gives proceedings of the Tribunal protection under the *Defamation Act 2005* and enables the President of the Tribunal to delegate his or her functions.

Part 2 Procedures of the Tribunal

The Part (proposed sections 149–155) sets out matters relating to the composition of the Tribunal when exercising its functions and to procedure at meetings of the Tribunal. The Part prohibits a member from determining that a person is a mentally ill person or a mentally disordered person unless so satisfied on the balance of probabilities. Unless the Tribunal otherwise orders, the Tribunal's proceedings are to be open to the public. Regulations may be made for or with respect to various aspects of Tribunal proceedings, including the publication of identity of persons subject to proceedings, rights of appearance and representation, representations by victims, the use of interpreters and recording of proceedings. It will be an offence to refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination of the Tribunal.

Chapter 7 Jurisdiction of Supreme Court

The Chapter (sections 156–161) provides for the making of appeals to the Supreme Court from determinations of the Tribunal or from the refusal or failure of the Tribunal to make a determination. The Chapter also provides for the appointment of assessors having appropriate qualifications and experience to sit with the Court on the hearing of appeals in order to assist in, but not to adjudicate on, any matter relevant to the determination of the appeal. Jurisdiction is also conferred on the Court to order a person who is detained in a mental health facility to be brought before the court for examination and to order the person's release from the facility (or transfer, in the case of a forensic patient) if the Court is not satisfied that the person meets the criteria for involuntary detention in a mental health facility.

exposure draft

Mental Health Bill 2006

Explanatory note

Chapter 8 Interstate application of mental health laws

Part 1 Preliminary

The Part (proposed sections 162–166) sets out the objects of the proposed Chapter and defines expressions used in the proposed Part. It also enables the Minister to enter into agreements with Ministers of other States and Territories to participate in reciprocal arrangements relating to the transfer, detention, treatment and apprehension of mental health patients and the interstate operation and enforcement of community treatment orders. It also provides for the declaration of interstate mental health laws for the purposes of the proposed Part. The remainder of the proposed Part deals with the actions that may be taken under any such reciprocal arrangements.

Part 2 Transfer of patients and persons

Division 1 Transfer of persons from this State

The Division (proposed sections 167–169) enables people who may be taken to and detained in a mental health facility in this State to be taken to mental facilities in other States or Territories by people authorised to do so in this State or the other State or Territory concerned. The Division also provides for the transfer of New South Wales patients to other States or Territories.

Division 2 Transfer of persons to this State

The Division (proposed sections 170–173) enables people who may be taken to and detained in a mental health facility in another State or Territory to be taken to mental facilities in this State by people authorised to do so in this State or the other State or Territory concerned. The Division also provides for the transfer of interstate involuntary patients to mental health facilities in this State.

Part 3 Community treatment orders and other orders

The Part (proposed sections 174–177) enables community treatment orders to be made in this State for interstate residents who are to be treated in this State and provides for the implementation, in this State, of community treatment orders made in other States or Territories.

Part 4 Apprehension of persons absent from mental health facility or in breach of orders

The Part (proposed sections 178–180) enables interstate warrants and orders to apprehend interstate mental patients to be recognised and enforced in this State and

exposure draft

Mental Health Bill 2006

Explanatory note

provides for the detention of patients apprehended under such warrants or orders in mental health facilities in this State.

Chapter 9 Miscellaneous

The Chapter (proposed sections 181–193) contains miscellaneous provisions, including provisions relating to the disclosure of information, exclusion from liability of police officers, health care professionals and ambulance officers, service of documents, approved forms, the role of the objects provisions and regulation-making powers. The Chapter also provides for a 5-year review of the Act and repeals the *Mental Health Act 1990*.

Schedule 1 Medical certificate as to examination or observation of person

The Schedule contains the form of the mental health certificate for use for the detention of a person in a hospital.

Schedule 2 Mental health inquiries

The Schedule contains procedural provisions relating to the conduct of mental health inquiries conducted by Magistrates to determine whether persons should be detained in mental health facilities as involuntary patients.

Schedule 3 Statement of rights

The Schedule contains the statement of rights which is to be given to a person as soon as practicable after a person is taken to and detained in a mental health facility, or it is decided to take steps to detain a person already in a facility.

Schedule 4 Provisions relating to Principal official visitor and official visitors

The Schedule contains provisions relating to the remuneration and tenure of office of the Principal official visitor and official visitors.

Schedule 5 Provisions relating to members of Tribunal

The Schedule contains provisions relating to the members of the Tribunal.

exposure draft

Mental Health Bill 2006

Explanatory note

Schedule 6 Savings, transitional and other provisions

The Schedule contains savings, transitional and other provisions.

Schedule 7 Amendment of other Acts

The Schedule makes consequential amendments to other Acts.

exposure draft

Mental Health Bill 2006

Explanatory note



New South Wales

Mental Health Bill 2006

Contents

	Page
Chapter 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	2
Chapter 2 Voluntary admission to facilities	
5 Admission on own request	6
6 Voluntary admission of children	6
7 Voluntary admission of persons under guardianship	6
8 Discharge of voluntary patients	7
9 Review of voluntary patients	7
10 Detention of voluntary patients in mental health facilities	7
11 Review of decisions made by medical officer to refuse or discharge voluntary patient	7

exposure draft

Mental Health Bill 2006

Contents

	Page
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 1	Requirements for involuntary admission, detention and treatment
12	General restrictions on detention of persons 9
13	Criteria for involuntary admission etc as mentally ill person or mentally disordered person 9
14	Mentally ill persons 9
15	Mentally disordered persons 10
16	Certain words or conduct may not indicate mental illness or disorder 10
Part 2	Involuntary detention and treatment in mental health facilities
Division 1	Preliminary
17	Definitions 11
Division 2	Admission to and initial detention in mental health facilities
18	When a person may be detained in mental health facility 11
19	Detention on certificate of medical practitioner or accredited person 12
20	Detention on information of ambulance officer 13
21	Police assistance 13
22	Detention after apprehension by police 13
23	Detention after order for medical examination or observation 14
24	Detention on order of court or bail officer 14
25	Detention after transfer from another health facility 14
26	Detention on request of primary carer, relative or friend 15
27	Steps for medical examination requirements for ongoing detention in mental health facility 15
28	Obligations of examining medical practitioners 16
29	Treatment of persons detained in mental health facilities 17
30	Assessable persons may be reclassified as voluntary patients 17
31	Limited detention of mentally disordered persons 17
32	Limited further detention of persons taken to facility by police or after Magistrate's or bail officer's order 18
33	Assessable persons not able to be brought before Magistrate 19
Division 3	Continuing detention in mental health facilities
34	Mental health inquiries to be held 19
35	Purpose and findings of mental health inquiries 19

exposure draft

Mental Health Bill 2006

Contents

	Page
36 Contempt of mental health inquiry	20
37 Reviews of involuntary patients by Tribunal	20
38 Purpose and findings of reviews of involuntary patients	21
39 Medical examination of involuntary patients	22
40 Re-classification of involuntary patients as voluntary patients	22
41 Discharge on making of community treatment order	22
42 Discharge of involuntary patients on own application	22
43 Discharge of involuntary patients on application of primary carer or other person	23
44 Appeals against discharge refusals	23
45 Review and discharge of absent patients	24
Division 4 Leave of absence from mental health facilities	
46 Application of Division	24
47 Leave of absence on compassionate grounds, medical grounds or other grounds	24
48 Apprehension of persons not permitted to be absent from mental health facility	24
49 Police assistance	25
Part 3 Involuntary treatment outside mental health facilities	
Division 1 Applications for and making of community treatment orders	
50 Definitions	25
51 Community treatment orders	26
52 Notice of applications	26
53 Determination of applications for community treatment orders	27
54 Requirements for treatment plans under community treatment orders	28
55 Community treatment order may be made in absence of affected person	28
56 Form and duration of community treatment orders	28
Division 2 Operation of community treatment orders	
57 Duties and functions of affected person and mental health facility	29
58 Breach of community treatment order	29
59 Police assistance	30
60 Procedures at facility after breach notice or breach order	31
61 Review of affected person at mental health facility after breach order	31
62 Discharge of affected persons	32
63 Review by Tribunal of detained affected persons	32
64 Purpose and findings of reviews	32

exposure draft

Mental Health Bill 2006

Contents

	Page
Division 3 Revocation, variation and review of community treatment orders	
65 Variation or revocation of orders by Tribunal	33
66 Revocation by director of community treatment	33
67 Appeals	33
Chapter 4 Care and treatment	
Part 1 Rights of patients or detained persons and primary carers	
Division 1 General	
68 Principles for care and treatment	35
69 Offence to ill-treat patients	36
70 Assistance of interpreters	36
71 Primary carer	36
72 Nomination of primary carer	37
Division 2 Notification and information sharing	
73 Information about medication	37
74 Information to be given to persons to be detained	38
75 Notification to primary carer of initial detention	38
76 Notification of mental health inquiries	38
77 Notification to new involuntary patients of appeal rights	39
78 Notifications to primary carer of events affecting patients or detained persons	39
79 Discharge and other planning	40
Division 3 Transfer of patients	
80 Transfer of patients to or from mental health facilities	40
81 Transport of persons to and from mental health facilities and other health facilities	41
Part 2 Mental health treatments	
Division 1 Preliminary	
82 Definitions	42
Division 2	
83 Prohibited treatments	42
84 Treatment may be given to patients	43
85 Administration of excessive or inappropriate drugs	43
86 Review of drug use in mental health facilities	43

exposure draft

Mental Health Bill 2006

Contents

	Page
Division 3 Electro convulsive therapy	
87 Definitions	44
88 Offences relating to administration of electro convulsive treatment	44
89 When electro convulsive therapy may be administered	44
90 Refusal of treatment by medical superintendent	45
91 Informed consent requirements	45
92 Person impaired by medication incapable of giving informed consent	46
93 When electro convulsive therapy may be administered to persons other than involuntary patients	46
94 When electro convulsive therapy may be administered to involuntary patients	47
95 Tribunal to hold inquiries promptly	47
96 Purpose and findings of ect inquiries	47
97 Electro convulsive therapy register	48
Part 3 Other medical treatments	
98 Definitions	49
99 Emergency surgery for involuntary patients	49
100 Authorised medical practitioner may consent to surgery	50
101 Tribunal may consent to surgery	50
102 Special medical treatment	51
103 Tribunal may consent to special medical treatment	51
104 Effect of consents	52
Chapter 5 Administration	
Part 1 Administrative objectives and functions	
105 Objectives of NSW Health	53
106 Functions of Director-General	53
107 Delegation	54
108 Annual report	54
Part 2 Mental health facilities	
Division 1 Declared mental health facilities	
109 Establishment of declared mental health facilities	55
110 Appointment of medical superintendents	55
111 Appointment of deputy medical superintendents	55
112 Directors and deputy directors of community treatment	56
113 Declared mental health facilities that are private mental health facilities	56
114 Psychiatric case managers	57

exposure draft

Mental Health Bill 2006

Contents

	Page
Division 2 Private mental health facilities	
115 Application for licence	57
116 Grant or refusal of licence	57
117 Duration of licence	57
118 Annual statement and licence fee	57
119 Duplicate licence	58
120 Cancellation of licences—generally	58
121 Cancellation of licences—failure to show cause	58
122 Variation of licence	58
123 Provision of medical services in private mental health facilities	59
124 Medical superintendents	59
125 Deputy medical superintendents	59
126 Unlicensed private mental health facilities	59
127 Certain private hospitals to be licensed	59
Part 3 Official visitors and accredited persons	
128 Principal official visitor	60
129 Official visitors	60
130 General provisions relating to the Principal official visitor and official visitors	61
131 Inspections of mental health facilities by official visitors	61
132 Obligations to facilitate exercise of functions by official visitors	62
133 Reports to Minister	62
134 Request by patient or other person to see official visitor	62
135 Official visitors not personally liable	62
136 Accredited persons	63
Part 4 Inspection powers	
137 Inspection of mental health facilities	63
138 Powers of authorised officer to require information, evidence, production of records	63
139 Protection from incrimination	64
Chapter 6 Mental Health Review Tribunal	
Part 1 The Tribunal	
140 Constitution of the Tribunal	66
141 Membership of Tribunal	66
142 Registrar and other officers of the Tribunal	67
143 Authentication of documents	67
144 Judicial notice of certain signatures	67

exposure draft

Mental Health Bill 2006

Contents

	Page	
145	Certain proceedings prohibited	67
146	Application of Defamation Act 2005 to proceedings of Tribunal	67
147	Annual report	68
148	Delegation	68
Part 2	Procedures of the Tribunal	
149	Application of Part	69
150	Composition of the Tribunal	69
151	Procedure at meetings of Tribunal to be informal	69
152	Legal representation of mentally ill persons and other persons	70
153	Determination whether a person is a mentally ill person or mentally disordered person	70
154	Tribunal procedure generally	70
155	Contempt of Tribunal	71
Chapter 7	Jurisdiction of Supreme Court	
156	Appeals to the Court	72
157	Power of the Court on appeals	72
158	Panel of assessors	72
159	Jurisdiction of Court to order discharge or transfer of detained person	73
160	Other jurisdiction of the Court not affected	73
161	Tribunal members not liable for costs	74
Chapter 8	Interstate application of mental health laws	
Part 1	Preliminary	
162	Object of Chapter	75
163	Definitions	75
164	Authority to enter into agreements	75
165	Corresponding laws, documents and interstate community treatment orders	76
166	New South Wales officers may exercise functions under corresponding laws	76
Part 2	Transfer of patients and persons	
	Division 1	Transfer of persons from this State
167	Admission of persons to mental health facilities in other States	76
168	Effect of certificates	77
169	Transfer of patients from this State	77

exposure draft

Mental Health Bill 2006

Contents

	Page
Division 2 Transfer of persons to this State	
170 Admission of interstate persons to mental health facilities in this State	78
171 Application of Act to persons brought to mental health facility from outside this State	78
172 Transfer of interstate persons to mental health facilities in this State	78
173 Application of Act to persons brought to mental health facility from outside this State	79
Part 3 Community treatment orders and other orders	
174 Community treatment orders relating to interstate persons	79
175 Interstate implementation of New South Wales orders	79
176 Provision of services under interstate community treatment order	80
177 Recognition of interstate community treatment orders	80
Part 4 Apprehension of persons absent from mental health facility or in breach of orders	
178 Recognition of warrants and orders	80
179 Apprehension of interstate persons absent without leave or in breach of corresponding orders	81
180 Regulations relating to apprehension of persons	81
Chapter 9 Miscellaneous	
181 Restrictions on holding of certain offices	82
182 Disclosure of information	82
183 Liability of police officers and health care professionals exercising functions under this Act	82
184 Service of documents	83
185 Amendment of certain documents	84
186 Approved forms	84
187 Role of objects provisions	84
188 Regulations	84
189 Proceedings for offences	85
190 Savings, transitional and other provisions	85
191 Amendment of other Acts	85
192 Review of Act	86
193 Repeal of Mental Health Act 1990 No 9	86
Schedule 1 Medical certificate as to examination or observation of person	87
Schedule 2 Mental health inquiries	92
Schedule 3 Statement of rights	97
Schedule 4 Provisions relating to Principal official visitor and official visitors	100

exposure draft

Mental Health Bill 2006

Contents

	Page
Schedule 5 Provisions relating to members of Tribunal	102
Schedule 6 Savings, transitional and other provisions	107
Schedule 7 Amendment of other Acts	114

exposure draft

Mental Health Bill 2006

Contents

Page

exposure draft



New South Wales

Mental Health Bill 2006

No. , 2006

A Bill for

An Act to make provision with respect to the care, treatment and control of mentally ill and mentally disordered persons and other matters relating to mental health; and for other purposes.

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Clause 1 Mental Health Bill 2006
Chapter 1 Preliminary

The Legislature of New South Wales enacts:

Chapter 1 Preliminary

1 Name of Act

This Act is the *Mental Health Act 2006*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are:

- (a) to provide for the care, treatment and control of persons who are mentally ill or mentally disordered, and
- (b) to facilitate the care, treatment and control of those persons through community care facilities, and
- (c) to facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis, and
- (d) while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care, and
- (e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control.

Note. See also section 68 which contains principles for care and treatment and section 105 which sets out objectives for NSW Health.

4 Definitions

- (1) In this Act:

accredited person means a person accredited under section 136.

ambulance officer means a member of staff of the NSW Health Service who is authorised by the chief executive of the Ambulance Service of NSW to exercise functions of an ambulance officer under this Act.

assessable person—see section 17.

authorised medical officer means the medical superintendent of a mental health facility or a medical officer, nominated by the medical superintendent for the purposes of this Act, attached to the mental health facility concerned.

community treatment order means a community treatment order in force under Part 3 of Chapter 3.

exposure draft

Mental Health Bill 2006
Preliminary

Clause 4
Chapter 1

Court means the Supreme Court.

declared mental health facility means premises subject to an order in force under section 109.

Deputy President means a person appointed as a Deputy President of the Tribunal.

determination of the Tribunal includes an order, direction or decision of the Tribunal.

Director-General means the Director-General of the Department of Health.

director of community treatment—see section 50.

exercise a function includes perform a duty.

forensic patient means:

- (a) a person who is detained in a mental health facility, correctional centre, detention centre or other place, or released from custody subject to conditions, pursuant to an order under section 10 (3) (c), 14, 17 (3), 25, 27 or 39 of the *Mental Health (Criminal Procedure) Act 1990* or section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act), or
- (b) a person who is detained in a mental health facility pending the person's committal for trial for an offence or pending the person's trial for an offence, or
- (c) a person who has been transferred to a mental health facility while serving a sentence of imprisonment and who has not been classified by the Tribunal as an involuntary patient, or
- (d) a person who is granted bail pursuant to section 14 (b) (ii) or 17 (2) of the *Mental Health (Criminal Procedure) Act 1990*.

DRAFTING NOTE 2.1 At this stage substantive provisions relating to the review and release of forensic patients have not been included in the draft Bill, which generally relates to non-forensic patients only. References to forensic patients have been retained in this Bill for the purposes of the application of the provisions relating to giving consent to certain mental health treatments and making it clear that leave provisions do not relate to forensic patients.

function includes a power, authority and duty.

guardian, in relation to the exercise of any function under this Act by the guardian of a person under guardianship, means a guardian who is able to exercise that function.

involuntary patient means:

exposure draft

Clause 4
Chapter 1

Mental Health Bill 2006
Preliminary

(a) a person who is ordered to be detained as an involuntary patient by a Magistrate after a mental health inquiry or by the Tribunal, or

(b) a forensic patient who is re-classified as an involuntary patient.

medical superintendent:

(a) of a declared mental health facility, means the medical practitioner appointed, under section 110, as medical superintendent of the facility, or

(b) of a private mental health facility, means the medical practitioner appointed, under section 124, as medical superintendent of the facility.

mental health certificate— see section 17.

mental health facility means a declared mental health facility or a private mental health facility.

mental health inquiry means an inquiry conducted by a Magistrate under Division 3 of Part 2 of Chapter 3.

mental illness means a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions,
- (b) hallucinations,
- (c) serious disorder of thought form,
- (d) a severe disturbance of mood,
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs (a)–(d).

mentally disordered person—see section 15.

mentally ill person—see section 14.

parent, of a child, means any person having parental responsibility (within the meaning of the *Children and Young Persons (Care and Protection) Act 1998*) for the child.

patient means a person who is admitted to a mental health facility in accordance with this Act and who is in the facility following the person's admission, and includes a person so admitted while absent from a facility either with or without leave of absence.

person under guardianship means a person under guardianship within the meaning of the *Guardianship Act 1987*.

premises includes any land, building and part of any building.

President means the President of the Tribunal.

exposure draft

Mental Health Bill 2006
Preliminary

Clause 4
Chapter 1

primary carer—see section 71.

private mental health facility means premises subject to a licence under Division 2 of Part 2 of Chapter 5.

surgical operation—see section 98.

Tribunal means the Mental Health Review Tribunal constituted under Chapter 6.

voluntary patient means:

- (a) a person who has been admitted to a mental health facility under Chapter 2, or
 - (b) a person who has been re-classified as a voluntary patient under this Act.
- (2) Notes included in this Act do not form part of this Act.

Chapter 2 Voluntary admission to facilities

5 Admission on own request

- (1) A person may be admitted to a mental health facility as a voluntary patient.
- (2) An authorised medical officer may refuse to admit a person to a mental health facility as a voluntary patient if the officer is not satisfied that the person is likely to benefit from care or treatment as a voluntary patient.
- (3) A person may be admitted to a mental health facility as a voluntary patient whether or not the person is a mentally ill person or a mentally disordered person.

6 Voluntary admission of children (cf 1990 Act, ss13–15)

- (1) An authorised medical officer must, as soon as practicable after admitting a person under the age of 16 years as a voluntary patient, take all reasonably practicable steps to notify the person's parent of the admission.
- (2) An authorised medical officer must discharge a person of 14 or 15 years of age who has been admitted as a voluntary patient if the person's parent objects to the admission to the officer, unless the person elects to continue as a voluntary patient.
- (3) A person under the age of 14 years must not be admitted as a voluntary patient if the parent of the person objects to the admission to an authorised medical officer.
- (4) An authorised medical officer must discharge a person under the age of 14 years who has been admitted as a voluntary patient if the person's parent requests that the person be discharged.

7 Voluntary admission of persons under guardianship (cf 1990 Act, s16)

- (1) A person under guardianship may be admitted to a mental health facility as a voluntary patient if the guardian of the person makes a request to an authorised medical officer.
- (2) A person under guardianship must not be admitted as a voluntary patient if the person's guardian objects to the admission to the authorised medical officer.
- (3) An authorised medical officer must discharge a person under guardianship who has been admitted as a voluntary patient if the person's guardian requests that the person be discharged.

exposure draft

Mental Health Bill 2006
Voluntary admission to facilities

Clause 8
Chapter 2

8 Discharge of voluntary patients (cf 1990 Act, s65)

- (1) An authorised medical officer may discharge a voluntary patient at any time if the officer is of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient.
- (2) A voluntary patient may discharge himself or herself from or leave a mental health facility at any time.
- (3) An authorised medical officer must give notice of the discharge of a voluntary patient who is a person under guardianship to the person's guardian.

Note. Section 79 provides for appropriate information relating to follow-up care to be provided to patients being discharged.

9 Review of voluntary patients (cf 1990 Act, s63)

- (1) The Tribunal must review, at least once every 12 months, the case of each voluntary patient who has been receiving care or treatment, or both, as a voluntary patient in a mental health facility for a continuous period of more than 12 months.
- (2) The Tribunal may on a review order the discharge of the patient from the mental health facility.
- (3) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.
- (4) The medical superintendent of a mental health facility must notify the Tribunal of the name of any voluntary patient whose case the Tribunal is required to review.

10 Detention of voluntary patients in mental health facilities (cf 1990 Act, s18A)

- (1) An authorised medical officer may do all necessary things to cause a voluntary patient to be detained in a mental health facility under Part 2 of Chapter 3 if the officer considers the person to be a mentally ill person or a mentally disordered person.
- (2) Any such patient is taken to have been detained in the facility under section 19 when the authorised medical officer takes action to detain the patient.

11 Review of decisions made by medical officer to refuse or discharge voluntary patient (cf 1990 Act, s19)

- (1) This section applies to a decision made under this Chapter by an authorised medical officer (other than a medical superintendent) to refuse a person admission to a mental health facility as a voluntary patient or to discharge a person as a voluntary patient.

exposure draft

Clause 11 Mental Health Bill 2006
Chapter 2 Voluntary admission to facilities

- (2) The person affected by a decision may apply to the medical superintendent for a review of the decision.
- (3) The medical superintendent must review a decision as soon as practicable after receiving an application for its review and may confirm the decision, admit the person as a voluntary patient or take any other action under this Act that the medical superintendent thinks fit.

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Requirements for involuntary admission, detention and treatment

Clause 12
Chapter 3
Part 1

Chapter 3 Involuntary admission and treatment in and outside facilities

Part 1 Requirements for involuntary admission, detention and treatment

12 General restrictions on detention of persons

- (1) A person must not be involuntarily admitted to, or detained in or continue to be detained in, a mental health facility unless an authorised medical officer is of the opinion that:
 - (a) the person is a mentally ill person or a mentally disordered person, and
 - (b) no other care of a less restrictive kind is appropriate and reasonably available to the person.
- (2) If an authorised medical officer is not of that opinion about a person (including a patient) at a mental health facility, the officer must refuse to detain, and must not continue to detain, the person.
- (3) A medical superintendent may, immediately on discharging a patient or person who has been detained in a mental health facility, admit that person as a voluntary patient.

13 Criteria for involuntary admission etc as mentally ill person or mentally disordered person (cf 1990 Act, s8)

A person is a mentally ill person or a mentally disordered person for the purpose of:

- (a) the involuntary admission of the person to a mental health facility or the detention of the person in a facility under this Act, or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a mental health facility,

if, and only if, the person satisfies the relevant criteria set out in this Part.

14 Mentally ill persons (cf 1990 Act, s9)

- (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:
 - (a) for the person's own protection from serious harm, or
 - (b) for the protection of others from serious harm.

exposure draft

Clause 15	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 1	Requirements for involuntary admission, detention and treatment

- (2) In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be taken into account.

15 Mentally disordered persons (cf 1990 Act, s10)

A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm, or
- (b) for the protection of others from serious physical harm.

16 Certain words or conduct may not indicate mental illness or disorder (cf 1990 Act, s11)

- (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:
- (a) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief,
 - (b) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief,
 - (c) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy,
 - (d) the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation,
 - (e) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity,
 - (f) the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity,
 - (g) the person engages in or has engaged in a particular sexual activity or sexual promiscuity,
 - (h) the person engages in or has engaged in immoral conduct,
 - (i) the person engages in or has engaged in illegal conduct,
 - (j) the person has developmental disability of mind,
 - (k) the person takes or has taken alcohol or any other drug,

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 17
Chapter 3
Part 2

- (l) the person engages in or has engaged in anti-social behaviour,
 - (m) the person has a particular economic or social status or is a member of a particular cultural or racial group.
- (2) Nothing in this Part prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

Part 2 Involuntary detention and treatment in mental health facilities

Division 1 Preliminary

17 Definitions

In this Part:

assessable person means a person detained in a declared mental health facility for whom a mental health inquiry is required to be held under this Part.

mental health certificate means a certificate given under section 19.

Division 2 Admission to and initial detention in mental health facilities

18 When a person may be detained in mental health facility

- (1) A person may be detained in a declared mental health facility in the following circumstances:
- (a) on a mental health certificate given by a medical practitioner or accredited person (see section 19),
 - (b) after being brought to the facility by an ambulance officer (see section 20),
 - (c) after being apprehended by a police officer (see section 22),
 - (d) after an order for an examination and an examination or observation by a medical practitioner or accredited person (see section 23),
 - (e) on the order of a court or authorised officer (see section 24),
 - (f) after a transfer from another health facility (see section 25),
 - (g) on a written request made to the authorised medical officer by a primary carer, relative or friend of the person (see section 26).

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Clause 19	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

- (2) A person may be detained, under a provision of this Part, in a health facility that is not a declared mental health facility if it is necessary to do so to provide medical treatment or care to the person for a condition or illness other than a mental illness or other mental condition.
- (3) In this Act, a reference to taking to and detaining in a mental health facility includes, in relation to a person who is at a mental health facility, but not detained in the mental health facility in accordance with this Act, the detaining of a person in the mental health facility.

Note. A person taken to and detained in a mental health facility must be provided with certain information, including a statement of the person's rights (see section 74).

19 Detention on certificate of medical practitioner or accredited person (cf 1990 Act, s21)

- (1) A person may be taken to and detained in a declared mental health facility on the basis of a certificate about the person's condition issued by a medical practitioner or accredited person. The certificate is to be in the form set out in Part 1 of Schedule 1.
- (2) A mental health certificate may be given about a person only if the medical practitioner or accredited person:
 - (a) has personally examined or observed the person's condition immediately before or shortly before completing the certificate, and
 - (b) is of the opinion that the person is a mentally ill person or a mentally disordered person, and
 - (c) is satisfied that no other appropriate means for dealing with the person is reasonably available, and that involuntary admission and detention are necessary, and
 - (d) is not the primary carer of the person.
- (3) A mental health certificate may contain a police assistance endorsement that police assistance is required if the person giving the certificate is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer. The endorsement is to be in the form set out in Part 2 of Schedule 1.
- (4) A mental health certificate may not be used to admit or detain a person in a facility:
 - (a) in the case of a person certified to be a mentally ill person, more than 5 days after it is given, or
 - (b) in the case of a person certified to be a mentally disordered person, more than one day after it is given.

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 20
Chapter 3
Part 2

20 Detention on information of ambulance officer

- (1) An ambulance officer who provides ambulance services in relation to a person may take the person to a declared mental health facility if the officer believes on reasonable grounds that the person appears to be mentally ill or mentally disturbed and that it would be beneficial to the person's welfare to be dealt with in accordance with this Act.
- (2) An ambulance officer may request police assistance if of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer.

21 Police assistance

- (1) A police officer to whose notice a police assistance endorsement on a mental health certificate, or a request for assistance by an ambulance officer under this Division, is brought must, if practicable:
 - (a) apprehend and take or assist in taking the person the subject of the certificate or request to a declared mental health facility, or
 - (b) cause or make arrangements for some other police officer to do so.
- (2) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person without a warrant, and may exercise any powers conferred on a person authorised under section 81 to take a person to a mental health facility or another health facility.

Note. Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

22 Detention after apprehension by police (cf 1990 Act, s24)

- (1) A police officer who, in any place, finds a person who appears to be mentally ill or mentally disturbed may apprehend the person and take the person to a declared mental health facility if the officer believes on reasonable grounds that:
 - (a) the person is committing or has recently committed an offence or that the person has recently attempted to kill himself or herself or that it is probable that the person will attempt to kill himself or herself or any other person or attempt to cause serious physical harm to himself or herself or any other person, and
 - (b) it would be beneficial to the person's welfare to be dealt with in accordance with this Act, rather than otherwise in accordance with law.
- (2) A police officer may apprehend a person under this section without a warrant and may exercise any powers conferred on a person authorised

exposure draft

Clause 23	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

under section 81 to take a person to a mental health facility or another health facility.

23 Detention after order for medical examination or observation (cf 1990 Act, s27)

- (1) A Magistrate or authorised officer may, by order, authorise a medical practitioner or accredited person to visit and to personally examine or personally observe a person to ascertain whether a mental health certificate should be issued for the person.
- (2) An order may be made if the Magistrate or officer is satisfied, by evidence on oath, that:
 - (a) the person may be a mentally ill person or a mentally disordered person, and
 - (b) because of physical inaccessibility, the person could not be personally examined or personally observed.
- (3) The order may also authorise any other person (including a police officer) who may be required to assist the medical practitioner or accredited person to accompany the medical practitioner or accredited person.
- (4) A person authorised to visit a person or accompany another person may enter premises, if need be by force, in order to enable the examination or observation to be carried out.
- (5) A person who is examined or observed under this section may be detained in accordance with section 19.
- (6) A person who takes action under an order must, as soon as practicable after taking the action, notify the person who made the order in writing of the action.
- (7) In this section:

authorised officer means an authorised officer within the meaning of the *Criminal Procedure Act 1986*.

24 Detention on order of court or bail officer (cf 1990 Act, s25)

A person may be taken to and detained in a declared mental health facility in accordance with an order made under section 33 of the *Mental Health (Criminal Procedure) Act 1990*.

25 Detention after transfer from another health facility

- (1) A person may be transferred from a health facility to a declared mental health facility and detained in the mental health facility if a responsible medical officer of the health facility, or the authorised medical officer

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 26
Chapter 3
Part 2

of the mental health facility, considers the person to be a mentally ill person or a mentally disordered person.

- (2) Any such person is taken to have been detained in the declared mental health facility under section 19 when the person is transferred to the facility.

26 Detention on request of primary carer, relative or friend (cf 1990 Act, s23)

- (1) A person may be detained in a declared mental health facility on a written request made to the authorised medical officer by the primary carer or a relative or friend of the person.
- (2) An authorised medical officer must not detain any such person unless the officer is satisfied that, because of the distance required in order for the person to be examined and the urgency of the circumstances, it is not reasonably practicable to have the person detained on the basis of a mental health certificate.

27 Steps for medical examination requirements for ongoing detention in mental health facility

The following steps must be taken in relation to a person who is detained in a mental health facility under this Division:

(a) **Step 1 Initial examination by authorised medical officer**

An authorised medical officer must examine the person as soon as practicable (but not more than 12 hours) after the person arrives at the facility or after the person is detained after being a voluntary patient.

The person must not be detained after the examination unless the officer certifies that, in the officer's opinion, the person is a mentally ill person or a mentally disordered person.

(b) **Step 2 Examination by second medical practitioner**

The authorised medical officer must cause the person to be examined by another medical practitioner as soon as possible after giving the certificate in step 1. The second examiner must be a psychiatrist if the authorised medical officer is not a psychiatrist.

The second examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person or if not able to form such an opinion.

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Clause 28	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

(c) **Step 3 Examination by third medical practitioner if second examiner does not find person to be mentally ill or mentally disordered**

If the second examiner is not of the opinion that the person is a mentally ill person or a mentally disordered person, the authorised medical officer must cause the person to be examined by a medical practitioner who is a psychiatrist, as soon as practicable after being notified of that opinion.

The third examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person.

(d) **Step 4 Mental health inquiry or discharge**

An authorised medical officer must bring the person before a Magistrate for a mental health inquiry if:

- (i) the person is found to be a mentally ill person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person or a mentally disordered person on examination in step 2 or step 3, or
- (ii) the person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person on examination in step 2 or step 3.

The person must be brought before a Magistrate as soon as practicable after the authorised medical officer is notified of the relevant finding of the second or third examiner.

If the third examiner does not find that the person is a mentally ill person or a mentally disordered person, the person must not be detained after the third examination.

(e) **Step 5 Mentally disordered persons**

If a person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and is found to be a mentally disordered person on examination in step 2 or step 3, the person may be detained in the mental health facility as a mentally disordered person.

28 Obligations of examining medical practitioners

- (1) An authorised medical officer or other medical practitioner who examines a person detained in a mental health facility under this Division may take into account his or her own observations and any other available evidence that he or she considers reliable and relevant in forming an opinion as to whether the person is a mentally ill person or a mentally disordered person.

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 29
Chapter 3
Part 2

-
- (2) A medical practitioner on whose certificate or request a person has been admitted to a mental health facility must not examine the person under section 27.

29 Treatment of persons detained in mental health facilities (cf 1990 Act, s31)

A person who authorises the administration of any medication to a person detained in a mental health facility under this Division:

- (a) must have due regard to the possible effects of the administration of the medication, and
- (b) must prescribe the minimum medication, consistent with proper care, to ensure that the person is not prevented from communicating adequately with any other person who may be engaged to represent the person at a mental health inquiry.

30 Assessable persons may be reclassified as voluntary patients (cf 1990 Act, s54)

An authorised medical officer may classify an assessable person as a voluntary patient at any time before a mental health inquiry is held about the person, but only if:

- (a) the authorised medical officer is of the opinion that the person is likely to benefit from care or treatment as a voluntary patient, and
- (b) the patient agrees to be so classified or, if the person is a person under guardianship or is under the age of 14 years, the person is admitted in accordance with the procedures under this Act applicable to admitting any such person as a voluntary patient.

31 Limited detention of mentally disordered persons (cf 1990 Act, s35)

- (1) A person detained as a mentally disordered person under step 5 in section 27 (e) must not be detained in a mental health facility for a continuous period of more than 3 days (not including weekends and public holidays).
- (2) If an authorised medical officer of a mental health facility is of the opinion that an assessable person has ceased to be a mentally ill person but is a mentally disordered person, the person must not be further detained in the facility for a continuous period of more than 3 days (not including weekends and public holidays).
- (3) An authorised medical officer must examine a mentally disordered person detained in a mental health facility at least once every 24 hours.
- (4) The person must not be further detained in the mental health facility if, on any such examination, the authorised medical officer is of the opinion that the person is not a mentally disordered person or a mentally

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Clause 32	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

ill person or that other care of a less restrictive kind is appropriate and reasonably available to the person.

- (5) A person must not be admitted to and detained in a mental health facility on the grounds that the person is a mentally disordered person on more than 3 occasions in any 1 calendar month.

32 Limited further detention of persons taken to facility by police or after Magistrate's or bail officer's order (cf 1990 Act, ss36, 37, 37A)

- (1) This section applies to a person detained in a mental health facility under this Part who is required not to be detained or further detained in the facility and who was taken to the facility:
- (a) by a police officer under this Division after being apprehended by a police officer, or
 - (b) on the order of a Magistrate or an authorised officer under section 33 of the *Mental Health (Criminal Procedure) Act 1990*.
- (2) An authorised medical officer must release the person into the custody of any police officer who is present at the mental health facility to ascertain the results of any examination or examinations of the person.
- (3) If a police officer is not so present when the authorised medical officer becomes aware that the person must not be detained or further detained, the authorised medical officer must, as soon as practicable, notify a police officer at the appropriate police station that the person will not be further detained.
- (4) The authorised medical officer may take any of the following actions in relation to a person (other than a person referred to in subsection (5)), after considering any matter communicated by a police officer as to the intended apprehension of the person by a police officer:
- (a) detain the person for a period not exceeding one hour pending the person's apprehension by a police officer,
 - (b) admit the person in accordance with this Act as a voluntary patient,
 - (c) discharge the person, in so far as it may be possible to do so, into the care of the person's primary carer,
 - (d) discharge the person.
- (5) If the person is a person ordered to be brought back before a court under section 33 (1) (b) of the *Mental Health (Criminal Procedure) Act 1990*:
- (a) it is the duty of the police officer notified by the authorised medical officer to ensure that a police officer attends the mental health facility and apprehends the person as soon as practicable after notification, and

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 33
Chapter 3
Part 2

- (b) the authorised medical officer must detain the person pending the person's apprehension by a police officer.
- (6) A police officer may apprehend a person under this section without a warrant.

33 Assessable persons not able to be brought before Magistrate

Despite any other provision of this Act, an authorised medical officer is not required to bring a person before a Magistrate for a mental health inquiry while the person is suffering from a condition or illness other than a mental illness or other mental condition and is not, for that reason, in the officer's opinion, fit to appear at the inquiry due to the seriousness of the persons' condition or illness.

Division 3 Continuing detention in mental health facilities

34 Mental health inquiries to be held

- (1) A Magistrate is to hold an inquiry about an assessable person brought before the Magistrate under step 4 in section 27 (d).
Note. Section 27 sets out the events that result in a mental health inquiry. Notice of the inquiry is to be given to the person concerned and primary carers in accordance with section 76.
- (2) An authorised medical officer of the mental health facility in which an assessable person is detained must:
 - (a) ensure that, as far as practicable, a person brought before the Magistrate is dressed in street clothes, and
 - (b) make all necessary arrangements to ensure that all appropriate medical witnesses appear before the Magistrate and other relevant medical evidence concerning the person is placed before the Magistrate.
- (3) Schedule 2 has effect with respect to mental health inquiries.

35 Purpose and findings of mental health inquiries (cf 1990 Act, ss50–52)

- (1) A Magistrate holding a mental health inquiry is to determine whether or not, on the balance of probabilities, the assessable person is a mentally ill person.
- (2) For that purpose, the Magistrate is to do the following:
 - (a) consider the reports and recommendations of the authorised medical officer and other medical practitioners who examined the person under section 27 after the person's detention,
 - (b) consider any other information placed before the Magistrate,

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Clause 36	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

- (c) inquire about the administration of any medication to the person and take account of its effect on the person's ability to communicate,
 - (d) have due regard to any cultural factors relating to the person that may be relevant to the determination,
 - (e) have due regard to any evidence given at the inquiry by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.
- (3) A Magistrate who is not satisfied, on the balance of probabilities, that an assessable person is a mentally ill person must order that the person be discharged from the mental health facility.
- (4) The Magistrate may defer the operation of an order for the discharge of a person for a period of up to 14 days, if the Magistrate thinks it is in the best interests of the person to do so.
- (5) A Magistrate who is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person may make any of the following orders:
- (a) an order that the person be discharged into the care of the person's primary carer,
 - (b) a community treatment order,
 - (c) an order that the person be detained in or admitted to and detained in a specified mental health facility for further observation or treatment, or both, as an involuntary patient, for a specified period of up to 3 months, if the Magistrate is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available or that for any other reason it is not appropriate to make any other order under this subsection.

36 Contempt of mental health inquiry (cf 1990 Act, s291)

A person must not refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination under this Act of a Magistrate.

Maximum penalty: 50 penalty units.

37 Reviews of involuntary patients by Tribunal

- (1) The Tribunal must review the case of each involuntary patient as follows:
- (a) at the end of the patient's initial period of detention as a result of a mental health inquiry,
 - (b) at least once every 3 months while the person is an involuntary patient after the initial period of detention.

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 38
Chapter 3
Part 2

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- (2) An authorised medical officer must cause an involuntary patient to be brought before the Tribunal as soon as practicable before the end of the initial period of detention, if it appears to the officer that the person should continue to be detained.
 - (3) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.

38 Purpose and findings of reviews of involuntary patients

- (1) The Tribunal is, on a review of an involuntary patient, to determine whether the patient is a mentally ill person for whom no other care (other than care in a mental health facility) is appropriate and reasonably available.
- (2) For that purpose, the Tribunal is to do the following:
 - (a) consider any information placed before it,
 - (b) inquire about the administration of any medication to the patient and take account of its effect on the patient's ability to communicate.
- (3) If the Tribunal does not determine that the patient is a mentally ill person, the patient must be discharged from the mental health facility in which the patient is detained.
- (4) If the Tribunal determines that the patient is a mentally ill person and that no other care of a less restrictive kind is appropriate and reasonably available to the patient, the Tribunal must make an order that the patient be continue to be detained as an involuntary patient in a mental health facility for further observation or treatment, or both.
- (5) In any other case that the Tribunal determines that a patient is a mentally ill person, it must make an order that the patient be discharged from the mental health facility in which the patient is detained and may make a community treatment order.
- (6) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.
- (7) The Tribunal may also order that a person who is to continue to be detained be allowed to be absent from a mental health facility for the period, and subject to the conditions, specified in the order. The order may be made only if the Tribunal is satisfied that adequate measures will, so far as practicable, be taken to prevent the patient from causing harm to himself or herself or others.
- (8) An order made by the Tribunal under this section is to be in the form approved by the Minister.

exposure draft

Clause 39	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

39 Medical examination of involuntary patients (cf 1990 Act, s61)

- (1) An authorised medical officer must medically examine each involuntary patient of the mental health facility, or cause each involuntary patient to be medically examined, to determine whether the patient's continued detention in the facility is necessary.
- (2) The medical examinations are to be carried out at intervals of not more than 3 months.

40 Re-classification of involuntary patients as voluntary patients (cf 1990 Act, s64)

- (1) An authorised medical officer may classify an involuntary patient as a voluntary patient of the mental health facility at any time.
- (2) A patient may be so classified only if:
 - (a) the authorised medical officer is of the opinion that the patient is likely to benefit from care or treatment as a voluntary patient, and
 - (b) the patient agrees to be so classified or, if the patient is a person under guardianship, the patient is admitted in accordance with the procedures under this Act applicable to admitting such persons as voluntary patients.
- (3) Without limiting subsection (1), a person who is discharged as an involuntary patient may be admitted as a voluntary patient immediately on discharge.

Note. For additional circumstances when a patient or person must be released from a mental health facility, see section 12.

41 Discharge on making of community treatment order (cf 1990 Act, s132)

- (1) An authorised medical officer must discharge a patient or person who is detained in a mental health facility when a community treatment order is made about the patient or person and any order authorising the patient's or person's detention ceases to have effect.
- (2) This section does not prevent an affected person subject to a community treatment order from being admitted to or detained in a mental health facility.

42 Discharge of involuntary patients on own application (cf 1990 Act, s67)

- (1) An involuntary patient of a mental health facility may make an application to the authorised medical officer to be discharged.
- (2) The authorised medical officer may discharge the patient.

Note. The authorised medical officer may also classify a patient as a voluntary patient (see section 40).

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary detention and treatment in mental health facilities

Clause 43
Chapter 3
Part 2

43 Discharge of involuntary patients on application of primary carer or other person (cf 1990 Act, s68)

- (1) The primary carer of an involuntary patient or another person may, at any time, make an application to an authorised medical officer of the mental health facility for the discharge of the patient or person.
- (2) The authorised medical officer may discharge the patient or person if:
 - (a) the applicant gives the authorised medical officer a written undertaking that the patient or person will be properly taken care of, and
 - (b) the authorised medical officer is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient or person from causing harm to himself or herself or others.

44 Appeals against discharge refusals (cf 1990 Act, ss69, 70)

- (1) An involuntary patient who applies to be discharged, or a person who applies for the discharge of any such patient, or a person appointed by the patient, may appeal to the Tribunal if:
 - (a) the authorised medical officer refuses the application, or
 - (b) the authorised medical officer fails to determine the application within 3 working days after it is made.
- (2) An appeal may be made orally or in writing and is to be made in accordance with the regulations.
- (3) The authorised medical officer must provide the Tribunal with a report about the patient, including the officer's reasons for refusing to discharge the patient or failing to determine the application.
- (4) For the purpose of determining an appeal, the Tribunal has and may exercise the functions of the authorised medical officer with respect to the discharge application and may make an order accordingly.
- (5) In addition, the Tribunal may determine that no further right of appeal may be exercised under this section before the date on which the person is next reviewed by the Tribunal under this Act, if it thinks it appropriate to do so, having regard to the following:
 - (a) the interval between the last determination under this Act that the person was a mentally ill person and the date of the appeal,
 - (b) the frequency of appeals under this section made by or on behalf of the person,
 - (c) the last report about the person by the authorised medical officer under this section,
 - (d) any other matter the Tribunal considers relevant.

exposure draft

Clause 45	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 2	Involuntary detention and treatment in mental health facilities

45 Review and discharge of absent patients (cf 1990 Act, ss72, 73)

- (1) An authorised medical officer must review the mental health and welfare of a patient or person detained in a mental health facility under this Act who is absent from the mental health facility with permission if the absence is for a continuous period of more than 28 days.
- (2) The authorised medical officer must discharge the patient or person following the review unless the officer is of the opinion that further detention of the patient or person in the facility is necessary.
- (3) An authorised medical officer of a mental health facility must discharge a patient or person detained in the facility under this Act who is absent from the mental health facility for a single period exceeding 12 months.

Division 4 Leave of absence from mental health facilities

46 Application of Division

This Division applies to an involuntary patient or a person who is detained in a mental health facility but does not apply to a forensic patient.

47 Leave of absence on compassionate grounds, medical grounds or other grounds

- (1) An authorised medical officer may permit a person to be absent from a mental health facility for the period, and on the conditions, that the officer thinks fit.
- (2) Permission may be given on compassionate grounds, on the ground that medical treatment is required or on any other ground the authorised medical officer thinks fit.

Note. A person may also be transferred from a mental health facility to another health facility on medical grounds (see section 80).

48 Apprehension of persons not permitted to be absent from mental health facility (cf 1990 Act, ss75, 76)

- (1) An authorised medical officer of a mental health facility may apprehend a person, or direct a person to be apprehended, if:
 - (a) the person fails to return to the facility on or before the expiry of a permitted period of absence granted under this Part or fails to comply with a condition of the permission, or
 - (b) the person absents himself or herself from the facility otherwise than in accordance with this Act.
- (2) The person may be apprehended by any of the following persons:

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary treatment outside mental health facilities

Clause 49
Chapter 3
Part 3

-
- (a) an authorised medical officer or any other suitably qualified person employed at the mental health facility,
 - (b) a police officer,
 - (c) a person authorised by the Minister or the authorised medical officer,
 - (d) a person assisting a person referred to in paragraph (a), (b) or (c).
- (3) A person who is apprehended is to be conveyed to and detained in the mental health facility from which the person absented himself or herself.

49 Police assistance

- (1) An authorised medical officer may request that a police officer apprehend, or assist in apprehending, a person under this Division if the officer is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to a mental health facility without the assistance of a police officer.
- (2) A police officer to whose notice any such request is brought may:
 - (a) apprehend and take or assist in taking the person to the mental health facility from which the person absented himself or herself, or
 - (b) cause or make arrangements for some other police officer to do so.
- (3) A police officer may enter premises to apprehend a person under this section or section 48, and may apprehend any such person without a warrant, and may exercise any powers conferred on a person who is authorised under section 81 to take a person to a mental health facility or another health facility.

Note. Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

Part 3 Involuntary treatment outside mental health facilities

Division 1 Applications for and making of community treatment orders

50 Definitions

In this Part:

affected person means a person for whom a community treatment order has been applied for or made.

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Clause 51	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 3	Involuntary treatment outside mental health facilities

breach notice—see section 58 (3).

breach order—see section 58 (4).

director of community treatment of a mental health facility means a person appointed under section 112 as the director of community treatment of the mental health facility.

psychiatric case manager means an officer or an employee of a declared mental health facility who is appointed under section 114 as the psychiatric case manager of an affected person.

51 Community treatment orders

- (1) A community treatment order authorising the compulsory treatment in the community of a person by a declared mental health facility may be made by the Tribunal or a Magistrate.
- (2) The following persons may apply for a community treatment order for the treatment of a person:
 - (a) the authorised medical officer of a mental health facility in which the affected person is detained or is a patient under this Act,
 - (b) a medical practitioner who is familiar with the clinical history of the affected person,
 - (c) any other person prescribed by the regulations.
- (3) An application may be made about an affected person who is detained in or a patient in a mental health facility or a person who is not in a mental health facility.
- (4) An application may be made about a person who is subject to a current community treatment order.
- (5) A community treatment order may be made in the following circumstances and may replace an existing order:
 - (a) following a mental health inquiry,
 - (b) on a review of a patient by the Tribunal,
 - (c) on an application otherwise being made to the Tribunal.

52 Notice of applications

- (1) The applicant for a community treatment order must notify the affected person of the application.
- (2) If the person is not detained in a mental health facility, the notice must be given not less than 14 days before the application is heard.

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary treatment outside mental health facilities

Clause 53
Chapter 3
Part 3

53 Determination of applications for community treatment orders

- (1) A Magistrate or the Tribunal is, on an application for a community treatment order, to determine whether the affected person is a mentally ill person who should be subject to the order.
- (2) For that purpose, the Magistrate or Tribunal is to consider the following:
 - (a) a treatment plan for the affected person proposed by the declared mental health facility that is to implement the proposed order,
 - (b) if the person is subject to an existing community treatment order, a report by the psychiatric case manager of the person as to the efficacy of that order,
 - (c) a report as to the efficacy of any previous community treatment order for the affected person,
 - (d) any other information placed before the Magistrate or Tribunal.
- (3) The Magistrate or Tribunal may make a community treatment order for an affected person if the Magistrate or Tribunal determines that the patient is a mentally ill person and that:
 - (a) no other care of a less restrictive kind is appropriate and reasonably available to the person and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care, and
 - (b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it, and
 - (c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.
- (4) For the purposes of this section, a person has a ***previous history of refusing to accept appropriate treatment*** if the following are satisfied:
 - (a) the affected person has previously refused to accept appropriate treatment,
 - (b) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness,
 - (c) the relapse has been followed by mental or physical deterioration justifying involuntary admission to a mental health facility (whether or not there has been such an admission),
 - (d) care and treatment following involuntary admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.

exposure draft

Clause 54	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 3	Involuntary treatment outside mental health facilities

- (5) In determining the duration of a community treatment order, the Tribunal or Magistrate must not specify a period longer than 12 months and must take into account the estimated time required:
- (a) to stabilise the condition of the affected person, and
 - (b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.

54 Requirements for treatment plans under community treatment orders

A treatment plan for an affected person is to consist of the following:

- (a) in general terms, an outline of the proposed treatment, counselling, management, rehabilitation or other services to be provided to implement the community treatment order,
- (b) in specific terms, the method by which, the frequency with which, and the place at which, the services would be provided for that purpose.

55 Community treatment order may be made in absence of affected person

A Magistrate or the Tribunal may make a community treatment order in the absence of the affected person, if the person has been given notice of the application under this Part.

56 Form and duration of community treatment orders

- (1) A community treatment order is to:
 - (a) nominate the declared mental health facility that is to implement the treatment plan for the affected person, and
 - (b) require the affected person to be present, at the reasonable times and places specified in the order to receive the medication and therapy, rehabilitation and other services provided in accordance with the treatment plan.
- (2) A community treatment order ceases to have effect on the date specified in the order or, if no date is specified, 12 months after the date of the order.
- (3) A community treatment order has no effect while an affected person is detained in a mental health facility (otherwise than under this Part), or is a patient.
- (4) A community treatment order is revoked in respect of a person detained in a mental health facility if the person ceases to be detained or to be a patient and the director of community treatment notifies the person and the medical superintendent that the order is revoked. A director may give notice under this subsection only if of the opinion that the affected

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary treatment outside mental health facilities

Clause 57
Chapter 3
Part 3

person is not likely to benefit from the continuation of the community treatment order.

- (5) The time for which a community treatment order is in force does not cease to run during any period in which this section provides that it has no effect.

Division 2 Operation of community treatment orders

57 Duties and functions of affected person and mental health facility (cf 1990 Act, ss145, 146)

- (1) The affected person must comply with the community treatment order.
- (2) The director of community treatment of the declared mental health facility implementing a treatment plan under a community treatment order may take all reasonable steps to have medication administered, and services provided, in accordance with the order.
- (3) Medication may be administered to an affected person for the purposes of a community treatment order without the person's consent if it is administered without the use of more force than would be required if the person had consented to its administration.
- (4) The director of community treatment of a declared mental health facility implementing a treatment plan under an order must provide to the affected person particulars of the kind and dosages of medication that are being administered, or have recently been administered, to the person, if requested to do so by:
 - (a) the affected person, or
 - (b) the primary carer of the affected person, or
 - (c) if the affected person consents, another person who would be entitled to apply for a community treatment order in relation to the person.
- (5) A person implementing a treatment plan under an order may enter the land (but not the dwelling) on which an affected person's residence is situated without the person's consent for the purpose of implementing the community treatment order.

58 Breach of community treatment order

- (1) The director of community treatment of a declared mental health facility implementing a community treatment order must take the steps set out in this section if the affected person in any way refuses or fails to comply with the community treatment order and the medical superintendent is of the opinion that:

exposure draft

Clause 59	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 3	Involuntary treatment outside mental health facilities

- (a) the agency has taken all reasonable steps to implement the order, and
 - (b) there is a significant risk of deterioration in the mental or physical condition of the affected person.
- (2) The director must:
- (a) make a written record of the opinions, the facts on which they are based and the reasons for forming them, and
 - (b) through the psychiatric case manager of the affected person, inform the affected person that any further refusal to comply with the order will result in the person being taken to the declared mental health facility or another appropriate mental health facility and treated there.
- (3) On a further refusal or failure by the affected person to comply with the community treatment order, the director may cause the person to be given a written notice (a **breach notice**):
- (a) requiring the person to accompany a member of staff of the NSW Health Service employed at the declared mental health facility for treatment in accordance with the order or to a specified mental health facility, and
 - (b) warning the person that the assistance of a police officer may be obtained in order to ensure compliance with the order.
- (4) On the refusal or failure by the affected person to comply with a breach notice, the director may, in writing, make an order (a **breach order**) that the affected person be taken to a specified declared mental health facility.

59 Police assistance

- (1) A police officer to whose notice a breach order is brought must, if practicable:
- (a) apprehend and take or assist in taking the person the subject of the order to the mental health facility, or
 - (b) cause or make arrangements for some other police officer to do so.
- (2) A police officer may enter premises to apprehend a person under this section, may apprehend any such person, without a warrant and may exercise powers conferred on a person who is authorised under section 81 to take a person to a mental health facility or another health facility.
- Note.** Section 81 sets out the persons who may take a person to a mental health facility and their powers when doing so.

exposure draft

Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary treatment outside mental health facilities

Clause 60
Chapter 3
Part 3

60 Procedures at facility after breach notice or breach order

- (1) An affected person who is at a mental health facility as a result of the giving of a breach notice or a breach order:
 - (a) may be given treatment in accordance with the community treatment order, and
 - (b) may be assessed by a medical practitioner for involuntary admission to a mental health facility.
- (2) A person who is at a mental health facility as a result of a breach notice or breach order may be released after treatment if treatment is accepted or may be dealt with at the mental health facility or taken to another declared mental health facility if treatment is refused.

61 Review of affected person at mental health facility after breach order (cf 1990 Act, ss141, 142)

- (1) This section applies to an affected person who is taken to a declared mental health facility on a breach order or is taken to or is at a declared mental health facility after refusing treatment at a mental health facility consequent on a breach order.
- (2) An authorised medical officer must, not later than 12 hours after the person is taken to the declared mental health facility, review the affected person's mental condition and determine whether the person is a mentally ill person or a mentally disordered person.
- (3) The authorised medical officer may cause the person to be given treatment in accordance with the community treatment order.
- (4) If the authorised medical officer determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind is appropriate or reasonably available, the person is to be detained in the declared mental health facility for further observation or treatment, or both.
- (5) The affected person may be detained until one of the following events occurs:
 - (a) in the case of a mentally ill person, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act, or
 - (b) in the case of a mentally disordered person, the maximum period for which a person may be held as such a person under Part 2 ends, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act.

exposure draft

Clause 62	Mental Health Bill 2006
Chapter 3	Involuntary admission and treatment in and outside facilities
Part 3	Involuntary treatment outside mental health facilities

62 Discharge of affected persons

An affected person detained in a declared mental health facility under this Division must be discharged from the facility:

- (a) if the authorised medical officer determines that the person is not a mentally ill person or a mentally disordered person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the person, or
- (b) if the medical superintendent decides at any time that it is appropriate to do so.

63 Review by Tribunal of detained affected persons (cf 1990 Act, s143A)

- (1) An authorised medical officer must cause a person detained in a declared mental health facility under this Division to be brought before the Tribunal not later than 3 months after the person is detained.
- (2) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.
- (3) This section does not apply if the affected person's community treatment order will end less than 3 months after the person is detained under this Division.

64 Purpose and findings of reviews (cf 1990 Act, s143A)

- (1) The Tribunal is, on a review of an affected person, to determine whether the person is a mentally ill person for whom no other care (other than care in a mental health facility) is appropriate and reasonably available.
- (2) For that purpose, the Tribunal is to do the following:
 - (a) consider any information placed before it,
 - (b) inquire about the administration of any medication to the patient and take account of its effect on the person's ability to communicate.
- (3) If the Tribunal determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind is appropriate or reasonably available, the Tribunal must determine whether the person should be detained in the declared mental health facility until the end of the community treatment order.
- (4) If the Tribunal does not determine that the person is a mentally ill person or is of the opinion that other care of a less restrictive kind is appropriate or reasonably available:
 - (a) it must make an order that the person be discharged from the declared mental health facility in which the person is detained, and

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Mental Health Bill 2006
Involuntary admission and treatment in and outside facilities
Involuntary treatment outside mental health facilities

Clause 65
Chapter 3
Part 3

- (b) it may make any community treatment order that it could make on a review of an involuntary patient.
- (5) The Tribunal may defer the operation of an order for the discharge of an affected person for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the affected person to do so.
- (6) An order made by the Tribunal under this section is to be in the form approved by the Minister.

Division 3 Revocation, variation and review of community treatment orders

65 Variation or revocation of orders by Tribunal (cf 1990 Act, s148)

- (1) The Tribunal may vary or revoke a community treatment order, on application being made under this section.
- (2) An application may be made by any of the following:
 - (a) the affected person,
 - (b) the psychiatric case manager of the affected person,
 - (c) any person who could have applied for the order.
- (3) An application may be made only if:
 - (a) there has been a substantial or material change in the circumstances surrounding the making of the order, or
 - (b) relevant information that was not available when the order was made has become available.
- (4) An order may be varied only if the order, as varied, could be made in relation to the affected person.
- (5) The regulations may make provision for or with respect to applications under this section and the orders that may be made by the Tribunal.

66 Revocation by director of community treatment (cf 1990 Act, s149)

The director of community treatment of a declared mental health facility implementing a treatment plan under a community treatment order may revoke a community treatment order if of the opinion that the affected person is not likely to benefit from a continuation of the order.

67 Appeals (cf 1990 Act, s151)

- (1) The affected person under a community treatment order made by the Tribunal may at any time appeal to the Court:
 - (a) if the term of the order exceeds 6 months, against the duration of the order, or

exposure draft

Clause 67 Mental Health Bill 2006
Chapter 3 Involuntary admission and treatment in and outside facilities
Part 3 Involuntary treatment outside mental health facilities

- (b) on any question of law or fact arising from the order or its making.
- (2) The affected person under a community treatment order made by a Magistrate may at any time appeal to the Tribunal:
 - (a) on any question of law or fact arising from the order or its making, or
 - (b) if the term of the order exceeds 6 months, against the duration of the order.
- (3) The regulations may make provision for or with respect to appeals to the Tribunal under this section and the orders that may be made by the Tribunal in respect of any such appeal.

Chapter 4 Care and treatment

Part 1 Rights of patients or detained persons and primary carers

Division 1 General

68 Principles for care and treatment

It is the intention of Parliament that the following principles are, as far as practicable, to be given effect to with respect to the care and treatment of people with a mental illness or mental disorder:

- (a) people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given,
- (b) people with a mental illness or mental disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards,
- (c) the provision of care and treatment should be designed to assist people with a mental illness or mental disorder, wherever possible, to live, work and participate in the community,
- (d) the prescription of medicine to a person with a mental illness or mental disorder should meet the health needs of the person and should be given only for therapeutic or diagnostic needs and not as a punishment or for the convenience of others,
- (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, treatment alternatives and the effects of treatment,
- (f) any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect is to be kept to the minimum necessary in the circumstances,
- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with a mental illness or mental disorder should be recognised,
- (h) every effort that is reasonably practicable should be made to involve persons with a mental illness or mental disorder in the development of treatment plans and plans for ongoing care,
- (i) people with a mental illness or mental disorder should be informed of their legal rights and other entitlements under this Act and all reasonable efforts should be made to ensure the

exposure draft

Clause 69	Mental Health Bill 2006
Chapter 4	Care and treatment
Part 1	Rights of patients or detained persons and primary carers

information is given in the language, mode of communication or terms that they are most likely to understand,

- (j) the role of carers for people with a mental illness or mental disorder and their rights to be kept informed are given effect.

69 Offence to ill-treat patients (cf 1990 Act, s298)

An authorised medical officer, or any other person employed at a mental health facility, must not wilfully strike, wound, ill-treat or neglect a patient or person detained at the facility.

Maximum penalty: 50 penalty units or imprisonment for 6 months, or both.

70 Assistance of interpreters (cf 1990 Act, s292)

A medical practitioner must arrange for an interpreter to be present at a medical examination of a person for the purposes of this Act, if the person is unable to communicate adequately in English but can communicate adequately in another language.

71 Primary carer

- (1) The *primary carer* of a person (the *patient*) for the purposes of this Act is:

- (a) the guardian of the patient, or
- (b) the parent of the patient (subject to any nomination by a person referred to in paragraph (c)), or
- (c) if the patient is over the age of 14 years and is not a person under guardianship, the person nominated by the patient as the primary carer under this Part under a nomination that is in force, or
- (d) if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):
 - (i) the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing, or
 - (ii) any person who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis), or
 - (iii) a close friend or relative of the patient.

- (2) In this section:

close friend or relative of a patient means a friend or relative of the patient who maintains both a close personal relationship with the patient through frequent personal contact and a personal interest in the patient's welfare and who does not provide support to the patient wholly or substantially on a commercial basis.

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Mental Health Bill 2006
Care and treatment
Rights of patients or detained persons and primary carers

Clause 72
Chapter 4
Part 1

spouse means:

- (a) a husband or wife, or
- (b) the other party to a de facto relationship within the meaning of the *Property (Relationships) Act 1984*,

but where more than one person would qualify as a spouse, means only the last person so to qualify.

72 Nomination of primary carer

- (1) A person may nominate a person to be the person's primary carer for the purposes of this Act.
- (2) A person may nominate persons who are excluded from being given notice or information about the person under this Act and may revoke or vary any such nomination.
- (3) A person who is over the age of 14 years and under the age of 18 years may not exclude the person's parent by a nomination under subsection (2).
- (4) A nomination, variation or revocation is to be made in writing and may be given to an authorised medical officer at the facility concerned, a director of community treatment or the Director-General.
- (5) A nomination remains in force for the period prescribed by the regulations or until it is revoked in writing.
- (6) An authorised medical officer or a director of community treatment is, in carrying out his or her functions under this Act or the regulations, to give effect to a nomination or a variation or revocation of a nomination, if notified of the nomination, variation or revocation.
- (7) An authorised medical officer or a director of community treatment is not required to give effect to a nomination, or a variation or revocation of a nomination, if the officer reasonably believes:
 - (a) that to do so may put the patient or nominated person or any other person at risk of serious harm, or
 - (b) that the person was incapable of making the nomination, variation or revocation.

Division 2 Notification and information sharing

73 Information about medication

- (1) On a request made under this section, an authorised medical officer of a mental health facility must provide particulars of the types of medication and dosages of each type of medication currently being

exposure draft

Clause 74	Mental Health Bill 2006
Chapter 4	Care and treatment
Part 1	Rights of patients or detained persons and primary carers

administered or recently administered to a patient or person detained in the facility.

- (2) A request may be made by:
- (a) the patient or person detained in a mental health facility, or
 - (b) the primary carer of any such patient or person, or
 - (c) a representative of any such patient or person at a mental health inquiry or before the Tribunal.

74 Information to be given to persons to be detained

- (1) An authorised medical officer of a mental health facility must give the following persons an oral explanation and a written statement of the person's legal rights and other entitlements under this Act:
- (a) a person who is taken to the facility under this Act,
 - (b) a person who is a voluntary patient in the facility, if it is decided to take steps to detain the person under this Act.
- (2) The explanation and statement must be given as soon as practicable after the person is taken to a mental health facility or it is decided to take steps to detain the person.
- (3) The written statement is to be in the form set out in Schedule 3.
- (4) If the authorised medical officer is of the opinion that a person is not capable of understanding the explanation or statement when it is first given, another explanation or statement must be given to the person not later than 24 hours before a mental health inquiry is held about the person.
- (5) The authorised medical officer must, if the person is unable to communicate adequately in English but is able to communicate adequately in another language, arrange for the oral explanation to be given in that other language.

75 Notification to primary carer of initial detention

- (1) An authorised medical officer must, not later than 24 hours after a person is detained in a mental health facility, take all reasonably practicable steps to notify the primary carer of the person that the person is detained in the facility.
- (2) Notice need not be given if the person is discharged or classified as a voluntary patient within that period.

76 Notification of mental health inquiries

- (1) An authorised medical officer must notify an assessable person in the mental health facility that:

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Mental Health Bill 2006
Care and treatment
Rights of patients or detained persons and primary carers

Clause 77
Chapter 4
Part 1

- (a) a mental health inquiry will be held about the person, and
 - (b) notice of the inquiry will be given to the person's primary carer.
- (2) The notice is to be given when the authorised medical officer becomes aware that the person is an assessable person.
 - (3) The authorised medical officer must, in accordance with the regulations, take all reasonably practicable steps to give notice to the primary carer of the assessable person of a proposed mental health inquiry.

77 Notification to new involuntary patients of appeal rights (cf 1990 Act, s55)

- (1) An authorised medical officer of a mental health facility must give, or cause to be given, to a person ordered by a Magistrate after a mental health inquiry to be detained as an involuntary patient in the facility a statement of the rights of appeal conferred on the person as an involuntary patient under this Act.
- (2) The statement must be given as soon as practicable after the order is made.
- (3) The statement is to be in the form approved by the Minister.

78 Notifications to primary carer of events affecting patients or detained persons

- (1) An authorised medical officer of a mental health facility must take all reasonably practicable steps to notify the primary carer of a patient or person detained in the facility if any of the following events occurs:
 - (a) the patient or person is absent from the facility without permission or fails to return at the end of a period of leave,
 - (b) it is proposed to transfer the patient or person, or the patient or person is transferred, to another mental health facility or other facility,
 - (c) the patient or person is discharged from the mental health facility,
 - (d) the patient or person is re-classified as a voluntary patient,
 - (e) it is proposed to apply to the Tribunal for an ect inquiry under Part 2 or to ascertain whether the patient or person is capable of giving informed consent to electro convulsive therapy,
 - (f) a surgical operation is performed on the patient or person under Part 3,
 - (g) it is proposed to apply to the Tribunal for consent to a surgical operation or special medical treatment under Part 3.
- (2) The authorised medical officer must give the notice as soon as practicable after becoming aware that the event has occurred.

exposure draft

Clause 79	Mental Health Bill 2006
Chapter 4	Care and treatment
Part 1	Rights of patients or detained persons and primary carers

- (3) In the case of a proposed transfer, the notice must be given before the relevant order or arrangement is made, except in an emergency.

79 Discharge and other planning

- (1) An authorised medical officer of a mental health facility must take all reasonably practicable steps to ensure that a patient or person detained in the facility, and the primary carer of the patient or person, are consulted in relation to planning the patient's or person's discharge and any subsequent treatment or other action considered in relation to the patient or person.
- (2) In planning the discharge of any such patient or person, and any subsequent treatment or other action considered in relation to the patient or person, the authorised medical officer must take all reasonably practicable steps to consult with agencies involved in providing relevant services to the patient or person, any primary carer of the patient or person and any dependent children or other dependents of the patient or person.
- (3) An authorised medical officer of a mental health facility must take all reasonably practicable steps to provide a patient (of any kind) who is discharged from the facility, and the patient's primary carer, with appropriate information as to follow-up care.

Division 3 Transfer of patients

80 Transfer of patients to or from mental health facilities (cf 1990 Act, s78)

- (1) An involuntary patient or a person detained in a mental health facility may be transferred from the mental health facility to another mental health facility or another health facility.
- (2) A person who is a patient in a health facility other than a mental health facility may be transferred from the health facility to a declared mental health facility for the purpose of detaining the person under Part 2 of Chapter 3.
Note. Section 25 sets out the procedure for detaining such a person in a declared mental health facility.
- (3) A transfer of a patient or person to a health facility other than a mental health facility may be made on the grounds that the patient requires medical treatment for a condition or other illness (other than a mental illness or other mental condition) that is not available in the mental health facility.
- (4) A transfer under this section is to be done in accordance with an arrangement between medical officers of each facility.

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Mental Health Bill 2006
Care and treatment
Rights of patients or detained persons and primary carers

Clause 81
Chapter 4
Part 1

- (5) An arrangement under this section is sufficient authority for the transfer of a patient or person, and the reception into, the mental health facility or other health facility to which the patient or person is transferred.

81 Transport of persons to and from mental health facilities and other health facilities

- (1) The persons listed below may take to or from a mental health facility or another health facility any person who is authorised by this Act to be taken, or transferred, to or from the facility:
- (a) a member of staff of the NSW health service,
 - (b) an ambulance officer,
 - (c) a police officer,
 - (d) a person prescribed by the regulations.
- (2) A person authorised by this Act to take a person to or from a mental health facility or other health facility may:
- (a) use reasonable force in exercising functions under this section or any other provision of this Act applying this section, and
 - (b) restrain the person in any way that is reasonably necessary in the circumstances.
- (3) A person may be sedated, by a person authorised by law to administer the sedative, for the purpose of being taken to or from a mental health facility or other health facility under this Act if it is necessary to do so to enable the person to be taken safely to or from the facility.
- Note.** The *Poisons and Therapeutic Goods Act 1966*, and the regulations under that Act, regulate the persons who may prescribe and administer drugs (including sedative drugs).
- (4) A person authorised by this Act to take a person to or from a mental health facility or other health facility may carry out a frisk search or an ordinary search of the person, if the person reasonably suspects that the other person is carrying anything:
- (a) that would present a danger to the person or any other person, or
 - (b) that could be used to assist the other person to escape from the person's custody.
- (5) The person may seize and detain a thing found in a search if it is a thing of a kind referred to in subsection (4) (a) or (b).
- (6) In this section:
frisk search means:
- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal

exposure draft

Clause 82 Mental Health Bill 2006
Chapter 4 Care and treatment
Part 2 Mental health treatments

detection device over or in close proximity to the person's outer clothing, or

- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing.

ordinary search means a search of a person or of articles in the possession of the person that may include:

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat, and
(b) an examination of those items.

Part 2 Mental health treatments

Division 1 Preliminary

82 Definitions

In this Part:

administer a treatment includes cause or knowingly permit treatment to be administered.

involuntary patient includes a forensic patient or person detained in a mental health facility.

Division 2 General provisions about mental health treatment

83 Prohibited treatments (cf 1990 Act, s197)

- (1) A person must not administer to or perform on another person any of the following:
- (a) deep sleep therapy,
 - (b) insulin coma therapy,
 - (c) psychosurgery,
 - (d) any other operation or treatment prescribed for the purposes of this section.

Maximum penalty: 50 penalty units.

- (2) In this section:
- behaviour*, in the definition of *psychosurgery*, does not include:
- (a) grand mal, petit mal or Jacksonian epilepsy, or

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Mental Health Bill 2006
Care and treatment
Mental health treatments

Clause 84
Chapter 4
Part 2

- (b) complex apparently automatic behaviour, whether presumed to be secondary to cerebral dysrhythmia or not,
but does include rage attacks, whether or not associated with epilepsy.

psychosurgery means:

- (a) the creation of 1 or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or procedure, when it is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person, or
- (b) the use for such a purpose of intracerebral electrodes to produce such a lesion or lesions, whether on the same or separate occasions, or
- (c) the use on 1 or more occasions of intracerebral electrodes primarily for the purpose of influencing or altering the thoughts, emotions or behaviour of a person by stimulation through the electrodes without the production of a lesion in the brain of the person,

but does not include a neurological procedure carried out for the relief of symptoms of Parkinson's disease.

84 Treatment may be given to patients

An authorised medical officer of a mental health facility may, subject to this Act, give, or authorise the giving of, any treatment (including any medication) the officer thinks fit to an involuntary patient detained in the facility in accordance with this Act.

85 Administration of excessive or inappropriate drugs (cf 1990 Act, s198)

A medical practitioner must not, in relation to any mental illness or mental condition or suspected mental illness or mental condition, administer, or cause to be administered to a person a drug or drugs in a dosage that, having regard to professional standards, is excessive or inappropriate.

Maximum penalty: 50 penalty units.

86 Review of drug use in mental health facilities (cf 1990 Act, s199)

- (1) The medical superintendent of a mental health facility must establish an internal review system to monitor and review the prescription and use of drugs in the facility.
- (2) The director of community treatment of a mental health facility must establish an internal review system to monitor and review the prescription and use of drugs under community treatment orders implemented by the facility.

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Clause 87	Mental Health Bill 2006
Chapter 4	Care and treatment
Part 2	Mental health treatments

- (3) The system is to monitor the frequency of administration and dosages of drugs, the intended and unintended effects of any drugs administered and the appropriateness of their use.

Division 3 Electro convulsive therapy

87 Definitions

In this Division:

ect administration inquiry—see section 96 (2).

ect consent inquiry—see section 96 (1).

ect determination—see section 96 (3).

ect inquiry means an ect administration inquiry or an ect consent inquiry.

88 Offences relating to administration of electro convulsive treatment (cf 1990 Act, ss180–182)

- (1) A person who is not a medical practitioner must not administer electro convulsive therapy to another person.
- (2) A medical practitioner must not administer electro convulsive therapy to a person:
- (a) otherwise than in accordance with this Division, or
 - (b) at a place other than a mental health facility or other place approved by the Director-General.
- (3) A medical practitioner must not administer electro convulsive therapy to a person unless there are present during the administration of the electro convulsive therapy not less than 2 medical practitioners (of whom the medical practitioner administering the electro convulsive therapy may be one):
- (a) one of whom is experienced in the administration of electro convulsive therapy, and
 - (b) another of whom is experienced in the administration of anaesthesia.

Maximum penalty: 50 penalty units.

89 When electro convulsive therapy may be administered

Electro convulsive therapy may be administered only in the following circumstances:

- (a) to a person other than an involuntary patient, if the person meets the requirements for informed consent to the treatment and medical certification set out in this Division,

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Mental Health Bill 2006
Care and treatment
Mental health treatments

Clause 90
Chapter 4
Part 2

- (b) to an involuntary patient, after an ect determination by the Tribunal at an ect inquiry.

Note. In this Part, *involuntary patient* includes a forensic patient and a person detained in a mental health facility.

90 Refusal of treatment by medical superintendent

The medical superintendent of a mental health facility may refuse to allow electro convulsive therapy to be administered to a patient or person detained in the facility, even though the Tribunal has made a determination under this Division that enables the treatment to be given.

91 Informed consent requirements (cf 1990 Act, s183)

- (1) A person is taken to have given informed consent to the administration of electro convulsive therapy if the person gives a free, voluntary and written consent after this section is complied with.
- (2) The following steps must be taken before consent is obtained:
- (a) a fair explanation must be made to the person of the techniques or procedures to be followed, including an identification and explanation of any technique or procedure about which there is not sufficient data to recommend it as recognised treatment or to reliably predict the outcome of its performance,
 - (b) a full description must be given, without exaggeration or concealment, to the person of any possible discomforts and risks of the treatment (including possible loss of memory),
 - (c) a full description must be given to the person of any expected benefits of the treatment,
 - (d) a full disclosure must be made, without exaggeration or concealment, to the person of any appropriate alternative treatments that would be advantageous to the person,
 - (e) an offer must be made to the person to answer any inquiries concerning the procedures or any part of them,
 - (f) the person must be given notice that the person is free to refuse or to withdraw consent and to discontinue the procedures or any part of them at any time,
 - (g) a full disclosure must be made to the person of any financial relationship between the person proposing the administration of the treatment or the administering medical practitioner, or both, and the facility in which it is proposed to administer the treatment,
 - (h) the person must be given notice of their right to obtain legal and medical advice and to be represented before giving consent,

exposure draft

Clause 92 Mental Health Bill 2006
Chapter 4 Care and treatment
Part 2 Mental health treatments

- (i) any question relating to the techniques or procedures to be followed that is asked by the person must have been answered and the answers must appear to have been understood by the person,
 - (j) a form setting out the steps in this subsection is to be given to the person and an oral explanation of the matters dealt with in the form is to be given to the person in a language with which the person is familiar.
- (3) The regulations are to prescribe forms setting out the steps to be taken before obtaining informed consent to electro convulsive therapy.

92 Person impaired by medication incapable of giving informed consent
(cf 1990 Act, s184)

A person is presumed to be incapable of giving informed consent to the administration of electro convulsive therapy if, when consent is sought, the person is affected by medication that impairs the person's ability to give that consent.

93 When electro convulsive therapy may be administered to persons other than involuntary patients (cf 1990 Act, s185)

- (1) Electro convulsive therapy may be administered to a person (other than an involuntary patient) if:
 - (a) the person is capable of giving informed consent to the treatment and has given informed consent to the treatment, including a written consent in the form prescribed by the regulations, and
 - (b) a certificate is given under this section by at least 2 medical practitioners, at least one of whom is a psychiatrist.
- (2) A certificate under this section is a certificate in writing that, after considering the clinical condition and history of treatment of, and any appropriate alternative treatments for, the person, the medical practitioners are of the opinion that electro convulsive therapy is:
 - (a) a reasonable and proper treatment to be administered to the person, and
 - (b) necessary or desirable for the safety or welfare of the person.
- (3) An authorised medical officer who is unsure whether a person is capable of giving informed consent may apply to the Tribunal for an ect consent inquiry to determine whether the person is capable of giving informed consent and has given that consent.