

# Training Resource Material

## Mental Health Branch – October 2004

# TRAINING COPY OF THE MENTAL HEALTH ACT 1986

## INCLUDING AMENDMENTS INTRODUCED BY THE MENTAL HEALTH (AMENDMENT) ACT 2003

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## PART 1—PRELIMINARY

### 1. *Purpose*

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

### 2. *Commencement*

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

### 3. *Definitions*

(1) In this Act—

\* \* \* \* \*

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

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

(b) declared to be an approved mental health service under section 94A;

\* \* \* \* \*

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

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

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

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

\* \* \* \* \*

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

**"community treatment order"** ~~means an order requiring treatment for mental illness of a person who is at large in the community but does not apply to a person who is in a prison or a patient in an approved mental health service~~ means an order made under section 14;

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

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

**"Department"** means the Department of Human Services;

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

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

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

**"forensic patient"** means—

- (a) a person—
  - (i) remanded in custody in an approved mental health service; or
  - (ii) committed to custody in an approved mental health service by a supervision order—under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;  
or
- (ab) a person detained in an approved mental health service under section 30(2) or 30A(3) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- (ac) a person deemed to be a forensic patient by section 73E(4) or 73K(8) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; or
- (b) a person transferred from a prison to an approved mental health service under section 17;

**"hospital order"** means an order made under section 93(1)(d) of the **Sentencing Act 1991**;

**"hospital security order"** means an order made under section 93(1)(e) of the **Sentencing Act 1991**;

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

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

~~**"involuntary patient"** means a person admitted to an approved mental health service under—~~

~~— (a) Division 2 of Part 3 (including a person whose detention and treatment is continued under section 12A(4) or 12C); or~~

~~— (b) Part 5 (except section 93(1)(e)) of the **Sentencing Act 1991**; or~~

~~— (c) section 16(3)(a); or~~

~~— (d) Part 5A—~~

~~— or deemed to be an involuntary patient under section 13 or 14;~~

**"involuntary patient"** means—

(a) a person who is subject to an involuntary treatment order (including a person who is subject to a community treatment order); or

(b) a person who is subject to a hospital order (including a person who is subject to a restricted community treatment order); or

(c) a person who is subject to an assessment order or a diagnosis, assessment and treatment order; or

(d) a person who is subject to a hospital transfer order; or

(e) a person whose detention and treatment is continued under section 12A(4) or 12C; or

(f) a person to whom section 93F, 93H or 93K(5) applies;

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

**"licence"** means a licence issued under section 75;

\* \* \* \* \*

**"mental disorder"** includes mental illness;

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

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

**"patient"** means—

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

**"prescribed"** means prescribed by the regulations;

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

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

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

\* \* \* \* \*

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

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

**"registered medical practitioner"** means a registered medical practitioner within the meaning of the **Medical Practice Act 1994**;

**"registered nurse"** means a nurse whose name is included in division 1 or 3 of the register of nurses kept under Part 2 of the **Nurses Act 1993**;

\* \* \* \* \*

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

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

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

**"Secretary"** means—

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

**"security patient"** means—

- (a) a person who is subject to a hospital security order or a restricted hospital transfer order; or a person detained in an approved mental health service under section 16(3)(b) of this Act or section 93(1)(e) of the Sentencing Act 1991; or

- (b) a person detained in an approved mental health service while serving a sentence of imprisonment within the meaning of the International Transfer of Prisoners Act 1997 of the Commonwealth.

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

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

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

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

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

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

\* \* \* \* \*

- (2) If under the **Public Sector Management and Employment Act 1998** the name of the Department of Human Services is changed, the reference in the definition of "Department" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.

### **3A. Meaning of consent of a person**

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

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

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

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

- (a) section 8 (criteria for ~~admission and detention as an~~ involuntary **treatment patient**);
- (b) section ~~12AB -(interim treatment under involuntary treatment order)~~ admission and detention of involuntary patients);
- (c) section ~~12AD 14 (treatment for involuntary patients community treatment orders)~~);
- (d) section 16 (transfer of mentally ill prisoners);
- (e) section 17A (status of forensic patients);
- (f) section 53B (requirements for obtaining informed consent);
- (g) section 57 (consent required);

- (h) section 73 (informed consent required);
  - (i) section 83 (definitions concerning non-psychiatric treatment).
- (3) This section has effect despite anything in the **Guardianship and Administration Act 1986**, the **Medical Treatment Act 1988** or any other law.

(Sections 4 to 6A not reproduced in this workbook)

## PART 3—ADMISSION OF PATIENTS

\* \* \* \* \*

### Division 1—Introductory

#### 7. Definitions

In this Part—

"authorised person" means—

(a) a registered medical practitioner; or

(b) a registered nurse; or

(c) a person who is a member of a class of health service providers prescribed as a class of authorised persons for the purposes of this Part;

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

"prescribed person" means—

(a) a member of the police force; or

(b) an ambulance officer; or

(c) a person who is a member of a class prescribed as a class of prescribed persons for the purposes of this Part;

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

### **Division 2—Involuntary Patients**

#### **8. Criteria for ~~admission and detention as an involuntary patient treatment~~**

- (1) ~~The criteria for involuntary treatment of a person under this Act are that - A person may be admitted to and detained in an approved mental health service as an involuntary patient in accordance with the procedures specified in this Act only if—~~
- (a) the person appears to be mentally ill; and
  - (b) the person's mental illness requires immediate treatment and that treatment can be obtained by the person being subject to an involuntary treatment order; and admission to and detention in an approved mental health service; and

- (c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and ~~the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and~~
- (d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and
- (e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of his or her ~~that person's~~ freedom of decision and action.

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

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

\* \* \* \* \*

~~9. Involuntary admission~~

- ~~(1) A person may be admitted to and detained in an approved mental health service as an involuntary patient upon production of—~~
- ~~(a) a request in the prescribed form and containing the prescribed particulars; and~~
  - ~~(b) a recommendation in the prescribed form by a registered medical practitioner following a personal examination of the person made not more than three clear days before the admission of the person.~~
- ~~(2) A request may be signed before or after a recommendation is made.~~
- ~~(3) A registered medical practitioner must not make a recommendation under sub-section (1) unless the registered medical practitioner considers that—~~
- ~~(a) the criteria specified in section 8(1) apply to the person; and~~
  - ~~(b) the person should be admitted to an approved mental health service for observation.~~
- ~~(4) A request and recommendation made in accordance with this section is sufficient authority for—~~
- ~~(a) the person making the request; or~~
  - ~~(b) a member of the police force, an ambulance officer or any other person authorized by the person making the request—~~
- ~~to take the person to whom the recommendation relates to an appropriate approved mental health service or to arrange for an appropriate approved mental health service to admit the person.~~
- ~~(5) For the purpose of taking the person to whom the recommendation relates to an appropriate approved mental health service a prescribed person may with such assistance as is required and such force as may be reasonably necessary—~~
- ~~(a) enter any premises in which the prescribed person has reasonable grounds for believing that the person to whom the recommendation relates may be found; and~~
  - ~~(b) if necessary to enable the person to be so taken safely, use such restraint as may be reasonably necessary.~~
- ~~(6) If in the opinion of a prescribed registered medical practitioner it is necessary to sedate the person to whom the recommendation relates so as to enable that person to be taken safely to an appropriate approved mental health service, the prescribed registered medical practitioner may administer or direct an authorised person to administer sedation to that person.~~
- ~~(7) Any person who uses restraint under sub-section (5) or administers sedation or directs an authorised person to administer sedation under sub-section (6) must specify the particulars required by the prescribed form and deal with the prescribed form in accordance with the regulations.~~
- ~~(7A) Despite anything to the contrary in this section, a person in respect of whom a request is made in accordance with sub-section (1)(a) may be taken to an approved mental health service without a recommendation being made under sub-section (1)(b) if—~~
- ~~(a) a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and~~
  - ~~(b) a mental health practitioner considers that—~~

- ~~(i) the criteria specified in section 8(1) apply to the person; and~~
- ~~(ii) the person should be admitted to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and~~
- ~~(c) the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.~~
- ~~(7B) In the circumstances set out in sub-section (7A), sub-sections (4) and (5), and (7) to the extent that it relates to sub-section (5), apply as if a recommendation had been made in accordance with this section.~~
- ~~(7C) A person who has made a request under sub-section (1)(a) in respect of a person must not complete an authority to transport that person under sub-section (7A)(c).~~
- ~~(8) In this section—~~
  - ~~"authorised person" means—~~
    - ~~(a) a registered medical practitioner; or~~
    - ~~(b) a registered nurse; or~~
    - ~~\* \* \* \* \*~~
    - ~~(d) a person who is a member of a class of health service providers prescribed for the purposes of this section;~~
  - ~~"mental health practitioner" means a person who is a member of a class of health service providers prescribed for the purposes of this definition;~~
  - ~~"prescribed registered medical practitioner" means a registered medical practitioner of a class prescribed for the purposes of this section;~~
  - ~~"prescribed person" means—~~
    - ~~(a) a member of the police force; or~~
    - ~~(b) an ambulance officer; or~~
    - ~~(c) a person who is a member of a class prescribed for the purposes of this section.~~

## **9. Request and recommendation for involuntary treatment**

- ~~(1) The documents required to initiate the involuntary treatment of a person are—~~
  - ~~(a) a request in the prescribed form and containing the prescribed particulars; and~~
  - ~~(b) a recommendation in the prescribed form by a registered medical practitioner following a personal examination of the person.~~
- ~~(2) A request may be signed before or after a recommendation is made.~~
- ~~(3) A registered medical practitioner must not make a recommendation under sub-section (1) unless he or she considers that—~~
  - ~~(a) the criteria in section 8(1) apply to the person; and~~
  - ~~(b) an involuntary treatment order should be made for the person.~~
- ~~(4) A request and recommendation have effect for 72 hours following the examination of the person by the registered medical practitioner who made the recommendation.~~

(5) While they have effect, a request and recommendation made in accordance with this section are sufficient authority for a person referred to in sub-section (6) to—

- (a) arrange for the assessment of the person to whom the recommendation relates by a mental health practitioner; or
- (b) take the person to whom the recommendation relates to an appropriate approved mental health service.

(6) The persons who may take action under sub-section (5) are—

- (a) the person making the request; or
- (b) a person authorised by the person making the request; or
- (c) a prescribed person.

#### ***9A. Authority to transport***

(1) Despite anything to the contrary in section 9, a person in respect of whom a request is made in accordance with section 9(1)(a) may be taken to an appropriate approved mental health service without a recommendation being made under section 9(1)(b) if—

- (a) a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and
- (b) a mental health practitioner considers that—
  - (i) the criteria in section 8(1) apply to the person; and
  - (ii) the person should be taken to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and
- (c) the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.

(2) A person who has made a request under section 9(1)(a) in respect of a person must not complete an authority to transport that person under sub-section (1)(c).

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

(1) This section applies if a person is to be taken to an approved mental health service under—

- (a) a request and recommendation; or
- (b) an authority to transport; or
- (c) section 12(2)(a) or 12(6); or
- (d) section 12AC(4)(b).

(2) For the purpose of taking the person to the approved mental health service, a prescribed person may with such assistance as is required and such force as may be reasonably necessary—

- (a) enter any premises in which the prescribed person has reasonable grounds for believing that the person may be found; and

~~(b) if necessary to enable the person to be so taken safely, use such restraint as may be reasonably necessary.~~

~~(3) If a prescribed registered medical practitioner considers that it is necessary to sedate the person so that the person can be taken safely to the approved mental health service, the prescribed registered medical practitioner may administer or direct an authorised person to administer sedation to the person.~~

~~(4) A person who uses restraint under sub-section (2) or administers sedation or directs an authorised person to administer sedation under sub-section (3) must specify the particulars required by the prescribed form and deal with the prescribed form in accordance with the regulations.~~

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

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

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

- (2) For the purpose of apprehending a person under sub-section (1) a member of the police force may with such assistance as is required—
  - (a) enter any premises; and
  - (b) use such force as may be reasonably necessary.

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

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

~~an examination of the person by a registered medical practitioner.~~

~~(a) an examination of the person by a registered medical practitioner; or~~

~~(b) an assessment of the person by a mental health practitioner.~~

(5) ~~The registered medical practitioner may examine the person for the purposes of this Act. The mental health practitioner may assess the person, having regard to the criteria in section 8(1) and –~~

~~(a) advise the member of the police force to–~~

~~(i) (arrange for an examination of the person by a registered medical practitioner; or~~

~~(ii) release the person from apprehension under this section;~~

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

- (6) If the mental health practitioner assesses the person and advises the member of the police force to arrange for an examination of the person by a registered medical practitioner the member of the police force must do so as soon as practicable.
- (7) If the mental health practitioner assesses the person and advises the member of the police force to release the person from apprehension under this section the member must do so unless the member arranges for a personal examination of the person by a registered medical practitioner.
- (8) If an arrangement is made under this section to have a person examined by a registered medical practitioner, a registered medical practitioner may examine the person for the purposes of section 9.
- (9) Nothing in this section limits-
  - (a) any other powers of a registered medical practitioner or mental health practitioner in relation to that person under this Act; or
  - (b) any other powers of a member of the police force in relation to that person.

*(Section 11 not reproduced in this workbook)*

~~**12. Admission and detention of involuntary patients**~~

- ~~(1) Where a request and recommendation has been made under section 9—
  - ~~(a) the person to whom the recommendation relates is to be admitted to the approved mental health service by a registered medical practitioner employed in or by the approved mental health service; and~~
  - ~~(aa) if that registered medical practitioner considers—
    - ~~(i) that the person requires any treatment immediately; and~~
    - ~~(ii) that the person is not capable of consenting to that treatment; and~~
    - ~~(iii) that the treatment required is of such a nature that it would not be in the best interests of the person to await the examination by the authorised psychiatrist required under paragraph (b)—~~~~
  - ~~the registered medical practitioner may on behalf of the person consent to the treatment being carried out until the authorised psychiatrist examines the person; and~~
  - ~~(ab) if the registered medical practitioner does not consider that—
    - ~~(i) the criteria specified in section 8(1) apply to the person; and~~
    - ~~(ii) the person should be admitted to the approved mental health service—~~~~
  - ~~he or she must notify the authorised psychiatrist as soon as practicable and await the examination by the authorised psychiatrist required under paragraph (b); and~~
  - ~~(b) the authorised psychiatrist must examine that person—
    - ~~(i) if paragraph (ab) applies, as soon as practicable after the person is admitted, but in any case within 24 hours after the person is admitted; or~~
    - ~~(ii) if paragraph (ab) does not apply, within 24 hours after the person is admitted.~~~~~~
- ~~(2) Where having regard to the criteria specified in section 8, the authorised psychiatrist upon examining the person under sub-section (1)—~~

- ~~(a) is not satisfied that the continued detention of the person as an involuntary patient is justified, the authorized psychiatrist must discharge the person from being an involuntary patient; or~~
  - ~~(b) is satisfied that the continued detention of the person as an involuntary patient is justified, the authorized psychiatrist must confirm the admission of the person as an involuntary patient.~~
  - ~~(3) A registered medical practitioner who has made a recommendation under section 9 must not examine that person under sub-section (1)(b).~~
  - ~~(4) Upon admission an involuntary patient is to be detained and given treatment for his or her mental illness.~~
  - ~~(4A) A person admitted to an approved mental health service as an involuntary patient under this section is not required to be taken to the approved mental health service for the purpose of admission.~~
  - ~~(5) If an involuntary patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental illness consent in writing may be given by the authorised psychiatrist.~~
  - ~~(6) The authorised psychiatrist must ensure that any guardian of a person admitted to the approved mental health service as an involuntary patient is notified of the admission and of the grounds for it.~~
- ~~Note: In considering whether a person has refused or is unable to consent to treatment, see section 3A.~~

## **12. Involuntary treatment orders—assessment in the community**

- ~~(1) This section applies if—~~
  - ~~(a) a request and recommendation have been made for a person; and~~
  - ~~(b) a mental health practitioner has assessed the person in accordance with the request and recommendation.~~
- ~~(2) The mental health practitioner must—~~
  - ~~(a) take the person, or arrange for the person to be taken, to an appropriate approved mental health service; or~~
  - ~~(b) make an involuntary treatment order for the person.~~
- ~~(3) The mental health practitioner must have regard to the criteria in section 8(1) in deciding what action to take under sub-section (2).~~
- ~~(4) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.~~
- ~~(5) If the mental health practitioner makes an involuntary treatment order for a person but does not consider that—~~
  - ~~(a) the criteria in section 8(1) apply to the person; or~~
  - ~~(b) an involuntary treatment order should be made for the person—~~

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

(6) At any time after an involuntary treatment order is made for a person under this section, but before the authorised psychiatrist examines the person under section 12AC, a mental health practitioner may take the person, or arrange for the person to be taken, to an appropriate approved mental health service if the mental health practitioner considers it necessary to do so.

(7) If a person is taken to an approved mental health service under sub-section (6), the involuntary treatment order is sufficient authority for the detention of the person in the approved mental health service until the authorised psychiatrist examines him or her under section 12AC.

***12AA. Involuntary treatment orders—persons taken to an approved mental health service***

(1) This section applies if—

(a) a request and recommendation have been made for a person; and

(b) the person has been taken to an approved mental health service.

(2) A registered medical practitioner employed by the approved mental health service to which the person has been taken must make an involuntary treatment order for the person.

(3) An involuntary treatment order under this section must be in the prescribed form and contain the prescribed particulars.

(4) An involuntary treatment order made for a person in accordance with this section is sufficient authority for the detention of the person in an approved mental health service.

(5) If the registered medical practitioner who makes an involuntary treatment order for a person under sub-section (2) does not consider that—

(a) the criteria in section 8(1) apply to the person; or

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

the practitioner must notify the authorised psychiatrist as soon as practicable.

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

(1) This section applies to a person who is subject to an involuntary treatment order at any time before he or she is examined by the authorised psychiatrist under section 12AC.

(2) If a registered medical practitioner employed by the approved mental health service considers that—

(a) the person requires any treatment immediately; and

(b) the person is unable to consent to that treatment; and

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

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

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

**12AC. Examination by authorised psychiatrist**

(1) If an involuntary treatment order is made for a person, the authorised psychiatrist must examine the person—

(a) if section 12(5) or 12AA(5) applies—as soon as practicable after the order is made, but in any case within 24 hours after the order is made; or

(b) otherwise—within 24 hours after the order is made.

(2) On examining the person under sub-section (1)—

(a) if the authorised psychiatrist considers that the criteria in section 8(1) do not apply to the person—the authorised psychiatrist must discharge the person from the order;

(b) if the authorised psychiatrist is satisfied that the criteria in section 8(1) apply to the person—the authorised psychiatrist must confirm the order.

(3) If the authorised psychiatrist confirms an involuntary treatment order under sub-section (2)(b), he or she may make a community treatment order under section 14 for the person.

(4) If the authorised psychiatrist confirms the involuntary treatment order under sub-section (2)(b) but does not make a community treatment order under sub-section (3)—

(a) the person is to be detained in the approved mental health service; and

(b) if the person is not currently in the approved mental health service, the authorised psychiatrist may take the person, or arrange for the person to be taken, to the approved mental health service.

(5) The authorised psychiatrist may confirm an involuntary treatment order without making a community treatment order only if he or she is satisfied that the treatment required for the person cannot be obtained through the making of a community treatment order.

(6) A registered medical practitioner who has made a recommendation under section 9 in respect of a person must not examine the person under this section.

**12AD. Treatment for involuntary patients**

(1) An involuntary patient is to be given treatment for his or her mental illness.

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

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

**12AE. Notification of guardian**

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

*(Sections 12A to 12D not reproduced in this workbook)*

*(Section 13 not reproduced in this workbook)*

**14. Community treatment orders**

~~(1) If a person satisfies the criteria specified in sub-section (1A) and the authorized psychiatrist considers that a community treatment order is appropriate, the authorized psychiatrist may make a community treatment order instead of confirming the admission of the person to an approved mental health service as an involuntary patient or continuing to detain the person in an approved mental health service.~~

~~(1A) For the purposes of sub-sections (1) and (6), the criteria are that—~~

~~(a) the person appears to be mentally ill; and~~

~~(b) the person's mental illness requires immediate treatment and that treatment can be obtained by making the person subject to a community treatment order; and~~

~~(c) because of the person's mental illness, the person should be made subject to a community treatment order for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and~~

~~(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and~~

~~(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person's freedom of decision and action.~~

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

~~\* \* \* \* \*~~

~~(2) A community treatment order must specify—~~

~~(a) the authorised psychiatrist or delegate of the authorised psychiatrist who is to monitor the treatment of the patient; and~~

~~(ab) the registered medical practitioner who is to supervise the treatment of the patient; and~~

~~(b) where the patient is to receive the treatment; and~~

~~(c) the intervals at which the registered medical practitioner must submit a written report concerning the treatment of the patient to the monitoring psychiatrist; and~~

~~(d) the duration of the community treatment order which must not exceed 12 months.~~

~~(2A) A community treatment order may specify where the patient must live, if this is necessary for the treatment of the patient's illness.~~

~~(3) A person who is subject to a community treatment order—~~

~~(a) is deemed to be an involuntary patient detained under section 12; and~~

~~\* \* \* \* \*~~

~~(c) the provisions of this Act, other than sections 37, 40, 41, 42 and 43 apply accordingly.~~

~~\* \* \* \* \*~~

~~(4) The authorised psychiatrist—~~

~~(a) may vary a community treatment order; or~~

~~(b) if satisfied on reasonable grounds that a person who is subject to a community treatment order—~~

~~(i) has failed to comply with the order; or~~

- ~~(ii) satisfies the criteria specified in section 8(1) but no longer satisfies the criteria specified in sub-section (1A) of this section —~~
- ~~may revoke the order; or~~
- ~~(c) if satisfied that a person who is subject to a community treatment order does not satisfy the criteria specified in section 8(1) or in sub-section (1A) of this section, must discharge the person as an involuntary patient.~~
- ~~(4A) If the authorised psychiatrist revokes a community treatment order to which a person is subject —~~
  - ~~(a) the person is deemed to be an involuntary patient who is absent from an approved mental health service without leave; and~~
  - ~~(b) the authorised psychiatrist may authorise any of the persons referred to in section 43(1) to apprehend the person for the purpose of returning the person to an approved mental health service.~~
- ~~(4B) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under sub-section (4A) as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.~~
- ~~(5) If a community treatment order is revoked the authorised psychiatrist must make reasonable efforts to inform the person —~~
  - ~~(a) that the order has been revoked; and~~
  - ~~(b) that the person must return to an approved mental health service as an in-patient.~~
- ~~(6) If, after examining a person who is the subject of a community treatment order, the authorised psychiatrist considers that —~~
  - ~~(a) the person still satisfies the criteria in sub-section (1A); and~~
  - ~~(b) a community treatment order is still appropriate —~~

~~the authorised psychiatrist may extend a community treatment order for a period which must not exceed 12 months.~~
- ~~(7) There is no limit to the number of times a community treatment order may be extended under sub-section (6).~~
- ~~(8) For the purposes of review under section 30(1)(a), the extending of a community treatment order is deemed to be the admitting of the person who is the subject of the order to an approved mental health service.~~

#### ***14. Community treatment orders***

- ~~(1) At any time, an authorised psychiatrist may make a community treatment order for a person who is subject to an involuntary treatment order if the authorised psychiatrist is satisfied that —~~
  - ~~(a) the criteria in section 8(1) apply to the person; and~~
  - ~~(b) the treatment required for the person can be obtained through the making of a community treatment order.~~
- ~~(2) A community treatment order is an order requiring the person to obtain treatment for their mental illness while not detained in an approved mental health service.~~

(3) A community treatment order—

- (a) must specify the duration of the order, which must not exceed 12 months; and
- (b) may specify where the person must live, if this is necessary for the treatment of the person's mental illness.

(4) If an authorised psychiatrist makes a community treatment order for a person, the authorised psychiatrist must—

- (a) inform the person that the order has been made; and
- (b) give the person a copy of the order; and
- (c) inform the person of the grounds on which the authorised psychiatrist decided to make the order.

(5) On the expiry (other than by revocation) of a community treatment order, or a person's discharge from a community treatment order, the person's involuntary treatment order is taken to expire and, consequently, the person ceases to be an involuntary patient.

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

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

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

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

(1) The supervising medical practitioner of a person subject to a community treatment order must assess the person at regular intervals.

(2) In assessing the person, the supervising medical practitioner must consider whether—

- (a) the criteria in section 8(1) still apply to the person; and
- (b) the treatment required for the person can still be obtained under the order.

(3) If the supervising medical practitioner does not consider that—

- (a) the criteria in section 8(1) still apply to the person; or
- (b) the treatment required for the person can still be obtained under the order—

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

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

(5) In this section—

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

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

***14B. Extension of community treatment orders***

(1) The authorised psychiatrist may extend a community treatment order for a period not exceeding 12 months if the authorised psychiatrist—

(a) examines the person subject to the order; and

(b) is satisfied that—

(i) the criteria in section 8(1) still apply to the person; and

(ii) the treatment required for the person can be obtained through the extension of the order.

(2) The extension takes effect from the time the authorised psychiatrist makes the extension.

(3) There is no limit to the number of times a community treatment order may be extended under sub-section (1).

(4) For the avoidance of doubt, a community treatment order cannot be extended after it has expired.

(5) If an authorised psychiatrist extends a person's community treatment order, the authorised psychiatrist must—

(a) inform the person that the order has been extended; and

(b) give the person a copy of the extension; and

(c) inform the person of the grounds on which the authorised psychiatrist decided to extend the order.

***14C. Variation of community treatment orders***

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

(2) If the authorised psychiatrist does so, he or she must—

(a) inform the person that the order has been varied; and

(b) give the person a copy of the order as varied; and

(c) inform the person of the grounds on which the authorised psychiatrist decided to vary the order.

***14D. Revocation of community treatment orders***

(1) The authorised psychiatrist may revoke a community treatment order if satisfied on reasonable grounds that—

(a) the criteria in section 8(1) still apply to the person subject to the order; and

(b) the treatment required for the person cannot be obtained under the order.

(2) The authorised psychiatrist may also revoke a community treatment order if—

(a) the authorised psychiatrist is satisfied on reasonable grounds that the person subject to the order has not complied with the order or the person's treatment plan; and

(b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and

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

(3) If the authorised psychiatrist revokes a community treatment order—

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

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

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

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

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

(2) A community treatment order to which sub-section (1) applies expires at the time it would otherwise have expired under this Act despite any period during which it has no effect.

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

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

(a) a prison; or

(b) a remand centre, youth residential centre or youth training centre (within the meaning of the **Children and Young Persons Act 1989**); or

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

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

***15. Discharge of involuntary patients***

(1) If a person to whom an assessment order under section 90 of the **Sentencing Act 1991** or a diagnosis, assessment and treatment order under section 91 of that Act is discharged in accordance with section 36(2) or 37(2) of this Act, the Board or the chief psychiatrist (as the case requires) must immediately notify the court.

If an order is made under section 36B(2) or 37(4) for a person to be discharged from his or her assessment order or diagnosis, assessment and treatment order, the Board or chief psychiatrist (as the case requires) must immediately notify the court.

- (2) The person is discharged on being returned to the court to be dealt with under section 92 of the **Sentencing Act 1991**.

**15A. Restricted community treatment orders**

- (1) A person may be made subject to a restricted community treatment order in accordance with the procedures specified in this section only if—
  - (a) the person appears to be mentally ill and to require treatment for the illness; and
  - (b) the treatment can be obtained by making the person the subject of a restricted community treatment order; and
  - (c) because of the person's mental illness, the person should be made subject to the restricted community treatment order for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.
- (2) If a person to whom a hospital order ~~under section 93(1)(d) of the Sentencing Act 1991~~ applies—
  - (a) satisfies the criteria specified in sub-section (1); and
  - (b) is in the opinion of the authorised psychiatrist suitable for treatment subject to a restricted community treatment order—

the authorised psychiatrist may apply to the chief psychiatrist for the making of a restricted community treatment order in respect of that person.

- (3) Upon receiving an application the chief psychiatrist may make a restricted community treatment order if he or she is satisfied that the person to whom the application relates is suitable for treatment subject to a restricted community treatment order.

~~(4) A restricted community treatment order must specify—~~

~~(a) the psychiatrist who is to supervise the treatment of the patient; and~~

~~(b) where the patient is to receive the treatment; and~~

~~(c) the intervals at which the patient must attend the psychiatrist for treatment; and~~

~~(d) the intervals at which the psychiatrist must submit a written report concerning the treatment of the patient to the chief psychiatrist; and~~

~~\* \* \* \* \*~~

~~(f) the duration of the restricted community treatment order; and~~

~~(g) any other conditions that the chief psychiatrist considers appropriate.~~

- ~~(5) A person who is subject to a restricted community treatment order is deemed to be an involuntary patient detained under section 93(1)(d) of the **Sentencing Act 1991**.~~

~~(4) A restricted community treatment order is an order requiring the person to obtain treatment for their mental illness while not detained in an approved mental health service.~~

~~(5) A restricted community treatment order must specify—~~

~~(a) the duration of the order, which must not exceed 12 months; and~~

~~(b) any conditions that the chief psychiatrist considers appropriate.~~

~~(5A) If the chief psychiatrist makes a restricted community treatment order for a person, the chief psychiatrist must—~~

~~(a) inform the person that the order has been made; and~~

~~(b) give the person a copy of the order; and~~

~~(c) inform the person of the grounds on which the chief psychiatrist decided to make the order.~~

(6) The chief psychiatrist must send a copy of a restricted community treatment order to the Board for review under section 30.

\* \* \* \* \*  
\* \* \* \* \*

(9) A restricted community treatment order does not take effect, except for the purposes of an appeal or review, unless and until it has been approved by the Board under section 36~~(2A)(e)D~~.

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

~~(1) The monitoring psychiatrist of a person subject to a restricted community treatment order must assess the person at regular intervals.~~

~~(2) In assessing the person, the monitoring psychiatrist must consider whether—~~

~~(a) the criteria in section 15A(1) still apply to the person; and~~

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

~~(3) If the monitoring psychiatrist does not consider that—~~

~~(a) the criteria in section 15A(1) still apply to the person; or~~

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

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

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

~~(5) In this section—~~

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

***15B. Discharge and variation of restricted community treatment orders***

~~(1) If the chief psychiatrist is satisfied that a person who is subject to a restricted community treatment order does not satisfy the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** or the criteria specified in section 15A(1) of this Act, the chief psychiatrist must discharge the person as an involuntary patient.~~

~~(2) A person who is subject to a restricted community treatment order may apply to the Board to—~~

~~(a) have the restricted community treatment order revoked; or~~

~~(b) be discharged under section 36.~~

\* \* \* \* \*

- ~~(4) Sections 29 to 35 apply to an application under sub-section (2) as if the application were an appeal under section 29.~~
- ~~(5) The chief psychiatrist may vary a restricted community treatment order.~~
- ~~(6) The chief psychiatrist may revoke a restricted community treatment order if he or she is satisfied on reasonable grounds that the person who is subject to a restricted community treatment order—
  - ~~(a) has failed to comply with the order; or~~
  - ~~(b) satisfies the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** but does not satisfy the criteria specified in section 15A(1) of this Act.~~~~
- ~~(7) If the chief psychiatrist revokes a restricted community treatment order to which a person is subject—
  - ~~(a) the person is deemed to be an involuntary patient who is absent from an approved mental health service without leave; and~~
  - ~~(b) the chief psychiatrist may authorise any of the persons referred to in section 43(1) to apprehend the person for the purpose of returning the person to an approved mental health service and for that purpose to exercise the powers conferred by section 43(1A).~~~~
- ~~(8) If a restricted community treatment order is revoked the chief psychiatrist must make reasonable efforts to inform the person—
  - ~~(a) that the order has been revoked; and~~
  - ~~(b) that the person must return to an approved mental health service as an in-patient.~~~~

~~**15C. Extension of restricted community treatment orders**~~

- ~~(1) If, after examining a person who is the subject of a restricted community treatment order, the chief psychiatrist considers that—
  - ~~(a) the person still satisfies the criteria in section 15A(1); and~~
  - ~~(b) a restricted community treatment order is still appropriate—~~the chief psychiatrist may extend a restricted community treatment order for a period which must not exceed 12 months.~~
- ~~(2) There is no limit to the number of times a restricted community treatment order may be extended.~~
- ~~(3) For the purposes of review under section 30(1)(a), the extending of a restricted community treatment order is deemed to be the admitting of the person who is the subject of the order to an approved mental health service.~~

**15B. Extension of restricted community treatment orders**

- (1) The chief psychiatrist may extend a restricted community treatment order for a period not exceeding 12 months if the chief psychiatrist—**
  - (a) examines the person subject to the order; and**
  - (b) is satisfied that—**
    - (i) the criteria in section 15A(1) still apply to the person; and**

(ii) the treatment required for the person can be obtained through the extension of the order.

(2) The extension takes effect from the time the chief psychiatrist makes the extension.

(3) There is no limit to the number of times a restricted community treatment order may be extended under sub-section (1).

(4) If the chief psychiatrist extends a person's restricted community treatment order, the chief psychiatrist must—

(a) inform the person that the order has been extended; and

(b) give the person a copy of the extension; and

(c) inform the person of the grounds on which the chief psychiatrist decided to extend the order.

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

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

(2) If the chief psychiatrist does so, the chief psychiatrist must—

(a) inform the person that the order has been varied; and

(b) give the person a copy of the order as varied; and

(c) inform the person of the grounds on which the chief psychiatrist decided to vary the order.

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

(1) The chief psychiatrist may revoke a restricted community treatment order if satisfied on reasonable grounds that—

(a) the criteria in section 93(1)(b) of the **Sentencing Act 1991** apply to the person subject to the order but the criteria in section 15A(1) of this Act do not; or

(b) the person subject to the order has failed to comply with the order or the person's treatment plan.

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

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

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

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

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

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

(2) A restricted community treatment order to which sub-section (1) applies expires at the time it would otherwise have expired under this Act despite any period during which it has no effect.

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

~~(a) a prison; or~~

~~(b) a remand centre, youth residential centre or youth training centre (within the meaning of the **Children and Young Persons Act 1989**); or~~

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

### Division 3—Persons Convicted of Criminal Offences or in a Prison

#### 16. *Transfer of mentally ill prisoners*

(1) The Secretary to the Department of Justice may by ~~a hospital order~~ an order under this section transfer a person who—

(a) is lawfully imprisoned or detained in a prison or other place of confinement; and

(b) appears to be mentally ill—

to an approved mental health service.

(1A) Sub-section (1) does not apply to a person who is detained in a prison under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** (whether on remand or under a supervision order made under that Act).

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

(a) the Secretary has received a certificate by a psychiatrist and is satisfied that—

(i) the person appears to be mentally ill and to require immediate treatment for that illness; and

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

(iii) because of the person's mental illness, the person should be admitted and detained for treatment for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(b) the Secretary has received a report from the authorized psychiatrist of the approved mental health service to which it is proposed to admit the person which recommends that the transfer be made.

~~(3) The Secretary to the Department of Justice may make either of the following hospital orders—~~

~~(a) a hospital order under which the person is admitted to and detained in an approved mental health service as an involuntary patient;~~

~~(b) a restricted hospital order under which the person is admitted to and detained in an approved mental health service as a security patient.~~

~~(3) The Secretary to the Department of Justice may make either of the following orders under this section—~~

~~(a) an order under which the person is admitted to and detained in an approved mental health service as an involuntary patient ("hospital transfer order");~~

(b) an order under which the person is admitted to and detained in an approved mental health service as a security patient ("restricted hospital transfer order").

- (4) In determining whether to make a hospital order or a restricted hospital order the Secretary to the Department of Justice must have regard to the public interest and all the circumstances of the case including the person's criminal record and psychiatric history.
- (5) Upon admission a security patient is to be detained and treated for his or her mental illness.
- (6) If a security patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental illness consent in writing may be given by the authorised psychiatrist.

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

- (7) In this section—
  - (a) a reference to the Secretary to the Department of Justice includes a reference to—
    - (i) the Secretary in relation to a person detained in a remand centre, youth residential centre or youth training centre within the meaning of the **Children and Young Persons Act 1989**; and
    - (ii) the Chief Commissioner of Police in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the **Corrections Act 1986** or being held in police custody on the order of a court; and
  - (b) a reference to a prison or other place of confinement includes a reference to—
    - (i) a remand centre, youth residential centre or youth training centre within the meaning of section 249 of the **Children and Young Persons Act 1989**; and
    - (ii) a police gaol within the meaning of the **Corrections Act 1986**.

*(Sections 17 to 19 not reproduced in this workbook)*

## Division 5—Patient's Rights

### 19A. Treatment plans

(1) The authorised psychiatrist must prepare, review on a regular basis and revise as required, a treatment plan for each patient.

(2) In preparing, reviewing and revising a treatment plan for a patient, the authorised psychiatrist must take into account—

(a) the wishes of the patient, as far as they can be ascertained; and

(b) unless the patient objects, the wishes of any guardian, family member or primary carer who is involved in providing ongoing care or support to the patient; and

(c) whether the treatment to be carried out is only to promote and maintain the patient's health or well-being; and

(d) any beneficial alternative treatments available; and

(e) the nature and degree of any significant risks associated with the treatment or any alternative treatment; and

(f) any prescribed matters.

(3) The treatment plan for a patient who is detained in an approved mental health service must contain an outline of the treatment the patient is to receive.

(4) The treatment plan for a patient who is subject to a community treatment order or restricted community treatment order must contain or specify—

(a) an outline of the treatment the patient is to receive; and

(b) the authorised psychiatrist or delegate of the authorised psychiatrist who is to monitor the patient's treatment ("**monitoring psychiatrist**"); and

(c) the registered medical practitioner who is to supervise the patient's treatment ("**supervising medical practitioner**"); and

(d) the patient's case manager; and

(e) the place at which the patient is to receive treatment; and

(f) the times at which the patient is required to attend to receive treatment; and

(g) the intervals at which—

(i) for a community treatment order—the supervising medical practitioner must submit a written report concerning the patient's treatment to the monitoring psychiatrist;

(ii) for a restricted community treatment order—the monitoring psychiatrist must submit a written report concerning the patient's treatment to the chief psychiatrist.

(5) A treatment plan may contain anything else the authorised psychiatrist thinks appropriate.

(6) The authorised psychiatrist must—

(a) give the patient a copy of the patient's treatment plan and any revisions to it; and

(b) discuss the treatment plan with the patient.

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

### **Division 1—Establishment, Constitution and Procedures of the Board**

*(Sections 20 to 21 not reproduced in this workbook)*

#### **22. Functions of the Board**

(1) The functions of the Board are as follows—

~~(a) to hear appeals against the detention of involuntary patients and security patients;~~

~~(b) to periodically review the continued detention of each involuntary patient and security patient;~~

(a) to hear appeals by or on behalf of involuntary patients and security patients;

(b) to review periodically the orders made for involuntary patients and security patients and their treatment plans;

(c) to hear appeals against the refusal of the chief psychiatrist to grant special leave to security patients;

(ca) to hear appeals against the transfer of involuntary patients and security patients;

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

\* \* \* \* \*

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

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

*(Sections 23 to 28 not reproduced in this workbook)*

## Division 2—Appeals and Reviews

### 29. Appeals

~~(1) An appeal may be made to the Board at any time against the detention of a person as an involuntary patient or a security patient by—~~

~~———— (a) the person admitted as an involuntary patient or security patient; or~~

~~———— (b) a community visitor or any other person who satisfies the Board of a genuine concern for the person admitted as an involuntary patient or security patient.~~

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

(a) by an involuntary patient—

(i) against his or her involuntary treatment order, community treatment order, hospital order, restricted community treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order; or

(ii) against his or her continued detention under section 12A(4) or 12C;

(b) by a security patient against his or her hospital security order or restricted hospital transfer order.

(1A) An appeal to the Board may also be made at any time on behalf of an involuntary patient or security patient by a community visitor or any other person who satisfies the Board of a genuine concern for the involuntary patient or security patient.

(2) An involuntary patient or security patient may initiate the appeal by writing to—

(a) the executive officer; or

(b) the chief psychiatrist; or

(c) an authorized psychiatrist; or

(d) a community visitor; or

(e) the Ombudsman; or

(f) the Health Services Commissioner.

(3) If the chief psychiatrist, an authorized psychiatrist, a community visitor, the Ombudsman or the Health Services Commissioner receives an application for an appeal he or she must immediately forward it to the executive officer.

(4) The Board must commence the hearing of an appeal without delay.

### ~~30. Reviews~~

- ~~(1) Subject to sub section (2), the Board must review the continued detention of a patient, other than a forensic patient—~~
- ~~(a) within 8 weeks after the patient is admitted or, in the case of a person who is subject to a restricted community treatment order, as soon as practicable after receiving a copy of the order under section 15A(6); and~~
- ~~(b) thereafter at intervals not exceeding 12 months.~~
- ~~(2) In the case of a patient whose detention has been continued under section 12C, the Board must review the continued detention of the patient within 14 days after the day on which the committee consented under section 12B to the continued detention.~~

~~**31. Appeal and review may be held at the same time**~~

~~The Board may conduct an appeal and a review in respect of a person at the same time.~~

**30. Reviews**

- ~~(1) The Board must conduct an initial review of—~~
- ~~(a) an involuntary treatment order, hospital order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject;~~
- ~~(b) a hospital security order or restricted hospital transfer order to which a security patient is subject—~~
- ~~within 8 weeks after the order is made.~~
- ~~(2) The Board must conduct an initial review of the continued detention of an involuntary patient under section 12C within 14 days after the day on which the committee consented under section 12B to the continued detention.~~
- ~~(3) The Board must conduct a periodic review of—~~
- ~~(a) an involuntary treatment order, hospital order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject;~~
- ~~(b) a hospital security order or restricted hospital transfer order to which a security patient is subject;~~
- ~~(c) the continued detention of an involuntary patient under section 12C—~~
- ~~at intervals not exceeding 12 months following the initial review.~~
- ~~(4) The Board must conduct a review of the extension of a community treatment order or restricted community treatment order within 8 weeks after the order is extended.~~
- ~~(5) The Board must conduct a review of a restricted community treatment order as soon as practicable after receiving a copy of the order under section 15A(6).~~

**(Section 31 not reproduced in this workbook)**

**32. Notice of appeal or review**

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

- (b) in the case of an appeal by a person other than the involuntary patient or security patient, the person making the appeal; and
- (c) the authorized psychiatrist; and
- (d) if the involuntary patient or security patient is a prisoner, the Secretary to the Department of Justice; and
- (e) any other person having regard to the wishes of the involuntary patient or security patient that the Board directs be given notice.

(1A) The authorised psychiatrist must give a copy of the notice to the patient's case manager as soon as practicable after receiving the notice.

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

*(Section 33 to 35 not reproduced in this workbook)*

### **35A. Review of treatment plans**

- (1) On each appeal and review under this Division, the Board must review the patient's treatment plan to determine whether—
  - (a) the authorised psychiatrist has complied with section 19A in making, reviewing or revising the plan (as the case may be); and
  - (b) the plan is capable of being implemented by the approved mental health service.
- (2) The Board may order the authorised psychiatrist to revise the treatment plan, if the Board is satisfied that—
  - (a) the authorised psychiatrist has not complied with section 19A in making, reviewing or revising the plan; or
  - (b) the plan is not capable of being implemented by the approved mental health service.

## **Division 3—Involuntary Patients**

### **36. Power of Board on appeal or review**

- ~~(1) Subject to sub section (4), if, having regard to the criteria specified in section 8, the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained or deemed to be detained under section 12 is necessary, the Board must order that the person be discharged as an involuntary patient.~~
- ~~(1A) If, having regard to the criteria specified in section 12A(2), the Board upon hearing an appeal or a review is not satisfied that the continued detention of a person whose detention has been continued under section 12A(4) or 12C is necessary, the Board must order that the person be discharged as an involuntary patient.~~
- ~~(2) Subject to sub section (2A), where having regard to the criteria specified in section 90(b), 91(b) or 93(1)(b) (as the case requires) of the **Sentencing Act 1991**, the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained or deemed to be detained under Part 5 of that Act is necessary, the Board must order that the person be discharged as an involuntary patient.~~
- ~~(2A) On hearing an appeal or review in relation to a person who is subject to a restricted community treatment order, the Board, having regard to the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** and section 15A(1) of this Act—~~
  - ~~(a) if satisfied that the person—~~
    - ~~(i) has failed to comply with the order; or~~
    - ~~(ii) satisfies the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** but does not satisfy the criteria specified in section 15A(1) of this Act—~~
      - ~~may revoke the order; or~~
  - ~~(b) if satisfied that the person does not satisfy the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** or the criteria specified in section 15A(1) of this Act, must discharge the person as an involuntary patient; or~~
  - ~~(c) in the case of the first review of the order under section 30(1)(a), if satisfied that the person does not satisfy the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** but satisfies the criteria specified in section 15A(1) of this Act, may approve the order.~~
- ~~(2B) If the Board revokes a restricted community treatment order—~~
  - ~~(a) the Board must make reasonable efforts to inform the person who was subject to the order—~~
    - ~~(i) that the order has been revoked; and~~
    - ~~(ii) that the person must return to an approved mental health service as an in patient; and~~
  - ~~(b) the person who was subject to the order is deemed to be an involuntary patient who is absent from an approved mental health service without leave; and~~
  - ~~(c) the Board may authorise any of the persons referred to in section 43(1) to apprehend the person for the purposes of returning the person to an approved mental health service.~~
- ~~(3) Where having regard to the criteria specified in section 16(2)(a) and 16(4), the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained as an involuntary patient under section 16 is necessary, the Board must order that the person be discharged as an involuntary patient and returned to a prison.~~

- ~~(4) On hearing an appeal or review in relation to a person who is subject to a community treatment order under section 14, the Board, having regard to the criteria specified in sections 8(1) and 14(1A) —~~
- ~~(a) may vary the community treatment order; or~~
- ~~(b) if satisfied on reasonable grounds that the person —~~
- ~~(i) has failed to comply with the order; or~~
- ~~(ii) satisfies the criteria specified in section 8(1) but no longer satisfies the criteria specified in section 14(1A) —~~
- ~~may revoke the order; or~~
- ~~(c) if satisfied that the person does not satisfy the criteria specified in section 8(1) or in section 14(1A), must discharge the person as an involuntary patient.~~
- ~~(5) If the Board revokes a community treatment order —~~
- ~~(a) the person who was subject to the order is deemed to be an involuntary patient who is absent without leave from an approved mental health service; and~~
- ~~(b) the authorised psychiatrist may authorise any of the persons referred to in section 43(1) to apprehend the person for the purpose of returning him or her to an approved mental health service.~~
- ~~(6) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under sub-section (2B) or (5) as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.~~

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

- ~~(1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under an involuntary treatment order.~~
- ~~(2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be discharged from the involuntary treatment order.~~
- ~~(3) If the Board is satisfied that the criteria in section 8(1) apply to the patient, the Board must confirm the involuntary treatment order.~~
- ~~(4) If the Board confirms the involuntary treatment order, the Board may order the authorised psychiatrist to make a community treatment order for the patient within a reasonable period specified by the Board, if the Board considers that the treatment required for the person can be obtained through the making of a community treatment order.~~
- ~~(5) The authorised psychiatrist may apply to the Board, at any time during the period specified under sub-section (4), for the Board to reconsider an order made under that sub-section.~~
- ~~(6) Sections 31 to 35 and this section apply to an application under sub-section (5) as if it were a review.~~

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

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

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

**36B. Power of Board on appeal or review of orders under the Sentencing Act 1991—patients who are detained**

- (1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under a hospital order, an assessment order or a diagnosis, assessment and treatment order.
- (2) If the Board considers that the continued detention of the patient as an involuntary patient is unnecessary, the Board must order that the patient be discharged from the order.
- (3) If the Board considers that the continued detention of the patient as an involuntary patient is necessary, the Board must confirm the order.
- (4) The Board must have regard to the criteria in section 90(b), 91(b) or 93(1)(b) of the **Sentencing Act 1991** (as the case requires) in making a decision on the appeal or review.

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

- (1) This section applies on an appeal or review for a patient who is subject to a community treatment order.
- (2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be discharged from the community treatment order.  
*Note: See section 14(5) for the effect of the discharge from a community treatment order on the patient's involuntary treatment order.*
- (3) If the Board is satisfied that the criteria in section 8(1) apply to the patient—the Board may—
  - (a) confirm or vary the community treatment order; or
  - (b) revoke the community treatment order if satisfied on reasonable grounds that the treatment required for the patient cannot be obtained under the order.
- (4) The Board may also revoke a community treatment order if—
  - (a) the Board is satisfied on reasonable grounds that the patient has not complied with the order or the patient's treatment plan; and
  - (b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and

(c) the Board is satisfied on reasonable grounds that there is a significant risk of deterioration in the patient's mental or physical condition because of the non-compliance.

(5) If the Board revokes a community treatment order—

(a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and

(b) the patient remains an involuntary patient under his or her involuntary treatment order and is taken to be absent without leave from an approved mental health service.

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

(6) If the Board varies a community treatment order, the Board must—

(a) inform the person that the order has been varied; and

(b) give the person a copy of the order as varied; and

(c) inform the person of the grounds on which the Board decided to vary the order.

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

(1) This section applies on an appeal or review for a patient who is subject to a restricted community treatment order.

(2) If the Board considers that neither the criteria in section 93(1)(b) of the **Sentencing Act 1991** nor the criteria in section 15A(1) of this Act apply to the patient, the Board must order that the patient be discharged from the restricted community treatment order.

Note: See section 37(6) for the effect of the discharge from a restricted community treatment order on the patient's hospital order.

(3) If the Board considers that the criteria in section 93(1)(b) of the **Sentencing Act 1991** do not apply to the patient but the criteria in section 15A(1) of this Act do apply, the Board may—

(a) in the case of a review under section 30(4)—approve the restricted community treatment order; or

(b) in any other case—confirm the restricted community treatment order.

(4) The Board may revoke a restricted community treatment order if satisfied that—

(a) the criteria in section 93(1)(b) of the **Sentencing Act 1991** apply to the person subject to the order but the criteria in section 15A(1) of this Act do not; or

(b) the person subject to the order has failed to comply with the order or the person's treatment plan.

(5) If the Board revokes a restricted community treatment order—

(a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and

(b) the patient remains an involuntary patient under his or her hospital order and is taken to be absent without leave from an approved mental health service.

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

- (6) On the discharge by the Board of a patient from a restricted community treatment order, the patient is taken to be discharged from his or her hospital order and, consequently, he or she ceases to be an involuntary patient.

*(Section 36E not reproduced in this workbook)*

~~**37. Discharge of involuntary patient**~~

- ~~(1) Where having regard to the criteria specified in section 8, the authorized psychiatrist is satisfied that the continued detention of a person detained under section 12 is not necessary, the authorized psychiatrist must discharge that person as an involuntary patient.~~
- ~~(2) Where having regard to the criteria specified in section 90(b), 91(b) or 93(1)(b) (as the case requires) of the **Sentencing Act 1991**, the chief psychiatrist is satisfied that the continued detention of a person detained under Part 5 of that Act is not necessary, the chief psychiatrist must order that the person be discharged as an involuntary patient.~~
- ~~(3) Where having regard to the criteria specified in section 16(2)(a) and 16(4), the chief psychiatrist is satisfied that the continued detention of a person detained as an involuntary patient under section 16 is not necessary, the chief psychiatrist must after advising the Secretary to the Department of Justice order that the person be discharged as an involuntary patient and returned to a prison.~~

**37. Discharge of involuntary patients**

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

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

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

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

- (4) If the chief psychiatrist, having regard to the criteria in section 90(b), 91(b) or 93(1)(b) of the **Sentencing Act 1991** (as the case requires), considers that the continued detention of a person in an approved mental health service under an assessment order, a diagnosis, assessment and treatment order or a hospital order is unnecessary, the chief psychiatrist must order that the person be discharged from the order.

- (5) If the chief psychiatrist considers that neither the criteria in section 93(1)(b) of the **Sentencing Act 1991** nor the criteria in section 15A(1) of this Act apply to a person who is subject to a restricted community treatment order, the chief psychiatrist must discharge the person from the restricted community treatment order.

(6) On the discharge of a person from a restricted community treatment order, the person is taken to be discharged from his or her hospital order and, consequently, he or she ceases to be an involuntary patient.

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

(Section 38 to 120 not reproduced in this workbook)

## PART 7—GENERAL

### Division 1—Miscellaneous

#### 120A. Confidentiality

(1) In this section—

**"person to whom this section applies"** **"relevant person"** means the following—

- (a) a relevant psychiatric service;
- (b) a person who is or has been a member of the board of a relevant psychiatric service;
- (c) a person who is or has been a proprietor of a relevant psychiatric service;
- (d) a person who is or has been engaged or employed in employed by or on behalf of a relevant psychiatric service;

**"public sector mental health service"** means—

(a) a relevant psychiatric service that is—

- (i) a public hospital, denominational hospital or privately-operated hospital (within the meaning of the **Health Services Act 1988**); and
- (ii) funded by the Secretary; or

(b) a relevant psychiatric service that is declared, or to the extent that it is declared, by an Order under sub-section (1A) to be a public sector mental health service;

**"relevant psychiatric service"** means a person or body to the extent that he, she or it provides or operates one or more of the following—

- (a) an approved mental health service;
- (b) a child and adolescent psychiatry service;
- (c) an agency providing community support services;
- \* \* \* \*
- (e) any premises licensed under section 75;
- (f) a hospital admitting or caring for people with a mental disorder;
- (g) any mental health service of a community health service centre;
- (h) a psychiatric out-patient clinic;

- (i) a community mental health service.

(1A) The Governor in Council may, by Order published in the Government Gazette, declare a relevant psychiatric service to be, either wholly or to the extent specified in the Order, a public sector mental health service.

- (2) A ~~person to whom this section applies~~ relevant person must not, except to the extent necessary—

- (a) to carry out functions under this or any other Act; or
- (b) to exercise powers under this or any other Act in relation to a relevant psychiatric service; or
- (c) to give any information he or she is expressly authorised or permitted to give under this or any other Act—

give to any other person, whether directly or indirectly, any information acquired by reason of being a person to whom this section applies, if a person who is or has been a patient ~~in~~of, or has received psychiatric services from, a relevant psychiatric service could be identified from that information.

Penalty: 50 penalty units.

- (2A) For the purposes of sub-section (2)(c), "any other Act" does not include the Health Privacy Principles in the **Health Records Act 2001** or Part 3 or Part 5 of that Act.

(2B) Sub-section (2) does not apply to a person (other than an independent contractor) who is a relevant person in relation to a relevant psychiatric service who gives information in accordance with HPP2 of the Health Privacy Principles in the **Health Records Act 2001** to another person (other than an independent contractor) who is a relevant person in relation to that relevant psychiatric service.

- (3) Sub-section (2) does not apply—

- (a) to the giving of information with the prior consent (which may be express or implied) of the person to whom it relates or, if that person has died, with the consent (which may be express or implied) of the senior available next of kin of that person; or
- (b) to the giving of information to a court in the course of criminal proceedings; or
- (c) to the giving of information concerning the condition of a person who is a patient ~~in~~of, or is receiving psychiatric services from, a relevant psychiatric service if the information—
  - (i) is communicated in general terms; or

\* \* \* \* \*

- (ca) to the giving of information relating to a person who is, or has been, receiving services from a relevant psychiatric service by a member of the medical staff, or a member of a prescribed class of staff, of that psychiatric service to a guardian, family member or primary carer of the person to whom the information relates if—
  - (i) the information is reasonably required for the on-going care of the person to whom it relates; and
  - (ii) the guardian, family member or primary carer will be involved in providing that care; or

- (d) to the giving of information to the Australian Red Cross Society for the purpose of tracing blood, or blood products derived from blood, infected with any disease or the donor or recipient of any such blood; or
- (e) to the giving of information—
  - (i) required in connection with the further treatment of a person with a mental disorder; or
  - (ii) ~~subject to the regulations (if any), by a person engaged or employed by or on behalf of an approved mental health service by means of an electronic records system established for the purpose of enabling the sharing of information in or between approved mental health services for the treatment of persons with a mental disorder at any time; or~~  
subject to the regulations (if any), by a person engaged or employed by or on behalf of a public sector mental health service by means of an electronic records system established and maintained by the Secretary for the purpose of enabling the sharing of information between public sector mental health services for the treatment of persons with a mental disorder at any time; or
- (ea) to the giving of information as described in HPP ~~2.2(f), 2.2(h)~~ 2.2(a), 2.2(f), 2.2(h), 2.2(k), 2.2(l) or 2.5 of the Health Privacy Principles in the **Health Records Act 2001**; or
- ~~(eb) to the giving of information relating to a notification, claim or potential claim to a person or body providing insurance or indemnity (including discretionary indemnity) for any liability of the relevant psychiatric service or a person who is a relevant person in relation to the relevant psychiatric service arising from the provision of services by, on behalf of or at the relevant psychiatric service; or~~
- (f) to the giving of information to the Australian Statistician; or
- (g) to the giving of information acquired by an agency concerning a person's psychiatric condition or treatment for the purposes of medical or social research if—
  - (i) the use to which the information will be put and the research methodology have been approved by an ethics committee of the relevant psychiatric service; and
  - (ii) the giving of information does not conflict with any prescribed requirements; and
  - (iii) the giving of information is in accordance with HPP 2.2(g) of the Health Privacy Principles in the **Health Records Act 2001**; or
- (ga) the giving of information to or by a person, or a person in a class of persons, designated under section 141(5) of the **Health Services Act 1988** in the course of carrying out support functions designated under that provision; or
- (h) to the giving of any information required in connection with any proceedings before the Board or the Tribunal; or
- (ha) to the giving of any information required in connection with proceedings before the Panel; or
  - (i) to the giving of information to a person to whom in the opinion of the Minister it is in the public interest that the information be given; or
  - (j) to the giving of information to the Secretary; or
  - (k) to the giving of information to the Minister; or

- (l) to the giving of information of a class specified by the Minister by a person who is a member of a class of persons specified by the Minister in circumstances specified by the Minister.
- (3A) The Minister may authorise the giving of information under sub-section (3)(l) only if he or she considers it necessary to do so in the public interest.
- (3B) A person must not use or collect, or attempt to use or collect, information about a person from an electronic records system referred to in sub-section (3)(e)(ii) if that second-mentioned person could be identified from that information unless—

(a) the use or collection is—

- (i) by a person engaged or employed by or on behalf of a public sector ~~n-approved~~ mental health service; and
- (ii) to enable the treatment of that second-mentioned person at or by that public sector mental health service ~~approved mental health service~~; and
- (iii) in accordance with the regulations (if any); or

(ab) the use is by a person referred to in paragraph (a)(i) of information collected in accordance with paragraph (a), being a use that is—

(i) necessary for the performance of the person's duties or functions with the public sector mental health service; and

(ii) in accordance with HPP2 of the Health Privacy Principles in the **Health Records Act 2001**; or

(ac) the use is by the Secretary of information collected in accordance with sub-section (3)(e)(ii), being a use that is—

(i) necessary for the performance of the duties, powers or functions of the Secretary under this Act; and

(ii) in accordance with HPP2 of the Health Privacy Principles in the **Health Records Act 2001**

(b) in the case of the Chief Psychiatrist, the Board or the Panel, the use or collection is—

- (i) necessary for the performance of the duties, powers or functions of the Chief Psychiatrist, the Board or the Panel, as the case requires; and
- (ii) in accordance with the regulations (if any).

Penalty: 50 penalty units.

- (4) A person who receives information by reason of the giving of information under sub-section (3)(g) must not give to any other person, whether directly or indirectly, any information so received unless the giving of the information—

- (a) has been approved by the ethics committee referred to in sub-section (3); and
- (b) does not conflict with any prescribed requirements; and
- (c) the giving of information is in accordance with HPP 2.2(g) of the Health Privacy Principles in the **Health Records Act 2001**.

Penalty: 50 penalty units.

*(Sections 121 to 148 not reproduced in this workbook)*

### Division 3—Repeals, Amendments and Transitional

#### **149. Transitional provisions—Mental Health (Amendment) Act 2003**

- (1) Clause 2(1)(a) of Schedule 3, as in force immediately before the commencement of section 37(3)(b) of the **Mental Health (Amendment) Act 2003**, continues to apply with respect to the person appointed as a member of the Psychosurgery Review Board under that clause until the expiry of that person's current term of membership.
- (2) A person who, immediately before the commencement day, was detained in an approved mental health service under section 12 (as in force at that time) is to be taken, on and after the commencement day, to have been placed on an involuntary treatment order at the time the person was admitted to the approved mental health service.
- (3) A person who, immediately before the commencement day, was subject to a hospital order made under section 16(3)(a) (as in force at that time) is taken, on and after the commencement day, to be subject to a hospital transfer order under section 16(3)(a) as substituted by section 16(2) of the amending Act.
- (4) A person who, immediately before the commencement day, was subject to a restricted hospital order made under section 16(3)(b) (as in force at that time) is taken, on and after the commencement day, to be subject to a restricted hospital transfer order under section 16(3)(b) as substituted by section 16(2) of the amending Act.
- (5) A reference in any instrument to a hospital order made under section 16(3)(a) or a restricted hospital order made under section 16(3)(b) is taken, in relation to anything occurring on or after the commencement day, to be a reference respectively to a hospital transfer order or restricted hospital transfer order.
- (6) Section 19A (treatment plans) applies in respect of a patient, whether he or she became a patient before, on or after the commencement day and, if he or she became a patient before the commencement day, the treatment plan must be prepared within 6 months after that day.
- (7) For the period of 6 months after the commencement day, section 35A (review of treatment plans) does not apply on an appeal or review for a person who became a patient before the commencement day unless a treatment plan has been prepared for the patient.
- (8) In this section—

**"amending Act"** means the **Mental Health (Amendment) Act 2003**;

**"commencement day"** means the day on which section