



New South Wales

Mental Health Legislation Amendment (Forensic Provisions) Act 2008 No 79

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Mental Health Legislation Amendment (Forensic Provisions) Act 2008 No 79

Act No 79, 2008

An Act to amend the *Mental Health (Criminal Procedure) Act 1990* and the *Mental Health Act 2007* with respect to the care, treatment, control and release of forensic patients and patients transferred from correctional centres and the functions of the Mental Health Review Tribunal; and for other purposes. [Assented to 5 November 2008]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*.

2 Commencement

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

3 Amendment of Mental Health (Criminal Procedure) Act 1990 No 10

The *Mental Health (Criminal Procedure) Act 1990* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedules 2 and 3 are amended as set out in those Schedules.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Mental Health (Criminal Procedure) Act 1990

(Section 3)

[1] Long title

Insert “and the care, treatment and control of such persons” after “mental conditions”.

[2] Section 1 Name of Act

Omit “*Mental Health (Criminal Procedure) Act 1990*”.

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[3] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

correctional patient—see section 41.

[4] Section 3 (1), definition of “forensic patient”

Omit the definition. Insert instead:

forensic patient—see section 42.

[5] Section 3 (1), definition of “prescribed authority”

Omit the definition.

[6] Section 16 Functions of Tribunal on referral after inquiry

Insert after section 16 (3):

(3A) The Tribunal may also make a recommendation to the Court as to the care or treatment of the person.

[7] Section 19 Court to hold special hearing after advice received from Director of Public Prosecutions

Omit “42 (4) or 44 (2)” from section 19 (1). Insert instead “45 (3) or 47 (5)”.

[8] Section 23 Procedure after completion of special hearing

Insert after section 23 (6):

(7) If the Court indicates that it would not have imposed a sentence of imprisonment in respect of a forensic patient, it must notify the Tribunal that a limiting term is not to be nominated in respect of the person.

[9] Section 30 Procedure after completion of further inquiry

Insert after section 30 (2):

- (3) The Court must notify the Tribunal if it determines that a forensic patient detained in a mental health facility is fit to be tried for an offence.

[10] Section 33 Mentally ill persons

Omit “by a police officer” from section 33 (1) and (1D) wherever occurring.

[11] Section 33 (1A)

Omit “health care agency”. Insert instead “declared mental health facility”.

[12] Section 33 (5A)

Omit the subsection. Insert instead:

- (5A) An order under this section may provide that a defendant:
- (a) in the case of a defendant who is a juvenile, be taken to or from a place by a juvenile justice officer employed in the Department of Juvenile Justice, or
 - (b) in the case of any defendant, be taken to or from a place by a person authorised to take persons to or from a mental health facility under this Act who is a person of a kind prescribed for the purposes of this section.

[13] Section 35 Transfer from correctional centre or detention centre

Omit “section 51” wherever occurring in section 35 (2).

Insert instead “section 55”.

[14] Part 5

Omit the Part. Insert instead:

Part 5 Forensic patients and correctional patients

Division 1 Preliminary

40 Objects

The objects of this Part are as follows:

- (a) to protect the safety of members of the public,

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- (b) to provide for the care, treatment and control of persons subject to criminal proceedings who are suffering from a mental illness or mental condition,
 - (c) to facilitate the care, treatment and control of any of those persons in correctional centres through community treatment orders,
 - (d) to facilitate the provision of hospital care or care in the community through community treatment orders for any of those persons who require involuntary treatment,
 - (e) to give an opportunity for those persons to have access to appropriate care.

Note. Section 68 of the *Mental Health Act 2007* sets out general principles with respect to the treatment of all people with a mental illness or mental disorder.

41 Definitions

- (1) In this Part:

correctional centre includes a detention centre.

correctional patient means a person (other than a forensic patient) who has been transferred from a correctional centre to a mental health facility while serving a sentence of imprisonment, or while on remand, and who has not been classified by the Tribunal as an involuntary patient.

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

Forensic Division of the Tribunal means the Division established under section 73.

victim means a primary victim within the meaning of the *Victims Support and Rehabilitation Act 1996* and includes a member of the immediate family of a victim within the meaning of section 9 of that Act.

victim of a patient means a victim who is a victim of an act of violence (within the meaning of the *Victims Support and Rehabilitation Act 1996*) committed by a patient.

- (2) Words and expressions used in this Part have the same meaning as they have in the *Mental Health Act 2007*.
- (3) For the purposes of the application of this Act to a person detained in, or transferred to or from, a detention centre:

- (a) a reference to the Commissioner of Corrective Services is taken to be a reference to the Director-General of the Department of Juvenile Justice, and
- (b) a reference to a sentence of imprisonment is taken to include a reference to a term of detention under a detention order within the meaning of the *Children (Detention Centres) Act 1987*.

42 Forensic patients

For the purposes of this Act, the following persons are *forensic patients*:

- (a) a person who is detained in a mental health facility, correctional centre or other place, or released from custody subject to conditions, pursuant to an order under:
 - (i) section 14, 17 (3), 24, 25, 27 or 39, or
 - (ii) section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act),
- (b) a person who is a member of a class of persons prescribed by the regulations for the purposes of this section.

Division 2 Forensic patients

Subdivision 1 Review of forensic patients by Tribunal

43 Criteria for release and matters to be considered by Tribunal

The Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, that:

- (a) the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
- (b) other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.

Note. See section 74 for matters that the Tribunal must consider in deciding what orders to make under this Part. Section 75 sets out conditions that may be imposed on release.

44 Persons found not guilty by reason of mental illness—initial review

- (1) The Tribunal must review a person's case as soon as practicable after the person is found not guilty of an offence by reason of

mental illness, after a special hearing, a trial or on an appeal, and ordered to be detained in a mental health facility or other place or to be released from custody subject to conditions.

Note. Relevant orders may be made under this Act (including sections 25 and 39) and under section 7 (4) of the *Criminal Appeal Act 1912* (including that subsection as applied by section 5AA (5) of that Act).

- (2) The Tribunal must, after reviewing a person's case, make an order:
 - (a) as to the person's care, detention or treatment, or
 - (b) as to the person's release (either unconditionally or subject to conditions).
- (3) This section does not apply if a person ceases to be a forensic patient.

45 Person found unfit to be tried—initial reviews

- (1) The Tribunal must review a person's case as soon as practicable after:
 - (a) an order is made under section 17 (3) in relation to the person, or
 - (b) an order is made under section 27 in relation to the person.
- (2) On a review, the Tribunal must determine whether, in its opinion, the person has become fit to be tried for an offence.
- (3) The Tribunal must notify the court that made the finding of unfitness and the Director of Public Prosecutions if, on a review, it is of the opinion that the person:
 - (a) has become fit to be tried for an offence, or
 - (b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.
- (4) This section does not apply if a person ceases to be a forensic patient.

46 Further reviews by Tribunal of forensic patients

- (1) The Tribunal must review the case of each forensic patient every 6 months but may review the case of any forensic patient at any time.
- (2) The Tribunal must review the case of a forensic patient if requested to do so by the Minister for Health, the Attorney General, the Minister for Justice, the Minister for Juvenile

Justice, the Director-General or the medical superintendent of the mental health facility in which the patient is detained.

- (3) The Tribunal must review the case of each forensic patient who is subject to a community treatment order, and who is detained in a correctional centre, every 3 months.
- (4) The period within which a particular review under this section must be held may, on the motion of the Tribunal or on the application of the patient or the primary carer of the patient, be extended by the Tribunal to a maximum of 12 months.
- (5) The Tribunal may grant an application to extend the review period if it is satisfied that:
 - (a) there are reasonable grounds to grant the application, or
 - (b) an earlier review is not required because:
 - (i) there has been no change since the last review in the patient's condition, and
 - (ii) there is no apparent need for any change in existing orders relating to the patient, and
 - (iii) an earlier review may be detrimental to the condition of the patient.

47 Orders and recommendations on further Tribunal reviews

- (1) The Tribunal may, after reviewing the case of a forensic patient under section 46, make an order as to:
 - (a) the patient's continued detention, care or treatment in a mental health facility, correctional centre or other place, or
 - (b) the patient's release (either unconditionally or subject to conditions).
- (2) The Tribunal must not make an order as to the release of a forensic patient if the patient is a person who has been remanded in custody pending the person's return to court but may make a recommendation to the court as to the person's release.
- (3) An order for release under this section may be made despite any other provision of this Act or any order of a court under this Act.
- (4) On reviewing under section 46 the case of a forensic patient who is subject to a finding that the person is unfit to be tried for an offence, the Tribunal must make a recommendation as to the fitness of the patient to be tried for an offence.

- (5) The Tribunal must notify the court that made the finding of unfitness and the Director of Public Prosecutions if, on a review, the Tribunal is of the opinion that the person:
 - (a) has become fit to be tried for an offence, or
 - (b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.

48 Transfer of patients

On a review under this Part, the Tribunal may make an order for the transfer of a forensic patient to a mental health facility, correctional centre or other place.

Subdivision 2 Leave of absence

49 Tribunal may grant leave

- (1) The Tribunal may make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place for such period and subject to such terms and conditions, if any, as the Tribunal thinks fit.
- (2) An order may be made on the application of the patient or on the motion of the Tribunal.
- (3) The Tribunal must not make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (4) This section does not prevent leave of absence being granted to a forensic patient detained in a correctional centre under any other Act or law.
- (5) The section has effect despite the *Crimes (Administration of Sentences) Act 1999*.

50 Other leave of absence

- (1) The Director-General may allow a forensic patient to be absent from a mental health facility for the period, and subject to the conditions (if any) that the Director-General thinks fit, in circumstances constituting an emergency or in other special circumstances as the Director-General thinks fit.

- (2) The Director-General must not allow a forensic patient to be absent from a mental health facility (otherwise than in a medical emergency) under this section unless the Director-General is satisfied, on the evidence available to the Director-General, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (3) The Director-General must not allow a forensic patient to be absent from a mental health facility if the Tribunal has previously, in the same or similar circumstances, refused to make an order allowing the patient to be absent from a mental health facility.

Subdivision 3 Termination of status as forensic patient

51 Termination of classification as forensic patient on unconditional release

- (1) A forensic patient ceases to be a forensic patient if any of the following events occurs:
 - (a) the person is released unconditionally in accordance with an order by the Tribunal under this Part or under section 29 or by order of a court,
 - (b) if the person has been released in accordance with such an order subject to conditions—the time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with expires.
- (2) This section applies in addition to any other provision of this Subdivision.

52 Additional circumstances for termination of classification as forensic patient

- (1) **Verdict of not guilty or no limiting term after special hearing**

A person who has been found to be unfit to be tried for an offence ceases to be a forensic patient if following a special hearing:

 - (a) the person is found not guilty of the offence concerned, or
 - (b) the person is found on the limited evidence available to have committed the offence but a limiting term is not imposed on the person.
- (2) **Detention after special hearing**

A person who has been detained in a mental health facility, correctional centre or other place following a special hearing

ceases to be a forensic patient if any of the following events occurs:

- (a) the limiting term (where that term is less than life) imposed in respect of the person expires,
- (b) the person is classified as an involuntary patient.

(3) **Person found unfit to be tried by court**

A person who has been found by a court to be unfit to be tried for an offence ceases to be a forensic patient if the Tribunal notifies the court and the Director of Public Prosecutions that it is of the opinion that the person has become fit to be tried for an offence (whether or not a special hearing has been conducted in respect of the offence) and a finding is made, at a further inquiry by the court as to the person's unfitness, that the person is fit to be tried for an offence.

Note. A person subject to a finding that the person is unfit to be tried for an offence, and who is released from detention under section 20 or 29, ceases to be a forensic patient by operation of section 51 (1).

(4) **Dismissal of charges or no further proceedings**

A person ceases to be a forensic patient if:

- (a) the relevant charges against the person are dismissed, or
- (b) the Director of Public Prosecutions notifies the court that the person will not be further proceeded against in respect of the relevant charges.

(5) **Other circumstances**

The regulations may make provision with respect to other circumstances in which the Tribunal may make an order terminating a person's status as a forensic patient.

53 Classification as involuntary patient

- (1) The Tribunal may, on a review of the case of a forensic patient detained in a mental health facility, correctional centre or other place following a special hearing, classify the patient as an involuntary patient if the patient would, by virtue of the operation of this Act or any other law, cease to be a forensic patient within 6 months after the date of the review.
- (2) The Tribunal may order that a patient classified as an involuntary patient under this section be transferred from a correctional centre to a mental health facility.

Note. A person classified as an involuntary patient ceases to be a forensic patient, see section 52 (2).

54 Release from mental health facility on ceasing to be a forensic patient

A person who ceases to be a forensic patient (other than a person classified as an involuntary patient under section 53) must be discharged from the mental health facility in which the person is detained.

Division 3 Transfers from correctional centres and correctional patients

55 Transfer from correctional centre by Director-General

- (1) The Director-General may, by order in writing, direct that a person imprisoned in a correctional centre be transferred to a mental health facility.
- (2) The Director-General may make a transfer order on the basis of 2 certificates about the person's condition issued by 2 medical practitioners, one of whom is a psychiatrist. The certificates are to be in the form set out in Schedule 2.
- (3) A transfer order may be made without the person's consent if it appears to the Director-General, on the basis of the certificates, that the person is a mentally ill person.
- (4) A transfer order may be made with the person's consent if it appears to the Director-General, on the basis of the certificates, that the person is suffering from a mental condition for which treatment is available in a mental health facility.
- (5) The Director-General may revoke a transfer order.
- (6) The Director-General must notify the Tribunal in writing if the Director-General makes or revokes a transfer order.

56 Transfer back to correctional centre

- (1) This section applies to a person transferred from a correctional centre to a mental health facility under any provision of this Division.
- (2) The person must be transferred back to the correctional centre within 7 days unless the Director-General is of the opinion that:
 - (a) the person is a mentally ill person or is suffering from a mental condition for which treatment is available in a mental health facility, and
 - (b) other care of an appropriate kind would not be reasonably available to the person in the correctional centre.

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- (3) The person may be transferred back to the correctional centre at any time if the Director-General is of the opinion that:
 - (a) the person has ceased to be a mentally ill person or to be suffering from a mental condition for which treatment is available in a mental health facility, or
 - (b) other care of an appropriate kind would be reasonably available to the person in a correctional centre.
 - (4) Nothing in this section affects the powers of the Tribunal in respect of a person transferred to a mental health facility from a correctional centre.

57 Requests for transfer to correctional centre

- (1) A correctional patient who is detained in a mental health facility may, at any time, request the Tribunal to make an order that the patient be transferred to a correctional centre.
- (2) The Tribunal, after considering any such request, may make the order requested by the patient or may refuse to make that order.
- (3) The Tribunal must make the order if it is satisfied that the person is not a mentally ill person.

58 Review by Tribunal of persons awaiting transfer to mental health facility

- (1) The Tribunal must conduct a limited review of the case of a person who is subject to an order for transfer to a mental health facility under this Division but who is not transferred within the period prescribed by the regulations.
- (2) The Tribunal must carry out such a review each month until the person is transferred to a mental health facility or the Tribunal or the Director-General revokes the order.
- (3) On a limited review, the Tribunal may make an order as to the person's detention, care or treatment in a mental health facility or other place.
- (4) For the purposes of a limited review, a report as to the person's condition and the reason for the delay in transfer is to be provided to the Tribunal by the Director-General and the Commissioner of Corrective Services.

Note. In the case of a juvenile, the report is to be provided by the Director-General of the Department of Juvenile Justice (see section 41 (3)).

59 Review of persons transferred from correctional centres

- (1) The Tribunal must review the case of a person transferred under this Division to a mental health facility from a correctional centre as soon as practicable after the person is so transferred and may make an order as to the person's continued detention, care or treatment in a mental health facility or correctional centre.
- (2) On a review, the Tribunal is to determine whether the person is a mentally ill person who should continue to be detained in a mental health facility.
- (3) If a person is transferred under this Division from a correctional centre to a mental health facility, the Tribunal may, at any time, make an order that the person be transferred to a correctional centre.

60 Effect of detention in mental health facility on sentence and parole

- (1) Any period of detention of a person in a mental health facility or other place, following a transfer under this Part from a correctional centre, is to be treated as if it were a period of imprisonment in a correctional centre for the purposes of the person's sentence and parole.
- (2) For the purposes of Part 6 of the *Crimes (Administration of Sentences) Act 1999*, a forensic patient who is currently serving a sentence of imprisonment, or a correctional patient, who is detained in a mental health facility, is taken to be serving a full-time sentence of detention in a correctional centre.
Note. Part 6 of that Act contains provisions permitting the granting of parole to certain persons serving full-time sentences of detention.
- (3) The detention of a person in a mental health facility or other place under this Part does not prevent the granting of parole to the person under the *Crimes (Administration of Sentences) Act 1999*.

Division 4 Correctional patients

Subdivision 1 Review of correctional patients

61 Reviews by Tribunal of correctional patients

- (1) The Tribunal must review the case of each correctional patient every 6 months but may review the case of any correctional patient at any time.
- (2) The Tribunal must review the case of a correctional patient if requested to do so by the Minister for Health, the Attorney General, the Minister for Justice, the Minister for Juvenile

Justice, the Director-General or the medical superintendent of the mental health facility in which the patient is detained.

- (3) The Tribunal must review the case of each person (not being a forensic patient) who is subject to a community treatment order and who is detained in a correctional centre every 3 months.
- (4) The period within which a particular review under this section must be held may, on the motion of the Tribunal or on the application of the patient or the primary carer of the patient, be extended by the Tribunal to a maximum of 12 months.
- (5) The Tribunal may grant an application to extend the review period if it is satisfied that:
 - (a) there are reasonable grounds to grant the application, or
 - (b) an earlier review is not required because:
 - (i) there has been no change since the last review in the patient's condition, and
 - (ii) there is no apparent need for any change in existing orders relating to the patient, and
 - (iii) an earlier review may be detrimental to the condition of the patient.
- (6) The Tribunal may, after reviewing the case of a correctional patient, make an order as to the patient's continued detention, care or treatment in, or transfer to, a mental health facility, correctional centre or other place.

Note. See Division 3 for provisions relating to limited reviews of persons awaiting transfer from a correctional centre or on transfer taking place.

Subdivision 2 Leave of absence

62 Commissioner of Corrective Services to grant leave

- (1) The Commissioner of Corrective Services may allow a correctional patient to be absent from a mental health facility for such period and subject to such terms and conditions (if any) as the Commissioner of Corrective Services thinks fit.
- (2) The Tribunal may, on a review of a correctional patient, make recommendations to the Commissioner of Corrective Services as to the granting of leave to the patient.
- (3) In determining whether to grant leave to a correctional patient to be absent from a mental health facility, the Commissioner of Corrective Services must have regard to any recommendations as to the granting of leave made by the Tribunal on a review of the patient.

63 Other leave of absence

- (1) The Director-General may allow a correctional patient to be absent from a mental health facility for the period, and subject to the conditions (if any) that the Director-General thinks fit, in circumstances constituting an emergency or in other special circumstances as the Director-General thinks fit.
- (2) The Director-General must not allow a correctional patient to be absent from a mental health facility (other than in a medical emergency) under this section unless the Director-General is satisfied, on the evidence available to the Director-General, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (3) The Director-General must not allow a correctional patient to be absent from a mental health facility if the Commissioner of Corrective Services has previously, in the same or similar circumstances, refused to allow the patient to be absent from a mental health facility.
- (4) This section has effect despite the *Crimes (Administration of Sentences) Act 1999*.

Note. See section 76D for security conditions relating to correctional patients who are absent on leave from mental health facilities.

Subdivision 3 Termination of status as correctional patient

64 Termination of classification as correctional patient

A correctional patient ceases to be a correctional patient if any of the following events occurs:

- (a) the person is transferred to a correctional centre or other place from the mental health facility,
- (b) the person's sentence of imprisonment expires,
- (c) the person is ordered to be released on parole,
- (d) the person is otherwise released on the order of a court,
- (e) the relevant charges against the person are dismissed,
- (f) the Director of Public Prosecutions notifies the court or the Tribunal that the person will not be further proceeded against in respect of the relevant charges.

65 Classification as involuntary patient

- (1) The Tribunal may, on a review of the case of a correctional patient under this Act, classify the patient as an involuntary

patient if the patient would, by virtue of the operation of this Act or any other law, cease to be a correctional patient within 6 months after the date of the review.

- (2) On classification as an involuntary patient under this section, the person ceases to be a correctional patient.

66 Release from mental health facility on ceasing to be correctional patient

A person who ceases to be a correctional patient (other than a person classified as an involuntary patient under section 65) must be discharged from the mental health facility in which the person is detained.

Division 5 Community treatment orders relating to forensic patients and correctional patients

67 Community treatment orders

- (1) On a review under this Part or at any other time, the Tribunal may make a community treatment order in relation to:
- (a) a forensic patient ordered to be released conditionally or to be transferred to a correctional centre or other place, or not detained under this Act, or
 - (b) a correctional patient ordered to be transferred to a correctional centre, or
 - (c) a person who is subject to an order for transfer to a mental health facility from a correctional centre but who has not been transferred, or
 - (d) an inmate in a correctional centre.
- (2) Part 3 of Chapter 3 of the *Mental Health Act 2007* applies to the making of a community treatment order referred to in this section, subject to any modifications prescribed by the regulations under that Act or under this Act.
- (3) Without limiting subsection (2), the regulations may modify that Part for the purpose of consistency with the operation of the *Crimes (Administration of Sentences) Act 1999* and regulations under that Act with respect to correctional patients, inmates of correctional centres and persons subject to parole.
- (4) A community treatment order made in respect of a person detained in a correctional centre or other place continues in force if the person is released from the centre or place, subject to the terms of the order or any variation or revocation of the order.

Division 6 Enforcement

68 Breach of orders for release

- (1) The President of the Tribunal may make an order for the apprehension of a person if it appears to the President that:
 - (a) the person has breached a condition of an order for the person's conditional release under this Part, or
 - (b) the person has committed a breach of an order releasing the person from custody under section 39, or
 - (c) the person has breached a condition of leave of absence granted under this Part, or
 - (d) the person has been granted conditional release or leave of absence under this Part and has suffered a deterioration of mental condition and is at risk of causing serious harm to himself or herself or to any member of the public because of his or her mental condition.
- (2) The Tribunal must review the case of a person apprehended under this section and may:
 - (a) confirm the person's release or leave, either conditionally or subject to conditions, or
 - (b) order the person's apprehension and detention, care or treatment in a mental health facility, correctional centre or other place, and in the manner, specified in the order.

Note. The Tribunal may also make a community treatment order under Division 5.
- (3) A police officer to whose notice an apprehension order is brought must:
 - (a) apprehend and take or assist in taking the person to the mental health facility, correctional centre or other place specified in the order, or
 - (b) cause or make arrangements for some other police officer to do so.
- (4) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person, without a warrant and may exercise any of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility.

69 Apprehended person may seek reconsideration by Tribunal

- (1) A person who is apprehended under section 68 may request the Tribunal to investigate the evidence on which the order for the

person's apprehension was made and may adduce other evidence for the consideration of the Tribunal.

- (2) On a reconsideration under this section, the Tribunal may make such orders as it thinks fit concerning the detention or release of the person.

70 Retaking of escapees

- (1) A forensic patient or correctional patient who escapes from a mental health facility or other place may be apprehended at any time by any of the following persons:
- (a) the medical superintendent of the mental health facility or any other suitably qualified person employed in the mental health facility who is authorised to do so by the medical superintendent,
 - (b) a police officer,
 - (c) a person authorised by the Director-General or the medical superintendent,
 - (d) a person assisting a person referred to in paragraph (a), (b) or (c).
- (2) On being apprehended, the patient is to be conveyed to and detained in the mental health facility or other place from which the patient escaped.
- (3) This section does not affect any power of any other person to apprehend a person under the *Crimes (Administration of Sentences) Act 1999*.

71 Aiding or permitting escape

- (1) A person must not release or attempt to release a person who is being conveyed to or detained in a mental health facility or other place under this Act.
- (2) A medical superintendent or any other person employed in a mental health facility must not:
- (a) through wilful neglect or connivance, permit any person detained in the facility under this Act to escape from the facility, or
 - (b) abet or connive at the escape of any such person from a mental health facility.

Maximum penalty:

- (a) on conviction on indictment—imprisonment for 3 years, or

- (b) on summary conviction—imprisonment for 1 year or 10 penalty units, or both.

72 Issue of warrants for apprehension of persons outside State

A Magistrate or an authorised officer within the meaning of the *Criminal Procedure Act 1986* may issue a warrant for the apprehension of a person if a credible person, on oath before the Magistrate or officer, shows reasonable cause to suspect that the person is a forensic patient or a correctional patient:

- (a) who has escaped from a mental health facility and is outside the State, or
- (b) is the subject of an order under section 68.

Division 7 Tribunal functions

73 Forensic Division to exercise functions

- (1) The functions of the Tribunal under this Act are to be exercised by the Forensic Division of the Tribunal.
- (2) The Forensic Division of the Tribunal is to consist of the following members:
 - (a) the President or a Deputy President,
 - (b) a member who is a psychiatrist, a registered psychologist or other suitable expert in relation to a mental condition,
 - (c) a member who has other suitable qualifications or experience.

Note. Under section 150 (1) of the *Mental Health Act 2007*, the Tribunal is to be constituted by members nominated by the President. See Chapter 6 of the *Mental Health Act 2007* for other provisions applying generally to the Tribunal.

- (3) The Tribunal must not order the release of a forensic patient under this Act unless it is constituted by at least one member, including the President or a Deputy President, who is the holder or former holder of a judicial office.
- (4) The regulations may provide that for specified functions of the Tribunal under this Act or the regulations the Forensic Division is to be constituted by the President or a Deputy President.
- (5) The regulations may make provision for or with respect to the constitution of the Tribunal, and procedure, for a limited review under this Part.

Note. Regulations may also be made under section 160 of the *Mental Health Act 2007* with respect to procedure of the Tribunal for the purposes of this Act.

74 Matters for consideration

Without limiting any other matters the Tribunal may consider, the Tribunal must have regard to the following matters when determining what order to make about a person under this Part:

- (a) whether the person is suffering from a mental illness or other mental condition,
- (b) whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,
- (c) the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,
- (d) in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations, who is not currently involved in treating the person, as to the condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release,
- (e) in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.

75 Conditions that may be imposed by Tribunal on release or leave of absence

- (1) The Tribunal may impose conditions relating to the following matters on orders for release or granting leave of absence made by it in relation to a forensic patient under this Part:
 - (a) the appointment of a case manager, psychiatrist or other health care professional to assist in the care and treatment of the patient,
 - (b) the care, treatment and review of the patient by persons referred to in paragraph (a), including home visits to the patient,
 - (c) medication,
 - (d) accommodation and living conditions,
 - (e) enrolment and participation in educational, training, rehabilitation, recreational, therapeutic or other programs,
 - (f) the use or non-use of alcohol and other drugs,
 - (g) drug testing and other medical tests,

- (h) agreements as to conduct,
 - (i) association or non association with victims or members of victims' families,
 - (j) prohibitions or restrictions on frequenting or visiting places,
 - (k) overseas or interstate travel.
- (2) This section does not limit the matters in relation to which a condition may be imposed.

76 Tribunal may amend or impose conditions on release or leave orders on application of victims

- (1) This section applies to an order of the Tribunal for the release of, or granting leave of absence to, a forensic patient.
- (2) A victim of the patient may apply to the Tribunal for an order:
 - (a) varying a non association condition of an order to which this section applies or imposing a non association condition on an order to which this section applies, or
 - (b) varying a place restriction condition of an order to which this section applies or imposing a place restriction condition on an order to which this section applies.
- (3) The Tribunal may, on an application being made, vary the order to which this section applies or impose any condition on the order or make any other order it may make under this Part.
- (4) In this section:
 - non association condition* means a condition of a kind referred to in section 75 (1) (i).
 - place restriction condition* means a condition of a kind referred to in section 75 (1) (j).

76A Other matters relating to Tribunal functions

- (1) For the purposes of a review, the Tribunal may communicate with any persons, take any action and make any recommendations it thinks fit.
- (2) The Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal, in relation to the possible release or grant of leave of absence to a forensic patient.
- (3) A review of the case of a forensic patient or a correctional patient under this Act may be conducted at the same time as any other review of the patient under this Act.

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- (4) An order by the Tribunal under this Act must be in writing.
 - (5) An order by the Tribunal under this Act has effect according to its tenor.
 - (6) The Tribunal must inform the Minister for Police, the Minister for Health and the Attorney General of any order it makes for the release of a person and of the date of the person's release.

Division 8 General

76B Treatment, care and detention of patients

- (1) To avoid doubt, the principles set out in section 68 (Principles for care and treatment) of the *Mental Health Act 2007* apply, subject to this Act or any other Act or law, to the administration of this Part with respect to forensic patients and correctional patients.
- (2) Section 70 (Assistance of interpreters) of the *Mental Health Act 2007* applies to a medical examination of a person for the purposes this Part.
Note. Under section 84 of the *Mental Health Act 2007*, treatment may be given to a forensic patient or a correctional patient who is detained in a mental health facility.
- (3) Section 73 (Information about medication) of the *Mental Health Act 2007* applies to a forensic patient or a correctional patient detained in a mental health facility.
- (4) Sections 71 and 72 of the *Mental Health Act 2007* apply to a forensic patient or a correctional patient for the purposes of this Act.
- (5) Section 195 of the *Mental Health Act 2007* applies to the provisions of section 40 of this Act and section 68 of that Act (as applied by subsection (1)).

76C Functions of Commissioner of Corrective Services and Director-General of Department of Juvenile Justice

Nothing in this Act or any order made under this Act prevents the Commissioner of Corrective Services or the Director-General of the Department of Juvenile Justice from exercising (or limits the exercise of) a function of the Commissioner or Director-General in relation to a forensic patient or correctional patient who is detained in a correctional centre or detention centre if the function is exercised for the purpose of maintaining the security, good order or safety, in any way, of the correctional centre or detention centre or its inmates.

76D Security conditions for patients

- (1) A forensic patient who is detained in a mental health facility or other place (other than a correctional centre) or absent in accordance with this Part is to be subject to any security conditions that the Director-General considers necessary.
- (2) A forensic patient who is detained in a correctional centre or in any part of a correctional centre that is a mental health facility, or a correctional patient who is detained in a mental health facility or other place or absent in accordance with this Part, is to be subject to security conditions in accordance with relevant legislation and with a protocol agreed between the Director-General and the Commissioner of Corrective Services or the Director-General of the Department of Juvenile Justice (as the case requires).
- (3) To avoid doubt, for the purposes of subsection (2):
 - (a) any part of a correctional centre that is a mental health facility is taken to be a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and
 - (b) a forensic patient or correctional patient who is detained in that facility is taken to be an inmate within the meaning of that Act and that Act and the regulations made under that Act, apply to any such patient, subject to any modifications and to the extent specified by the regulations.

76E Transfer and transport of patients

- (1) The Director-General may, by order in writing, order the transfer of a forensic patient or correctional patient detained in a mental health facility to another mental health facility. The order is sufficient authority for the transfer.
- (2) A person may be transferred to and detained in a mental health facility, correctional centre or other place in accordance with an order under this Part.
- (3) A forensic patient or correctional patient may be transported to or from a mental health facility, correctional centre or other place if it is necessary or convenient to do so for the administration of this Act or the *Mental Health Act 2007*. Any such transport is to be subject to any security conditions that the Director-General considers necessary.
- (4) A forensic patient or correctional patient may be taken to or from a mental health facility by a person referred to in section 81 (1) of the *Mental Health Act 2007*, a person employed in the

Department of Corrective Services or the Department of Juvenile Justice or any other person prescribed by the regulations.

- (5) Section 81 of that Act, and any regulations made under that section, apply to or in respect of the transport of a forensic patient or correctional patient to or from a mental health facility, correctional centre or other place under this Act in the same way as they apply to or in respect of the transport of a person under that Act.

76F Appeals against decisions of Director-General

- (1) A forensic patient or a correctional patient may appeal to the Tribunal against a failure or refusal by the Director-General to grant the patient leave of absence under this Part.
- (2) An appeal may be made orally or in writing and is to be made in accordance with the regulations. An oral appeal is to be recorded in accordance with the regulations.
- (3) The Director-General must provide the Tribunal with a report about the patient, including the Director-General's reasons for refusing or failing to grant leave of absence.
- (4) The Tribunal, for the purpose of determining an appeal, has and may exercise the functions of the Director-General with respect to the granting of leave and may make an order accordingly.
- (5) In addition, the Tribunal may determine that no further right of appeal may be exercised under this section before the date on which the person is next reviewed by the Tribunal under this Act, if it thinks it appropriate to do so.

76G Planning for release and leave

- (1) The authorised medical officer of a mental health facility in which a forensic patient is detained must, if the person is to be released or granted leave under this Part, take all reasonably practicable steps to ensure that the person and any primary carer of the person are consulted in relation to planning the person's release and leave and any subsequent treatment or other action considered in relation to the person.
- (2) In planning the release of any such person and any subsequent treatment or other action considered in relation to any such person, the authorised medical officer must take all reasonably practicable steps to consult with agencies involved in providing relevant services to the person, any primary carer of the person and any dependent children or other dependants of the person.

- (3) The authorised medical officer must take all reasonably practicable steps to provide a person who is released or given leave of absence from the mental health facility with appropriate information as to follow-up care.

76H Person who ceases to be forensic patient or correctional patient may become voluntary patient

Nothing in this Part prevents the application of Chapter 3 of the *Mental Health Act 2007* to a person who ceases to be a forensic patient or a correctional patient or any such person from remaining in a mental health facility as a voluntary patient.

76I Grants of leave do not affect sentences or limiting terms

The grant of leave of absence to a forensic patient or a correctional patient under this Part does not affect the operation of any limiting term or sentence of imprisonment imposed in respect of the patient concerned.

76J Exchange of information

- (1) The Department of Health, the Department of Corrective Services and the Department of Juvenile Justice may enter into arrangements (an *information sharing protocol*) with each other for the purposes of sharing or exchanging information held by them.
- (2) The information to which an information sharing protocol may relate is limited to the following:
- (a) information concerning forensic patients and correctional patients,
 - (b) any other information that may be prescribed by the regulations.
- (3) Under an information sharing protocol, each Department is authorised:
- (a) to request and receive information held by any other party to the arrangement, and
 - (b) to disclose information to any other party,
- and without the consent of any patient concerned, but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant Departments concerned.
- (4) This section does not limit the operation of any Act under which the Department concerned is authorised or required to disclose information to another person or body.

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- (5) This section has effect despite the *Crimes (Administration of Sentences) Act 1999* or the *Children (Detention Centres) Act 1987*.

76K Duties of certain agencies

- (1) The Director-General of the Department of Health, the Commissioner of Corrective Services, the Director-General of the Department of Juvenile Justice and any other government Department or agency responsible for the detention, care or treatment of a forensic patient or correctional patient, must use their best endeavours to comply with a request made to them under this Act by the Tribunal if the request is consistent with the discharge of their responsibilities and does not unduly prejudice the discharge of their functions.
- (2) A court or the Director of Public Prosecutions must notify the Tribunal if relevant charges against a forensic patient or correctional patient are dismissed or the person is not to be further proceeded against in respect of the relevant charges.

[15] Sections 77A–77C

Insert after section 77:

77A Appeals against Tribunal decisions

- (1) A forensic patient or correctional patient who is a party to a proceeding before the Tribunal under this Act may appeal to the Supreme Court from any determination of the Tribunal in that proceeding, by leave of the Supreme Court:
- (a) on a question of law, or
 - (b) on any other question,
- other than a determination referred to in subsection (4).
- (2) The Minister for Health may appeal to the Supreme Court from any determination of the Tribunal in a proceeding before the Tribunal under this Act, as of right:
- (a) on a question of law, or
 - (b) on any other question,
- other than a determination referred to in subsection (5).
- (3) A victim of a forensic patient who is a party to proceedings under section 76 may appeal to the Supreme Court from any determination of the Tribunal under that section in that proceeding, by leave of the Supreme Court:
- (a) on a question of law, or

- (b) on any other question.
- (4) A person may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of the person, by leave of the Court of Appeal:
 - (a) on a question of law, or
 - (b) on any other question.
- (5) The Minister for Health may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of a person, as of right:
 - (a) on a question of law, or
 - (b) on any other question.
- (6) The Attorney General may appeal to the Court of Appeal from a determination of the Tribunal under this Act as to the release of a person, as of right, on a question of law.
- (7) An appeal under this section must be made not later than 28 days:
 - (a) after the determination of proceedings by the Tribunal, or
 - (b) in the case of an appeal by the Minister for Health or the Attorney General, of notification to the Minister or Attorney General by the Tribunal of the determination of the proceedings,unless the Court extends the period within which the appeal may be made.
- (8) An appeal under this section is to be made subject to and in accordance with the rules of the Court.
- (9) After deciding the question the subject of an appeal under this section, the Court may, unless it affirms the determination of the Tribunal on the question:
 - (a) make such order in relation to the proceedings in which the question arose as, in its opinion, should have been made by the Tribunal, or
 - (b) remit its decision on the question to the Tribunal and order a rehearing of the proceedings by the Tribunal.
- (10) If such a rehearing is held, the Tribunal is not to proceed in a manner, or make an order or a decision, that is inconsistent with the decision of the Court remitted to the Tribunal.

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- (11) If a party has appealed under this section to the Court against a determination of the Tribunal on a question of law, either the Tribunal or the Court may suspend, until the appeal is determined, the operation of any order or determination made in respect of the proceedings.
 - (12) If the Tribunal suspends the operation of an order or a determination, the Tribunal or the Court may terminate the suspension or, where the Court has suspended the operation of an order or a determination, the Court may terminate the suspension.
 - (13) If a rehearing is held, fresh evidence, or evidence in addition to or in substitution for the evidence on which the original determination was made, may be given on the rehearing.
 - (14) A reference in this section to a matter of law includes a reference to a matter relating to the jurisdiction of the Tribunal.
 - (15) The Tribunal or any member of the Tribunal is not liable for any costs relating to a determination of the Tribunal, or the failure or refusal of the Tribunal to make a determination, in respect of which an appeal is made under this Act, or of the appeal.

77B Proceedings for offences

- (1) Proceedings for an offence against this Act are to be dealt with summarily before a Local Court.
- (2) Proceedings for an offence under section 71 may be dealt with on indictment.

77C Orders for transfer of forensic patients

If an order is made by a court, the Tribunal or the Director-General specifying that a forensic patient is to be detained in or transferred to a specified correctional centre or detention centre, the Commissioner of Corrective Services or the Director-General of the Department of Juvenile Justice may cause that patient to be detained in any correctional centre or detention centre.

[16] Schedule 1 Savings and transitional provisions

Insert before clause 1A:

Part 1 Preliminary

[17] Schedule 1, clause 1A

Insert at the end of clause 1A (1):

Mental Health Legislation Amendment (Forensic Provisions) Act 2008

[18] Schedule 1, Part 2, heading

Insert after clause 1A:

Part 2 Miscellaneous amending Acts

[19] Schedule 1, Part 3

Insert after clause 3:

**Part 3 Mental Health Legislation Amendment
(Forensic Provisions) Act 2008**

4 Definitions

In this Part:

amending Act means the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*.

operative day means the day on which Part 5 of the Act was substituted by the amending Act.

5 Existing patients and persons detained in mental health facilities

- (1) A person who was detained in a mental health facility immediately before the operative day is taken to be a correctional patient if the person would have been a correctional patient if detained after that day.
- (2) However, any such person who was released on conditions that were in effect immediately before that day is subject to review by the Tribunal as if the person were a forensic patient and the Tribunal may exercise functions in relation to that person as if the person were a forensic patient.
- (3) A grant of leave of absence from a mental health facility granted to a forensic patient and in force immediately before the operative day is taken to have been granted by the Tribunal under this Act and may be revoked and varied accordingly.

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- (4) Except as provided by this Part or the regulations, the provisions of Part 5, as substituted by the amending Act, apply to or in respect of persons who were forensic patients immediately before the operative day.

6 Existing recommendations as to release, care and treatment

- (1) If the Tribunal has made a recommendation for the release of a forensic patient and the prescribed authority has not determined, immediately before the operative day, whether or not to make an order for the release of the patient, the provisions of Part 5, as in force immediately before that day, continue to apply in respect of the release of the person and that recommendation.
- (2) If the Tribunal has made a recommendation in respect of a forensic patient (other than a recommendation for release) in respect of which the prescribed authority had not determined, immediately before the operative day, whether or not to make an order, the recommendation is taken to be an order of the Tribunal and has effect accordingly.
- (3) This clause does not prevent the Tribunal from making an order as to the release of a person referred to in this clause, or any other order in relation to such a person, on a review under this Act. If an order for release is made by the Tribunal, subclause (1) ceases to have effect in relation to the person.

7 References

A reference to a forensic patient in any Act, other law or any other instrument, as in force before the operative day, includes a reference to a correctional patient.

[20] Schedule 2 Medical certificate as to examination of inmate

Omit “Section 51 (2)”. Insert instead “Section 55 (2)”.

Schedule 2 Amendment of Mental Health Act 2007

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

correctional patient has the same meaning as it has in the *Mental Health (Forensic Provisions) Act 1990*.

[2] Section 4 (1), definition of “forensic patient”

Omit the definition. Insert instead:

forensic patient has the same meaning as it has in the *Mental Health (Forensic Provisions) Act 1990*.

[3] Section 12 General restrictions on detention of persons

Insert “, that is consistent with safe and effective care,” after “kind” in section 12 (1) (b).

[4] Section 24 Detention on order of Magistrate or bail officer

Omit “*Mental Health (Criminal Procedure) Act 1990*”.

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[5] Section 31 Limited detention of mentally disordered persons

Insert “, that is consistent with safe and effective care,” after “kind” in section 31 (4).

[6] Section 32 Detention on order of Magistrate or bail officer

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 32 (1) (b) and (5) wherever occurring.

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[7] Section 35 Purpose and findings of mental health inquiries

Insert “, that is consistent with safe and effective care,” after “kind” in section 35 (5) (c).

[8] Section 38 Purpose and findings of reviews of involuntary patients

Insert “, that is consistent with safe and effective care,” after “kind” in section 38 (4).

[9] Section 46 Application of Division

Omit “but does not apply to a forensic patient”.

Insert instead “under this Act”.

[10] Section 52 Notice of applications

Insert after section 52 (3):

- (4) This section does not apply to an application for a further community treatment order in respect of an affected person who is the subject of a current community treatment order.

[11] Section 53 Determination of applications for community treatment orders

Insert “, that is consistent with safe and effective care,” after “kind” in section 53 (3) (a).

[12] Section 53 (3A)

Insert after section 53 (3):

- (3A) If the affected person has within the last 12 months been the subject of a community treatment order, the Magistrate or Tribunal is not required to make a determination under subsection (3) (c) but must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness if the order is not granted.

[13] Section 61 Review of affected person at mental health facility after breach order

Insert “, that is consistent with safe and effective care,” after “kind” in section 61 (4).

[14] Section 61A

Insert after section 61:

61A Medical examination of detained affected persons

- (1) An authorised medical officer must medically examine each affected person detained in a mental health facility to determine whether the person’s continued detention in the facility is necessary.
- (2) The medical examinations are to be carried out at intervals of not more than 3 months.

- [15] Section 62 Discharge and detention of affected persons**
Insert “, that is consistent with safe and effective care,” after “kind” in section 62 (1) (a).
- [16] Section 63 Review by Tribunal of detained affected persons**
Insert “, and at least every 3 months while the person is detained” after “detained” where secondly occurring in section 63 (1).
- [17] Section 64 Purpose and findings of reviews**
Insert “, that is consistent with safe and effective care,” after “kind” wherever occurring in section 64 (3) and (4).
- [18] Section 64 (3)**
Insert “or should be detained in the facility as an involuntary patient” after “community treatment order”.
- [19] Section 65 Variation or revocation of orders by Tribunal**
Insert “or at any time on its own motion” after “section” in section 65 (1).
- [20] Section 69 Offence to ill-treat patients**
Insert “under this or any other Act” after “facility” where secondly occurring.
- [21] Section 77 Notification to involuntary patients of appeal rights**
Insert after section 77 (1):
(1A) An authorised medical officer of a mental health facility must give, or cause to be given, to a person detained in the facility on the order of the Tribunal after a breach of a community treatment order a statement of the rights of appeal conferred on the person under this Act or the *Mental Health (Forensic Provisions) Act 1990*.
- [22] Section 82 Definitions**
Insert “, correctional patient” after “forensic patient” in the definition of *involuntary patient*.
- [23] Section 84 Treatment may be given to patients**
Insert “and the *Mental Health (Forensic Provisions) Act 1990*” after “this Act” where firstly occurring.
- [24] Section 84**
Insert “or that Act” after “this Act” where secondly occurring.

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- [25] **Section 89, note**
Insert “, correctional patient” after “forensic patient”.
- [26] **Section 98 Definitions**
Insert in alphabetical order:
involuntary patient includes a forensic patient and a correctional patient.
- [27] **Sections 99, 100 and 101**
Insert “or correctional patient” after “forensic patient” wherever occurring.
- [28] **Section 107 Delegation**
Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Act” in section 107 (1).
- [29] **Section 141 Membership of Tribunal**
Omit “including” from section 141 (2) where firstly occurring.
Insert instead “other than”.
- [30] **Section 150 Composition of Tribunal**
Omit “in relation to forensic patients” from section 150 (2).
Insert instead “under the *Mental Health (Forensic Provisions) Act 1990*”.
- [31] **Section 150 (4)**
Omit the subsection.
- [32] **Section 151 Procedure at meetings of Tribunal to be informal**
Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 151 (1).
Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.
- [33] **Section 151 (2)**
Insert “, correctional patient” after “forensic patient”.
- [34] **Section 153 Determination whether a person is a mentally ill person or mentally disordered person**
Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 153 (1).
Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[35] Section 154 Rights of appearance and representation

Insert “or correctional patient” after “forensic patient” wherever occurring.

[36] Section 155 Adjournments

Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Act” in section 155 (2).

[37] Section 160 Tribunal procedure generally

Insert after section 160 (2) (g):

- (h) making written reasons for decisions or determinations of the Tribunal available,
- (i) the establishment and use of a victims’ register,
- (j) notification of victims of Tribunal decisions in proceedings relating to forensic patients or correctional patients,
- (k) notification of victims of termination of status of persons as forensic patients.

[38] Section 160 (3)

Insert after section 160 (2):

- (3) The President may issue practice directions, not inconsistent with this Act or the *Mental Health (Forensic Provisions) Act 1990* or any regulations under this Act or that Act, for or with respect to the practice and procedure of the Tribunal.

[39] Section 162 Publication of names

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 162 (1) (c).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[40] Section 162 (1)

Omit the penalty. Insert instead:

Maximum penalty:

- (a) in the case of an individual—50 penalty units or imprisonment for 12 months, or both, or
- (b) in the case of a corporation—100 penalty units.

[41] Section 162A

Insert after section 162:

162A Tribunal may request information or services from other agencies

- (1) The Tribunal may request the Department of Health, an area health service, the Commissioner of Corrective Services, the Director-General of the Department of Juvenile Justice or any other person or body prescribed by the regulations to provide the Tribunal with information as to whether or not action has been taken, and what actions have been taken, in relation to orders made by the Tribunal under this Act or the *Mental Health (Forensic Provisions) Act 1990*.
- (2) A person or body must comply with any reasonable request made by the Tribunal of the person or body under this section.

[42] Section 165 Panel of assessors

Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Chapter” in section 165 (1).

[43] Section 166 Jurisdiction of Court to order discharge or transfer of detained person

Insert “, that is consistent with safe and effective care,” after “kind” from section 166 (1) (b) and (2) (b) wherever occurring.

[44] Section 166

Insert “or correctional patient” after “forensic patient” wherever occurring.

[45] Section 170 Definitions

Insert in alphabetical order:

civil patient means a person who is involuntarily detained, or who may be detained, under a corresponding law that corresponds to Chapter 3.

mental health laws of this State include this Act, the *Mental Health (Forensic Provisions) Act 1990* and any regulations made under this Act or that Act.

[46] Section 170, definition of “corresponding law”

Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Act”.

[47] Sections 172 (1), 174 (2) (a), 177 (2) (a), 182 (1), 184 (1), 189, 190 and 191

Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Act” wherever occurring.

- [48] Section 174 Admission of persons to mental health facilities in other States**
Insert “or under the *Mental Health (Forensic Provisions) Act 1990*” after “Chapter 3” in section 174 (1).
- [49] Section 176 Transfer of patients from this State**
Insert “or forensic patient” after “involuntary patient” from section 176 (1) and (2) wherever occurring.
- [50] Section 178 Application of Acts to persons brought to mental health facility from outside of this State**
Insert “who is a civil patient” after “person” where firstly occurring.
- [51] Section 178 (2)**
Insert at the end of section 178:
(2) This Act and the *Mental Health (Forensic Provisions) Act 1990* apply to a person (other than a civil patient) who is taken to and detained in a mental health facility under this Division in the same way as they apply to a person detained in a mental health facility as a forensic patient.
- [52] Section 180 Status of transferred persons**
Insert “who is a civil patient who is” after “person” where firstly occurring.
- [53] Section 180 (2)**
Insert at the end of section 180:
(2) A person (other than a civil patient) who is transferred to a mental health facility under this Division is taken to be a forensic patient and the provisions of this Act and the *Mental Health (Forensic Provisions) Act 1990* apply as if the person first became a forensic patient on the date of the person’s transfer to a mental health facility in this State.
- [54] Section 181 Community treatment orders relating to interstate persons**
Insert “or under the *Mental Health (Forensic Provisions) Act 1990*” after “Part 3 of Chapter 3”.
- [55] Section 184 Recognition of interstate community treatment orders**
Insert “or the *Mental Health (Forensic Provisions) Act 1990*” after “this Act” where firstly occurring in section 184 (2).

[56] Section 184 (2)

Omit “this Act applies”.

Insert instead “this Act and the *Mental Health (Forensic Provisions) Act 1990* apply”.

[57] Section 189 Disclosure of information

Insert after section 189 (1) (d):

- (d1) for a purpose referred to in health privacy principle 10 (1) (f) (research) under the *Health Records and Information Privacy Act 2002*, or

[58] Section 193 Amendment of certain documents

Insert “(whether under this or any other Act)” after “mental health facility” in section 193 (1).

[59] Section 196 Regulations

Omit “section 47 of the *Mental Health (Criminal Procedure) Act 1990*” from section 196 (2) (m).

Insert instead “section 67 of the *Mental Health (Forensic Provisions) Act 1990*”.

[60] Schedule 5 Provisions relating to members of Tribunal

Omit clause 1. Insert instead:

1 Qualifications of President or Deputy President

A person is eligible to be appointed as the President or Deputy President if the person is:

- (a) a person who holds or has held office as a judge of the Supreme Court or the District Court, or as a judge of an equivalent court of another State or a Territory, or
- (b) a person who holds or has held office as a judge of the Federal Court or the High Court, or
- (c) a person who is qualified to be appointed as a judge referred to in this clause.

[61] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Mental Health Legislation Amendment (Forensic Provisions) Act 2008

[62] **Schedule 6, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of
Mental Health Legislation Amendment
(Forensic Provisions) Act 2008**

19 Definition

In this Part:

amending Act means the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*.

20 Community treatment orders

The amendments made by the amending Act to this Act and the *Mental Health (Forensic Provisions) Act 1990* apply to community treatment orders in force immediately before the commencement of this clause.

Schedule 3 Amendment of other Acts

(Section 4)

3.1 Child Protection (Offenders Registration) Act 2000 No 42

Section 5 Notices to be given when registrable person commences supervised sentence for registrable offence

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 5 (3) (d).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.2 Civil Procedure Act 2005 No 28

Section 3 Definitions

Omit paragraph (b) from the definition of *person under legal incapacity* in section 3 (1).

Insert instead:

- (b) an involuntary patient, a forensic patient or a correctional patient within the meaning of the *Mental Health Act 2007*, and

3.3 Costs in Criminal Cases Act 1967 No 13

Section 2 Certificate may be granted

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 2 (3).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.4 Crimes (Administration of Sentences) Act 1999 No 93

Section 193 Information concerning offenders and correctional centres

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 193 (1) (d).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.5 Crimes (Appeal and Review) Act 2001 No 120

Section 74 Definitions

Omit “*Mental Health (Criminal Procedure) Act 1990*” from paragraph (a) of the definition of *conviction* in section 74 (1).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.6 Crimes (Sentencing Procedure) Act 1999 No 92

[1] Section 54 Exclusions from Division

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 54 (c).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[2] Section 54D Exclusions from Division

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 54D (1) (b).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.7 Criminal Appeal Act 1912 No 16

[1] Section 2 Definitions

Omit “*Mental Health (Criminal Procedure) Act 1990*” wherever occurring in the definitions of *Conviction* and *Sentence* in section 2 (1).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

[2] Section 6A Powers of court in relation to certain convictions and sentences concerning mentally ill persons

Omit “*Mental Health (Criminal Procedure) Act 1990*” wherever occurring.

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.8 Drug and Alcohol Treatment Act 2007 No 7

Section 4 Application of Act

Omit “*Mental Health (Criminal Procedure) Act 1990*” from section 4 (4) (b).

Insert instead “*Mental Health (Forensic Provisions) Act 1990*”.

3.9 Interpretation Act 1987 No 15

Section 21 Meanings of commonly used words and expressions

Insert “or a correctional patient” after “forensic patient” in the definition of *mentally incapacitated person* in section 21 (1).

3.10 Protected Estates Act 1983 No 179

Section 18 Consideration of capability of forensic patients to manage affairs

Omit “Division 2 of Part 5 or section 54 of the *Mental Health (Criminal Procedure) Act 1990*”.

Insert instead “Part 5 of the *Mental Health (Forensic Provisions) Act 1990*”.

[Agreement in principle speech made in Legislative Assembly on 27 June 2008

Second reading speech made in Legislative Council on 28 October 2008]

BY AUTHORITY