

Explanatory Notes

Short title

The short title of the Bill is the Forensic Disability Bill 2011 (the Bill).

Policy objectives and the reasons for them

The main purpose of the Bill is to provide for the involuntary detention, and the care and support and protection, of forensic disability clients while at the same time -

- safeguarding their rights as well as their rights and freedoms; and
- balancing their rights and freedoms with the rights and freedoms of other people; and
- promoting their individual development and enhancing their opportunities for a quality life; and
- maximising their opportunities for reintegration into the community.

The Bill will provide the Mental Health Court with an alternative and more appropriate forensic secure care option for people who have an intellectual or cognitive disability but do not require involuntary treatment for a mental illness.

Existing legislative scheme – *Mental Health Act 2000*

Chapter 7 of the *Mental Health Act 2000* (forensic provisions) allows a reference to be made to the Mental Health Court where a person has been charged with an indictable offence and may have been of unsound mind at the time of the offence or who may be unfit for trial (either on a permanent or temporary basis). If the Mental Health Court finds the person is not of sound mind at the time of the offence or may be unfit for trial, the court may make a forensic order detaining the person to an authorised mental health service. In deciding whether to make a forensic order, the Mental Health Court considers factors such as the seriousness of the offence, the protection of the community and the person's treatment or care needs.

The primary focus of the *Mental Health Act 2000* is to provide for the involuntary assessment, treatment, and care of people with a mental illness. However, if the Mental Health Court makes a finding of unsoundness of

mind or unfitness for trial for a person with an intellectual or cognitive disability, that person may be placed on a forensic order by the court.

Under the existing legislative scheme, if the Mental Health Court decides to make a forensic order, the only option available to the court is to detain the person in an authorised mental health service (such as an acute ward, medium secure care service or high secure service). The detention of people with an intellectual or cognitive disability but without a mental illness in authorised mental health services has attracted significant criticism. This is because the needs arising from an intellectual or cognitive disability are quite different to those arising from a mental illness and a mental health service may not be equipped to manage these specialised care and support needs. Also, that environment may place the person and others at risk of harm.

The inadequacy of the existing legislative framework and the need to develop non-hospital based secure care for people with an intellectual or cognitive disability but no mental illness who are placed on forensic orders was highlighted in the reports titled *Promoting balance in the forensic mental health system – Final Report – Review of the Queensland Mental Health Act 2000* by (the then) Mr Brendan Butler AM SC (the Butler Report); and *Challenging Behaviour and Disability – A Targeted Response* by the Honourable Mr WJ Carter QC (the Carter Report). It has also been raised in decisions of the Mental Health Court, Mental Health Review Tribunal, as well as by the Public Advocate.

The Butler Report included 106 recommendations for legislative and administrative reforms. These focused on developing new systems and services to better support victims, improving forensic mental health legal processes, enhancing risk management practices and increasing community understanding of the forensic mental health system. In December 2006, Government announced that it accepted all 106 recommendations in the Butler Report. Recommendation 5.1 of the Butler Report provided that: *‘a review of the provisions of the Mental Health Act 2000 affecting people with an intellectual disability be conducted as part of any reform to provide secure care for people with an intellectual or cognitive disability who exhibit severely challenging behaviour’*.

In 2006, The Honourable Mr WJ Carter QC was engaged to explore options for a targeted service and legislative response to adults with an intellectual or cognitive disability who present with challenging behaviour of such a nature, intensity or frequency to put themselves or others at risk. Government supported all 24 recommendations for a new service delivery

model and legislation to protect the human rights of people with an intellectual disability who exhibit severely challenging behaviour. Recommendation 22 of the Carter Report, specifically addressed the issue of alternative detention options for people with an intellectual disability on a forensic order, providing that: *‘subject to the approval of the Honourable Minister for Health, consideration be given to the amendment of the Mental Health Act in relation to the Mental Health Court’s power in making a forensic order in respect of a person with intellectual disability to order that the person be detained other than in a mental health service’*.

Achievement of policy objectives

The forensic disability service

To achieve its objectives the Bill will establish the forensic disability service. The Bill provides the legislative framework for the detention, care and support and protection of forensic disability clients detained in the forensic disability service (including limited community treatment).

A forensic disability client is defined in the Bill as an adult with an intellectual or cognitive disability for whom a forensic order (Mental Health Court - Disability) is in force for the person’s detention in the forensic disability service. The forensic disability service is not intended for people with a “dual diagnosis” (that is an intellectual or cognitive disability and a mental illness). It is intended that the forensic disability service will be targeted at those who will benefit from the service, including the therapeutic interventions, and the level of security offered by the service. Benefit is a key term in the Bill and means benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

The Bill reflects the primary focus of the forensic disability service, that is to provide evidence-based services that maximise the person’s quality of life, reduce the risk of reoffending and increase opportunities for community participation and reintegration, while at the same time ensuring the safety of the community. A growing body of research suggests that such programs will have a positive overall impact on the individual and assist in the reduction of behaviours of concern. As such, this model will allow the management of risk for people subject to forensic orders in a manner more appropriate for clients with an intellectual or cognitive disability while also promoting better outcomes for the person.

The medium-secure service will provide 24-hour secure involuntary care and support to people with an intellectual or cognitive disability in an environment which enables each person to participate in a range of day to day activities that promote skill development, habilitation and rehabilitation, greater independence, positive behaviour and therapeutic outcomes. Transition planning will be an important part of the person's individual development plan which will be developed in consultation with the person, their family and informal support network.

The Bill provides for a multi-disciplinary staffing complement, with the team comprised of specialist allied health and disability support workers, who have a range of skills, experience and qualifications in working with people with an intellectual or cognitive disability, and staff with a commitment to positive behaviour support, skill development and a rehabilitation and habilitation model.

The Bill also amends the *Mental Health Act 2000* to ensure that the Director of Mental Health must also issue policies and practice guidelines about the care of a patient (detained in an authorised mental health service) on a forensic order (Mental Health Court - Disability). The Director of Mental Health must consult with the Director of Forensic Disability when preparing these policies and guidelines.

The Forensic Disability Bill 2011

To achieve its objectives the Bill aims to be consistent with the principles, goals and objectives reflected in the United Nations *Convention on the Rights of Persons With Disabilities* which sets out the fundamental human rights of persons with disabilities. To this end, the focus of the legislative scheme (within the constraints of a detention environment) is on safeguarding rights and freedoms, promoting individual development, ensuring clients are supported to take part in making decisions, enhancing opportunities for quality of life and maximising opportunities for participation and reintegration into the community. These objectives must be balanced with the provision of a secure forensic disability service for people detained in the service, the need to protect the community and to ensure the safety of forensic disability clients and others. The following key elements of the Bill reflect this framework:

- Key *principles* focus on the concept of habilitation and rehabilitation, promoting individual's rights and needs and are intended to reflect the

objects, goals and principles of the *United Nations Convention on the Rights of Persons with Disabilities*.

- Key **statutory positions** are created to administer, operate and oversee the forensic disability service and to ensure the care and support of persons detained to the forensic disability service. These positions include: the Director of Forensic Disability, the administrator, senior practitioners, authorised practitioners and other practitioners.
- The **Director of Forensic Disability** is an independent statutory position that will have statutory oversight of the forensic disability service, responsibility for the proper and efficient administration of the legislation and will monitor the protection of the rights of persons in the service.
- The **individual development plan** is an integral part of a client's care and support while detained in the forensic disability service. It is developed and regularly reviewed for each forensic disability client and will include transition planning to allow participation and reintegration into the community where appropriate.
- **Limited community treatment** (a form of leave approved or ordered by the Mental Health Court or Mental Health Review Tribunal under the *Mental Health Act 2000*) can be authorised under the Bill by a senior practitioner to give effect to an order by the court or tribunal.
- Access to an **allied person** (who may for example be a guardian, family member or friend) will allow the individual's views and wishes to be represented.
- **Regulated behaviour control** is authorised by the Bill in limited circumstances and as an option of last resort. The Bill sets out a process for authorising medication for behaviour control, restraint or seclusion if required to ensure the safety of the person or others in the forensic disability service. There are extensive provisions guaranteeing transparency and accountability in the use of any regulated behaviour controls.
- The Bill includes **security provisions**, consistent with a medium secure facility, including powers to exclude visitors, and search and seize harmful things for security and safety purposes.
- **Authorised officers** (who can include a lawyer or a practitioner independent to the forensic disability service) may be appointed under the Bill to investigate any non-compliance with the Act.

- ***Statutory oversight*** will be provided by:
 - the Director of Forensic Disability who will provide annual reports to the Minister for Disability Services that will be tabled in Parliament;
 - regular reviews of the forensic order by the Mental Health Review Tribunal;
 - the community visitor program under the *Guardianship and Administration Act 2000*, who will be able to investigate and provide reports to safeguard the interests of those detained; and
 - the Adult Guardian who can investigate any abuse, neglect or exploitation of an adult with impaired capacity.
- ***A five year review*** will be conducted by the Director of Forensic Disability of each forensic disability client who has been detained to the forensic disability service for a period of five years to determine if they will continue to benefit from the care and support provided in the forensic disability service.

There are also a range of ***offences*** to safeguard the forensic disability client and manage risk and security.

Amendments to the *Mental Health Act 2000*

The new forensic disability service is part of an existing mental health and forensic system. As such, decisions about forensic orders will continue to be made by the Mental Health Court, and the Mental Health Review Tribunal will continue to review a person's forensic order under the *Mental Health Act 2000*.

Amendments are proposed to the *Mental Health Act 2000* to:

- provide for the Mental Health Court to make a new type of forensic order - a forensic order (Mental Health Court – Disability) where the court decides that a person charged with an offence was of unsound mind when the alleged offence was committed or is unfit to stand trial, and the unsoundness of mind or unfitness for trial is a consequence of an intellectual or cognitive disability;
- allow the Mental Health Court, when making a forensic order, the option of detaining a person with an intellectual or cognitive

disability, who does not require involuntary treatment for a mental illness in the forensic disability service;

- provide for additional criteria for the Mental Health Court or Mental Health Review Tribunal to consider before detaining a person with an intellectual or cognitive disability on a forensic order to the forensic disability service;
- provide for specific criteria for the tribunal to consider when reviewing a forensic order (Mental Health Court - Disability) aimed at considering a person's progress in modifying their behaviour in response to their individual development plan;
- provide for the Director of Forensic Disability to give the court a certificate (issued by the chief executive) stating whether or not the forensic disability service has the capacity for the person's detention and care;
- allow for transfers between an authorised mental health service and the forensic disability service for people on a forensic order (Mental Health Court – Disability);
- allow the Director of Forensic Disability to be a party to certain Mental Health Court and tribunal proceedings involving a person with an intellectual or cognitive disability; and
- to ensure the Director of Mental Health must issue policies and practice guidelines about the care of a patient (detained in an authorised mental health service) on a forensic order (Mental Health Court – Disability). The Director of Mental Health must consult with the Director of Forensic Disability when preparing the policies and guidelines.

Alternative ways of achieving policy objectives

While a number of alternative ways of achieving the objectives were considered including amendments to the *Mental Health Act 2000* and amendments to the *Disability Services Act 2006*, a stand alone Act (to provide for the involuntary detention, care and support of persons detained in the forensic disability service) and consequential amendments to the *Mental Health Act 2000* was the preferred option.

A stand alone Act allows the focus of the forensic service to be on a disability model of care rather than a medical (or mental health) model of

care and maintains the integrity and primary focus of both the *Mental Health Act 2000* and the *Disability Services Act 2006*.

The *Mental Health Act 2000* could have been amended to allow the Director of Mental Health the option of gazetting the new forensic disability service as an authorised mental health service. While this would have been a simpler option, there would not have been a legislative basis for ensuring the model of care and support in the new forensic disability service as a disability as opposed to a medical (or mental health) model of care. The implementation of this option would also fundamentally alter the primary purpose of the *Mental Health Act 2000* and its focus on assessment and treatment of mental illness.

A further option was amending the *Disability Services Act 2006* to include specific provisions relating to the cohort with a sole diagnosis of intellectual disability on a forensic order. This option was not preferred as the purpose and scope of the *Disability Services Act 2006* focuses on the provision of tailored disability support in a community and service provider (non-detention) setting. The inclusion of specific provisions relating to the cohort with a sole diagnosis of intellectual or cognitive disability on a forensic order would fundamentally alter the statute's primary purpose and focus.

Due to the nature of forensic detainment, following an order of the Mental Health Court, no non-regulatory alternatives were deemed appropriate.

Estimated cost for government implementation

Recurrent funding of \$5.4 million was allocated in the 2007-08 State Budget to the Department of Communities to establish and operate the forensic disability service. All additional costs associated with the new facility will be met from within the Department of Communities' existing budget allocation.

A review of the efficiency and effectiveness of the forensic disability service will be conducted in two years.

Consistency with fundamental legislative principles

While the Bill is generally consistent with fundamental legislative principles, where the proposed legislation does infringe on legislative principles as set out in the *Legislative Standards Act 1992*, these departures occur within the context of managing the tension between

safeguarding the rights of individuals detained in the forensic disability service and the need to provide for the safety of forensic disability clients and others, adequate protection for the community and appropriate security for the facility.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a)

Chapters 6 (Regulated behaviour controls – medication for behaviour control, restraint and seclusion)

Chapter 6 deals with regulated behaviour controls which include seclusion, restraint and medication for behaviour control. These regulated behaviour controls adversely affect a person's rights and liberties as set out in section 4(2)(a) of the *Legislative Standards Act 1992* and other common law rights including freedom of movement and association with other people. However, it is considered that where the Bill derogates from these rights, there are sufficient measures, safeguards and justifications for the use of these behaviour control interventions.

A key intention is to provide for transparency and accountability in the use of regulated behaviour controls and safeguards for clients. It is intended that regulated behaviour control is used as a last resort, rather than a standard practice. Chapter 1, Part 3 sets out principles for exercising powers and performing functions under the Bill, and there is a requirement that a power or function must be exercised or performed so that the person's liberty and rights are adversely affected only if there is no less restrictive way to protect his or her health or to protect others; and any adverse affect on the person's liberty and rights is the minimum necessary in the circumstances.

The Director of Forensic Disability has an important oversight role in relation to regulated behaviour controls. The use of all regulated behaviour controls must be reported to the Director of Forensic Disability, who has the power to order restraint or seclusion to stop and to order a review of the use of medication for behaviour control.

There are strict requirements for the authorised administration of medication for behaviour control including:

- it must be prescribed by a psychiatrist (clause 50)
- it must be administered by a senior practitioner who is a doctor or a nurse, or by a doctor or nurse under the direction of the senior practitioner, who is a doctor or registered nurse (clause 50)

- it must be administered in accordance with the psychiatrist's directions, including directions about the dose, route and frequency of the medication and any restrictions on its use (clause 50).

The transparency and accountability regime also extends to any medication prescribed and administered to a client in the forensic disability service. If the client is prescribed any medication (including, but not restricted to medication for behaviour control) the details must be included in the individual development plan (clause 15(3)(a)). A senior practitioner must ensure a psychiatrist regularly reviews a client's need for and the application of any behaviour control medication prescribed for a client, at least every 3 months (clause 52). A senior practitioner must also ensure a medical practitioner regularly reviews a client's need for and appropriateness of medication (other than behaviour control medication) (clause 145).

There are also strict limitations on the use of both restraint and seclusion. Only the Director of Forensic Disability can authorise the use of restraint on a forensic disability client and only a device approved by the Director of Forensic Disability may be used. A client may only be put into seclusion if authorised by the senior practitioner or in urgent circumstances by an authorised practitioner (clause 61). Both the authorisation of restraint and seclusion must be given by a written order which details the reasons for use and the details of how they may be used. The authorisation for restraint or an order for seclusion must end within 3 hours after the order is made (clauses 56 and 62).

There are obligations to record the details of restraint and seclusion in the client's file (clauses 57 and 63). Special safeguards apply where an authorised practitioner places a client in seclusion in urgent circumstances (clause 64), including that a senior practitioner must be immediately informed of the seclusion.

Clients must be observed while being restrained or secluded and have all of their reasonable needs met including sufficient bedding and clothing, sufficient food and drink and access to toilet facilities (clauses 69 and 70).

The Bill also provides that it is an offence to administer behaviour control medication, use restraint or place a client in seclusion other than in accordance with the provisions in the Bill (clauses 49, 54 and 60).

Clause 144 and clause 224 (administration of medication during transfer)

Clause 144 provides for the administration of medication to a client without their consent while being transferred from the forensic disability service to an authorised mental health service. Similarly, clause 224 (inserting new section 169N in the *Mental Health Act 2000*) also provides a comparative power for medication to be administered to a client without their consent while being transferred from an authorised mental health service to the forensic disability service. However, this may only be administered if a medical practitioner is satisfied that it is necessary to ensure the safety of the client or others while the client is being transferred, or taken to the relevant service and must be administered by a doctor, or registered nurse under the instruction of a doctor.

Chapter 7 (Powers to search, withhold certain items and exclude visitors)

Chapter 7 provides powers to search a person on a forensic order while they are in the forensic disability service and to seize certain material that is potentially harmful. These provisions are a departure from the general fundamental legislative principle that sufficient regard must be given to the rights and liberties of individuals and potentially infringes on a person's right to privacy. The powers are necessary to enable proper security to be maintained and to ensure the safety of clients, staff and visitors within the forensic disability service. Limitations and safeguards apply in the application of these powers.

The Bill provides for how the search can be carried out and strict limitations are placed on these powers including:

- providing the search can only occur on the reasonable belief that the client is in possession of a harmful thing, and only senior practitioners or authorised practitioners are able to carry out the search (clause 76);
- providing that records must be kept of the search and things seized and strict provisions in the proposed Bill determine what must happen to the thing if it is seized (clause 80);
- providing for the privacy and dignity of the client to be respected, and that more invasive searching of the client must be approved by the administrator of the service if it is deemed necessary in the circumstances to carry out a proper search (clause 77);

- providing that compensation may be paid if the possessions of the client are damaged in the exercise of the power to search (clause 81).

Chapter 7, Part 2 also provides the administrator with the power to exclude a person from visiting a client in the forensic disability service. However, this power may only be exercised if the administrator is satisfied that the proposed visit will adversely affect the person's care. The person who is excluded has a right of appeal to the Mental Health Review Tribunal and the Bill provides that written notice of the decision and the reasons (including the right to appeal and how the appeal is made), must be provided to the visitor.

The right to privacy and disclosure of confidential information

Clause 38 and clause 224 (Giving information about a person for purpose of transfer and care)

Clause 38 empowers the Director of Forensic Disability to give the Director of Mental Health certain information about the person (for example, the person's personal and medical information; details of the person's individual development plan; their response to care and willingness to continue care). The same power is given to the Director of Mental Health in new section 169K *Mental Health Act 2000* inserted by clause 224. This could be regarded as an infringement of a person's right of privacy.

It is considered that this potential breach is justified to ensure there is continuity of care for the person when they are transferred from the forensic disability service to an authorised mental health service. Further, it allows the director of the service receiving the person to administer, and enforce the forensic order – which is consistent with the principles of the Bill. This is achieved by allowing release of, for example:

- A complete and up-to-date history in relation to the person's personal and medical information;
- Information in relation to the circumstances giving rise to the forensic order (including information contained in any report considered by the Mental Health Court in making the order);
- Details of the forensic order;
- The person's response to care and willingness to continue care;

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- Details as to whether the Mental Health Court or Mental Health Review Tribunal has approved limited community care, including any condition imposed;
 - When the tribunal is to conduct a review of the person's mental condition;
 - Whether the person has an allied person and their contact details.

A key principle in clause 7 reflects that a person's right to confidentiality of information must be recognised and taken into account. Further, clause 122 provides that it is an offence for a person to disclose information about a person who is or has been a forensic disability client unless it is permitted by law (including under this Bill), or the person about whom the information is provided agrees to the disclosure.

Clauses 92 and 250 (Giving information about client to Director of Mental Health)

Clauses 92 and 250 empowers the Director of Forensic Disability and the Director of Mental Health to give each other, or a person nominated by either directors, information about a person who is or was a forensic disability client or a patient, in order to enable each director to perform their functions under the Forensic Disability Act and the *Mental Health Act 2000* accordingly.

It is considered that this potential breach of a person's right to privacy is justified to ensure that the Director of Forensic Disability and Director of Mental Health are able to perform their functions under the Forensic Disability Act and the *Mental Health Act 2000*, which under the Forensic Disability Act includes the protection of the rights of clients and ensuring the involuntary detention, assessment, care and support and protection of forensic disability clients. This power also supports the provision of continuity of care for clients or patients who are transferred between the forensic disability service and an authorised mental health service for care and support and treatment. Clause 92 envisages the scenario when a forensic patient is transferred to an authorised mental health service from a forensic disability service, or detained in the authorised mental health service temporarily. Clause 250 that inserts new section 493B in the *Mental Health Act 2000*, envisages the scenario where a patient in an authorised mental health service is transferred to the forensic disability service. The power to provide information in both clauses is limited by the requirement that the information is reasonably necessary for enabling either director to perform their functions under the respective Acts.

Legislation should be consistent with the principles of natural justice – *Legislative Standards Act 1992*, section 4(3)(b)

Clause 33 (transfer from forensic service to authorised mental health service)

Clause 33 provides the Director of Forensic Disability with the power to order the person's transfer from a forensic disability service to an authorised mental health service. This could be regarded as affecting the rights and liberties of individuals as the person's consent is not required and the transfer may adversely affect the person. It could also be seen as denying the person natural justice as there is no formal opportunity for the person to have input into the transfer decision or a right to an administrative review of the transfer decision.

However, under section 203 of the *Mental Health Act 2000* as applied under Chapter 10 of this Bill, the person may apply for a review of their forensic order to the Mental Health Review Tribunal. One of the decisions the tribunal may make when reviewing the forensic order is an order about the transfer of a client between an authorised mental health service and the forensic disability service. While this is not a strict administrative review of the transfer decision by the Director of Forensic Disability, the tribunal review provides an opportunity for the client to have the issue of their transfer considered as part of an independent review process.

Legislation should not confer immunity from proceeding or prosecution without adequate justification – *Legislative Standards Act 1992*, section 4(3)(h)

Clause 128 (protection of officials from liability)

Clause 128 of the Bill provides that particular persons are not personally liable for anything done or omitted to be done honestly and without negligence under the Act.

The general rule is that all persons are equal before the law and immunity should not be conferred. The *Legislative Standards Act 1992* section 4(3)(h) provides that legislation should not confer immunity from proceeding or prosecution without adequate justification. The conferral of immunity in this instance may be justified as it is necessary for the administration of this Act to protect officials from prosecution for duties they have legitimately carried out.

The powers and functions for officials under the Act are necessary to enable proper security to be maintained and to ensure the safety and

protection of forensic disability clients, staff and visitors within the forensic disability service. This clause is also required to allow them to appropriately perform their powers or functions without fear of civil liability. Importantly the protection is only provided if they carry out their functions honestly and without negligence, and there are limitations and safeguards that apply in the application of their powers and functions throughout the Bill - so that any improper use of powers would not be covered under this clause.

Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(2)(a)*

Clauses 68 and 155 (use of reasonable force)

Clause 68 provides for the use of reasonable force to be used by a senior practitioner or authorised practitioner and those who assist them when administering behaviour control medication, using restraint on a client or placing them in seclusion. Clause 155 provides that a practitioner or administrator may exercise their powers with the help and using the minimum force that is necessary and reasonable in the circumstances. This impacts on the rights and liberties of individuals. However, the Bill places firm limits on the use of force. Under clause 155 the use of reasonable force is limited to the exercise of the administrator's power to detain a forensic disability client under the Act or a forensic order, or a practitioner's powers under section 37 (Taking client to authorised mental health service if transferred), section 113(2) or (3) (Taking client to forensic disability service or authorised mental health service) or under section 151 (Taking client to appear before court and return to forensic disability service).

When force is used, it must be the minimum force that is necessary and reasonable in the circumstances. Further safeguards include an offence provision in the Bill relating to the ill-treatment of forensic disability clients by a person who has responsibility for the detention, care and support and protection of a forensic disability client.

Clauses 116 and 251 (increase in penalty)

Clause 251 increases the penalty for ill-treating a patient in an authorised mental health service from a maximum of 100 to 150 penalty units. This is also reflected in the maximum penalty for ill-treating a forensic disability client in clause 116 of the Bill. This increase in penalty is proportionate to the seriousness of the offence of ill-treating a patient or client by someone who has responsibility for their care and protection.

Legislation should not adversely affect rights and liberties or impose obligations retrospectively – section 4 (3) (g)

Clause 254 (insertion of new section 613 in *Mental Health Act 2000*) declaratory provision

The Bill amends the *Mental Health Act 2000* (at Chapter 16, Part 5) to insert a declaratory and validating provision to the effect that section 305A of the *Mental Health Act 2000*, which states who a special notification forensic patient is, and therefore who can be ordered to submit to a psychiatric examination before the Mental Health Review Tribunal revokes the person's forensic order. Special notification patients are generally persons alleged to have committed murder, rape or the dangerous operation of a vehicle causing death or grievous bodily harm.

In effect, section 305A of the *Mental Health Act 2000* will have commenced on 28 February 2008 and will retrospectively apply to the Bill. This could be regarded as affecting the rights and liberties of individuals retrospectively. However, it is considered that this potential breach is justified on balance because of the serious offences involved.

Consultation

Consultation with key disability, health and justice stakeholders across both government and non-government sectors - including statutory bodies, legal professionals, service providers, peak bodies, industry groups, unions, advocates and the Mental Health Review Tribunal, occurred in two stages. The first stage occurred between September and October 2010 and included 28 face to face briefings. An Information Paper was distributed that explained the scope and model of the new forensic disability service and the proposed legislative scheme. A draft Exposure Bill was distributed to targeted stakeholders.

The Department of Communities conducted targeted consultation, in close consultation with Queensland Health and the Department of Justice and Attorney-General. In response to the first stage of consultation, the Department of Communities receive 29 written and email submissions.

Following the first stage of consultation, the Bill was amended in response to stakeholder feedback and a second round of briefings occurred between December 2009 and February 2011 on an amended Bill with key stakeholders who had engaged closely with the first round of consultation. The Department of Communities received a further 8 written submissions in response to the second round of consultation.

Notes on Provisions

Chapter 1 Preliminary

Part 1 Introduction

Short Title

Clause 1 provides that the short title of the Act is the *Forensic Disability Act 2011*.

Commencement

Clause 2 provides for the commencement of the Act on a date to be set by proclamation.’

Part 2 Purpose and application of Act

Purpose

Clause 3 provides that the purpose of the Bill is to provide for the involuntary detention, and the care and support and protection, of forensic disability clients, while at the same time:

- safeguarding their rights and freedoms; and
- balancing their rights and freedoms with the rights and freedoms of other people; and
- promoting their individual development and enhancing their opportunities for quality of life; and
- maximising their opportunities for reintegration into the community.

The Bill seeks to strike a balance between protecting the community from a person's offending behaviour and supporting each person to successfully reintegrate into the community through the provision of individualised programs, interventions and services aimed at development, habilitation and rehabilitation.

How purpose is to be achieved

Clause 4 states the ways in which the purpose of the Bill is primarily achieved by:

- stating the human rights and other relevant principles applying to the administration of the Bill;
- providing for the detention, admission, assessment, care and support and protection of clients;
- providing for a multidisciplinary model of care and support for clients that is designed to promote their continual development, independence and quality of life; and
- when making a decision under the Bill about a client, taking into account the protection of the community, the needs of a victim of the alleged offence relating to the applicable forensic order and considering the client's individual development plan, including any limited community treatment.

Act binds all persons

Clause 5 states that the Bill binds all persons, including the State and (as far as the legislative power of the Parliament permits) the Commonwealth and all the other States. Also, this clause provides that that nothing in the Bill makes the State liable to be prosecuted for an offence.

Application of Act

Clause 6 clarifies that the Bill enables a person to be continued to be cared and supported for, in the forensic disability service for a period of time if the Mental Health Court or Mental Health Review Tribunal revokes the person's forensic order. If the order is revoked, there may be a period of time whereby a person may need to be continued to be supported in the forensic disability service until alternative arrangements are made. However, in this circumstance, a person would reside in the service on a

voluntary basis and could not be compelled to remain at the forensic disability service. This clause is not intended to provide for the provision of services to clients who have never been subject to a forensic order, or for more than a minimal time following the revocation of a persons forensic order.

Part 3 Principles for administration of Act

General principles

Clause 7 sets out the general principles which guide the administration of the Bill and underpin the operation of the forensic disability service. The principles are consistent as far as practicable, with the *Convention on the Rights of Persons with Disabilities*.

For example, the principle in 7(b) which emphasises the importance of habilitation and rehabilitation is consistent with article 26 of the Convention that states parties shall provide habilitation and rehabilitation services to enable people with disabilities to attain and maintain maximum independence and full social, mental and physical ability to enable full inclusion in all aspects of life.

The principle in 7(e) includes a presumption of capacity, for the person to make decisions about their care and support and choice of allied person. This is consistent with article 12(1) and 12(2) of the Convention, that persons with disabilities enjoy legal capacity on an equal basis with others.

The principle in 7(f) that forensic disability clients should be provided with support and information for exercising rights is consistent with article 21 of the Convention that emphasises the importance of being provided with information in accessible formats to ensure they can exercise their right to freedom of expression and opinion.

The principle in 7(g), recognising the person's right to confidentiality, is consistent with article 22 of the Convention which provides for the respect of a person's privacy and the onus on countries to protect the personal, health, and rehabilitation information of persons with disabilities on an equal basis with others.

Principles for exercising powers and performing functions

Clause 8 reflects the tension between safeguarding clients rights under the Act and the need to ensure their safety, adequate protection for the community and appropriate security for the facility. Consistent with a human rights framework, where it is necessary to exercise a power or function under the Act, it must be exercised in a way so that the client's liberty and rights are affected in the least restrictive way to protect their health or safety of others and any adverse effect on the client's liberty and rights is the minimum necessary in the circumstances.

Part 4 Interpretation

Definitions

Clause 9 states that schedule 3 defines particular words used in the Act. Some key terms include defining what is meant by the term 'capacity', 'care and support', 'least restrictive' and 'practitioner'.

Who is a *forensic disability client*

Clause 10 defines a *forensic disability client* for the purpose of the Act. This is a key definition as the powers and functions in the Bill only apply to forensic disability clients and only people to whom this definition apply may be detained in the forensic disability service. Key elements include the person:

- must have an intellectual or cognitive disability; and
- must be detained or liable to be detained in the forensic disability service under a forensic order (Mental Health Court - Disability).

The clause clarifies that a person is also a forensic disability client if the above elements apply and the person is undertaking limited community treatment.

The clause also clarifies that in this clause a forensic order (Mental Health Court – Disability) includes an order that, under section 169L and 605 of the *Mental Health Act 2000* (an admission to a forensic disability service under a transfer order), applies to the client as if it were an order for the client's detention in the forensic disability service.

The clause provides that if a person who is a forensic disability client is transferred to an authorised mental health service under an order of the Director of Forensic Disability (with the consent of the Director of Mental Health) (clause 33(1)) or an order of the Mental Health Review Tribunal (clause 33(3)), the person remains a forensic disability client until admitted to the authorised mental health service. The clause also provides that if a person who is a forensic disability client is detained temporarily in an authorised mental health service under section 309B of the *Mental Health Act 2000*, the person remains a forensic disability client until a transfer order for the person is made under section 34(2) of this Act, or by the tribunal or Mental Health Court under the *Mental Health Act 2000*.

What is a *cognitive disability*

Clause 11 defines *cognitive disability*. This clause and clause 12, help guide eligibility and suitability for a person to be detained to the forensic disability service under clause 10 (definition of forensic disability client). A cognitive disability is a condition attributable to a cognitive impairment and a ‘disability’ as defined in the *Disability Services Act 2006*. In particular, a disability that is attributable to a cognitive impairment that results in a substantial reduction of the person’s capacity for communication, social interaction, learning, mobility or self-care and the person needing support. The impairment may result from an acquired brain injury and the disability must be permanent or likely to be permanent.

What is an intellectual disability

Clause 12 defines what is meant by an *intellectual disability*. This term like clause 11 is important to guide eligibility and suitability for the forensic disability service. This definition is derived from the definition provided by the American Association on Intellectual and Developmental Disabilities and is internationally recognised. The key elements of the definition are:

- the person must have significant limitations in intellectual functioning; and
- the person must have significant limitations in adaptive behaviour, and
- onset before the age of 18.

This clause should be read with **schedule 1** which sets out how to determine a significant limitation in intellectual functioning and a significant limitation in adaptive behaviour.

Chapter 2 Support and development of forensic disability clients

Part 1 Individual development plans

What is an individual development plan

Clause 13 defines an *individual development plan*. The individual development plan is an integral part of the person's care and support while detained in the forensic disability service (including when accessing limited community treatment). The focus of an individual development plan is on promoting the person's development, habilitation and rehabilitation, with the aim of reducing the risk of re-engaging in offending behaviour and facilitating eventual community reintegration. The plan must be developed following a multi-disciplinary assessment of a forensic disability client. The aim of the multi-disciplinary assessment is to analyse the nature and causes of the behaviours which led to the forensic order, and the impact of the behaviour on the person and others.

Preparing plan for client

Clause 14 sets out the requirements for the senior practitioner in the development of the individual development plan. An individual development plan must be developed for each individual client. It must be developed in consultation with (and considering the views of) the client; if a client has a guardian or informal decision maker, the guardian or informal decision maker; and anyone else the senior practitioner considers to be integral to the plans preparation (such as a family member, a carer, an advocate for the client or another member of the clients support network). A senior practitioner is a person appointed by the administrator under clause 101 and has a senior role in the forensic disability service.

The clause also requires that the plan must be prepared considering:

- any relevant policies and practice guidelines about the care and support and protection of forensic disability clients issued by the Director of Forensic Disability under the Act; and
- any previous or existing relevant plans (such as a previous individual development plan, a positive behaviour support plan as defined in *the Disability Services Act 2006* or a treatment plan made under the *Mental Health Act 2000* applying immediately before the client was transferred to the forensic disability service, or advance health directive under the *Powers of Attorney Act 1998*).

Content of plan

Clause 15 sets out the minimum requirements of a person's individual development plan. Central to the plan is the inclusion of evidence based programs, interventions and supports that may, for example, include offender rehabilitation programs, specifically designed for people with an intellectual or cognitive disability and therapeutic programs aimed at developing the individual (including self care and daily life skills, personal management and communication skills). Risk assessment will also be an integral part of the plan as will transitional planning. It will be important to plan for the eventual reintegration of the client into the community.

If the client is prescribed any medication (including, but not limited to medication for behaviour control) the details must be included in the plan.

If regulated behaviour control is used on a forensic disability client, the plan must also include the details of the behaviour control used and any strategies for avoiding, reducing and eliminating any further use of behaviour control as required under clause 73.

The plan must also include any limited community treatment ordered or approved by the Mental Health Court or Mental Health Review Tribunal under the *Mental Health Act 2000*.

Senior practitioner must tell client about plan

Clause 16 requires the senior practitioner to explain the plan to the client. The senior practitioner must talk to each client about their care and support under their individual development plan in the language or way the client is

most likely to understand and in a way that has appropriate regard to the client's age, culture and disability.

If the client has a guardian under the *Guardianship and Administration Act 2000* or an informal decision-maker, a senior practitioner must also talk to the guardian or their informal decision-maker about the client's care and support under the plan. This is also consistent with the underlying principles in the Bill.

The senior practitioner is required (under clause 154) to explain the plan in the language or way the client is most likely to understand and in a way that has appropriate regard to the client's age, culture, disability and communication ability. This may involve for example, using augmented communication strategies such as visual or other communication aids. If the senior practitioner believes the client has not understood the information they have been given about their care and support under their plan, the practitioner must record details of this fact in the client's file.

Changing plan

Clause 17 sets out the process and requirements for changing the client's individual development plan. A senior practitioner, or an authorised practitioner authorised for the purpose by a senior practitioner may change the client's individual development plan. The plan will not be a static document and must be regularly reviewed to ensure its continuing appropriateness.

In changing a client's individual development plan, a senior practitioner or an authorised practitioner, must consult with key people integral to the development of the plan as described in clause 14.

A senior practitioner must also change a client's individual development plan to give effect to a decision or order of the Mental Health Court or Mental Health Review Tribunal to include details about any limited community treatment (as required by clause 22) or if regulated behaviour control is used on the client, the details of the behaviour control and strategies for avoiding, reducing and eliminating the behaviour control (as required by clause 73).

Care and support under plan

Clause 18 provides that it is the administrator of the forensic disability service who must ensure the client receives care and support and protection as required under their individual development plan.

Regular assessment of client

Clause 19 requires the administrator to ensure that a senior practitioner carries out regular assessments of the client as required under their individual development plan. A senior practitioner who carries out such an assessment must record details of the assessment in the client's file. Regular assessments of the plan help ensure that the plan (and programs and services for the client) remain relevant and appropriate for the person.

Part 2 Limited community treatment

Authorising limited community treatment

Clause 20 provides that a senior practitioner may authorise limited community treatment for the client and the circumstances when this can happen. A senior practitioner is a person appointed by the administrator and has a senior role in the forensic disability service. Limited community treatment is a form of leave which is ordered or approved by the Mental Health Court or Mental Health Review Tribunal under the *Mental Health Act 2000*. It can, for example, include escorted or unescorted leave on or off the grounds, overnight access and more than overnight (where the person may be on a forensic order but live in community-based accommodation). The court or tribunal may also impose other conditions relevant to the management of risk and care and support while on leave.

The senior practitioner may only authorise the limited community treatment if the tribunal or the Mental Health Court has ordered or approved the limited community treatment. The senior practitioner will authorise limited community treatment on a case by case basis, considering a range of factors including risk, and the client's safety and the safety of others.

Limited community treatment on order of tribunal or Mental Health Court

Clause 21 applies where the Mental Health Review Tribunal or the Mental Health Court have ordered limited community treatment. The administrator must ensure the senior practitioner changes the client's individual development plan to give effect to the order.

What individual development plan must state about limited community treatment

Clause 22 applies if the client is authorised under section 20, or ordered under section 21 to have limited community treatment. In this case the client's individual development plan must include

- any periods, whether or not continuous, of limited community treatment; and
- the conditions a senior practitioner considers necessary for managing the client's care and support and protecting the health or safety of the client or the safety of others while the person is on limited community treatment.

Chapter 3 Allied persons

Who is an *allied person*

Clause 23 defines an *allied person*. An allied person is a person chosen by a forensic disability client, or a person declared under this part to be the person's allied person and is independent of the forensic disability service.

Function of allied person

Clause 24 specifies that the function of an allied person is to help a forensic disability client to represent their views, wishes and interests relating to their assessment, detention, care and protection under the Forensic Disability Act. While the clause sets out the general role of the allied person, other provisions throughout the Bill and the *Mental Health Act 2000* provide specifically for the involvement of the allied person at key

points. The allied person is notified at certain times and is empowered to make applications to the Mental Health Review Tribunal on behalf of the person under the *Mental Health Act 2000*. The allied person also has the right to appear at tribunal hearings to assist the person to represent their views and can appeal on behalf of the person against decisions of the tribunal.

Client may choose allied person

Clause 25 enables a forensic disability client to choose a person to be their allied person. The client's ability to choose who they want to be their allied person under this clause is subject to the client having the capacity to make that decision. 'Capacity' is defined in the schedule 3 dictionary. If the client has the capacity to make the decision about choosing an allied person, they can choose not to have an allied person at all. The client can choose their allied person from the categories of people listed in the clause. The client does not have to appoint their guardian or attorney as their allied person—they can choose an adult relative or close friend or any other adult to be their allied person instead. The person chosen as the allied person must also be willing, readily available, culturally appropriate and capable to perform the function of the allied person.

It is intended that the administrator of the forensic disability service will make the determination as to whether the person is willing, readily available, capable and culturally appropriate and capable to be the allied person. Employees at the client's forensic disability service cannot be chosen to be an allied person. This is to ensure against a conflict of interest arising between the allied person's subjective role in relation to representing the client's views and wishes and the forensic disability service's objective role to provide appropriate care to the client.

Who is allied person if client does not have capacity to choose

Clause 26 set out how an allied person is chosen for the forensic disability client if they do not have capacity to make the decision to choose an allied person. Capacity is defined in the schedule 3 dictionary. The decision as to whether the client has capacity to make this decision lies with the administrator. However, the patient is presumed to have capacity by virtue of the principle in clause 7(e).

If the client has directed someone to be their allied person under an advance health directive (made under the *Powers of Attorney Act 1998*),

then that person will be their allied person. If not, the administrator of the client's forensic disability service then chooses the allied person for the client. The same exclusion applies to the appointment of the allied person as when the client is choosing the allied person, i.e. the client must not be a forensic disability service employee.

The clause requires the administrator to choose as the allied person, the first person in order in the list set out in clause 25 who is capable, readily available, culturally appropriate and willing to be the person's allied person.

The clause ensures that an allied person is always chosen if the client is incapable of making a decision to choose their own allied person. The Adult Guardian is the default appointment if no else in the list in section 25 is willing readily available, capable and culturally appropriate. In this instance, the Adult Guardian need not be appointed under the *Guardianship and Administration Act 2000*, the appointment as the client's allied person occurs under the Forensic Disability Act.

When choice of allied person ends

Clause 27 provides for the circumstances when the allied person ceases to act for a forensic disability client.

Administrator to give notice of applicable forensic order to allied person

Clause 28 requires the administrator to give notice of the applicable forensic order to the allied person of a forensic disability client.

Chapter 4 Rights of forensic disability clients and others

Part 1 Statement of Rights

Preparing statement of rights

Clause 29 ensures that a written statement about the rights of forensic disability clients and of their allied persons under the Act is prepared by the Director of Forensic Disability. The statement must include information about the rights of clients to make complaints about the service provided at the forensic disability service and how the complaints are made, as well as anything else the director thinks is appropriate.

Giving statement of rights to client and allied person

Clause 30 requires the administrator to give a copy of the statement of rights to be provided to a forensic disability client on their admission to the forensic disability service. The statement is also required to be given to the client's allied person. The clause ensures that the client understands the content of the statement by requiring an explanation of the information in the statement to be given to the client in a language or way they are most likely to understand. Clause 154 requires that the way in which the explanation is provided must also have proper regard to the client's age, culture, disability and communication ability. It may for example involve the use of augmented communication strategies such as visual or other communication aids. If the person giving the explanation believes the client has not understood the information, they must record this in the client file.

Notice of rights

Clause 31 requires the administrator of the forensic disability service to ensure that the information in the statement of rights is displayed in a prominent place.

Part 2 Rights of persons other than forensic disability service employees to visit client etc

Visiting and assessing client and consulting about client's care and support

Clause 32 gives a registered health practitioner or social worker (other than a forensic disability service employee) the authority to visit and examine a forensic disability client, as well as consult with a senior practitioner for the forensic disability service about the client's care and support. This can only occur at a reasonable time of the day or night. The clause also gives similar authority to a legal or other adviser to visit the client. The authority given to the registered health practitioner, social worker or adviser can only be exercised at the request of the client or someone else on their behalf, and under arrangements made with the administrator of the forensic disability service.

Chapter 5 Transfer and temporary absence of forensic disability clients

Part 1 Transfer

Transfer from forensic disability service to authorised mental health service

Clause 33 allows the Director of Forensic Disability to transfer a forensic disability client from the forensic disability service to an authorised mental health service if the Director of Forensic Disability is satisfied the transfer is in the client's best interest, and the Director of Mental Health agrees to the transfer.

If an agreement cannot be reached, the Director of Forensic Disability may apply to the Mental Health Review Tribunal for an order for the client's transfer to an authorised mental health service.

The *Mental Health Act 2000* has been amended by this Bill to provide jurisdiction for the tribunal to consider these applications. The tribunal may make or refuse to make the order sought. The new provisions made under this Bill in Chapter 5, Part 1, Division 2A, Subdivision 2 of the *Mental Health Act 2000* apply to these applications. These are applied provisions (see clauses 129 and 139).

The clause provides that the forensic disability client must be transferred to an authorised mental health service if the tribunal orders the transfer, subject to a stay of the tribunal's decision under section 323 of the *Mental Health Act 2000*.

Transfer if detained temporarily in authorised mental health service

Clause 34 applies where a forensic disability client is taken to an authorised mental health service in circumstances outlined in clause 113 of the Bill, and is temporarily detained there as authorised under new section 309B of the *Mental Health Act 2000*. This may be, for example, if the client's limited community treatment has ended and they have not returned to the forensic disability service and it is impracticable to take them directly to the forensic disability service which may be some distance from where the client is located.

If it is in the best interest of the client, the Director of Forensic Disability may transfer the person to the authorised mental health service if the Director of Mental Health agrees. This may be necessary, for example, if the forensic disability client has been absent for some time and there is no longer any capacity in the forensic disability service for the person to be readmitted or the care and support and treatment needs of the person have changed. If the directors cannot agree to the transfer, as under clause 33, the Director of Forensic Disability may apply to the Mental Health Review Tribunal for the transfer order sought.

Director of Forensic Disability to give notice of transfer order to tribunal and others

Clause 35 requires the Director of Forensic Disability to give written notice of a transfer order of a forensic disability client to the Mental Health

Review Tribunal, and if any proceedings involving the client have started, each entity that the Director of Forensic Disability considers has sufficient interest in the proceedings. For example, an entity may include the Mental Health Court, the Director of Public Prosecutions or another prosecuting agency.

Administrator to give notice of transfer order to client and allied person

Clause 36 requires the administrator to give notice of a transfer order to the forensic disability client to whom the order relates and the client's allied person.

Taking client to authorised mental health service if transferred

Clause 37 authorises a practitioner to take a forensic disability client from the forensic disability service to an authorised mental health service under a transfer order to be detained.

Giving information about client for facilitating transfer and care and support

Clause 38 allows the Director of Forensic Disability to give to the Director of Mental Health certain information (as detailed in the clause) about a forensic disability client when they are transferred to an authorised mental health service. The effect of this provision will facilitate continuity of care and ensure that the person's complete background can be considered.

Continuation of existing forensic order

Clause 39 applies when a forensic disability client is transferred to an authorised mental health service under a transfer order by either the Director of Forensic Disability or the Mental Health Review Tribunal. This clause provides that the client's existing forensic order (Mental Health Court – Disability) (that provided for their detention in the forensic disability service) will apply as if it was an order made for their detention as a patient to the authorised mental health service.

This clause provides for the continuation in force of the clients existing forensic order with any changes necessary to make it consistent with the *Mental Health Act 2000* and to allow its operation under that Act. It also

clarifies the continuing power of the tribunal to review the order as applied under Chapter 10 of this Bill.

Continuation of matters under applied provisions for client transferred to authorised mental health service

Clause 40 provides for the continuation of an action that is done or something that is brought into existence for a matter in compliance with an applied provision under the *Mental Health Act 2000* for forensic disability clients transferred to an authorised mental health service. Chapter 10 of this Bill sets out a scheme for applying provisions of the *Mental Health Act 2000* for forensic disability clients.

Part 2 Temporary absence

Absence of particular clients with Director of Forensic Disability's approval

Clause 41 empowers the Director of Forensic Disability to approve the temporary absence of a forensic disability client from the forensic disability service for certain reasons. This is different from limited community treatment as ordered or approved by the Mental Health Court or the Mental Health Review Tribunal. Conditions can be placed on the absence if necessary, for example, that the client is to be escorted while absent from the service.

Chapter 6 Regulation of behaviour control

This Chapter deals with regulated behaviour controls which include seclusion, restraint and medication for behaviour control. Key provisions provide for transparency and accountability in the use of regulated behaviour controls and safeguards for clients. It is intended that regulated behaviour control is used as a last resort, rather than a standard practice.

There must be no less restrictive way to safeguard the client or others from harm and any adverse effect on the client's liberty and rights must be the minimum necessary in the circumstances.

Part 1 Preliminary

Purpose of ch 6

Clause 42 provides that the purpose of Chapter 6 is to protect the rights of forensic disability clients by regulating the use of behaviour control medication, mechanical restraint and seclusion under the Bill so that the restraint or seclusion is only used:

- if considered necessary and the least restrictive way to safeguard the client or others from harm; and
- in a way that:
 - has regard to the human rights of clients; and
 - aims to reduce or eliminate the need for its use; and
 - ensures transparency and accountability in its use.

Definitions for ch 6

Clause 43 provides for definitions of key terms under this Chapter. An authorised practitioner or senior practitioner are appointed under Chapter 8, Part 3 of the Bill. The definitions of *authorised practitioner* and *senior practitioner* in this Chapter reflect that their instruments of appointment must specifically state that they may exercise the powers given to them under this Chapter.

Meaning of behaviour control medication

Clause 44 defines *behaviour control medication*. Behaviour control medication is medication for the primary purpose of controlling the client's behaviour. The definition excludes medication for health care as defined under the *Guardianship and Administration Act 2000*, schedule 2, section 5.

This definition is integral to the authorisation regime for medication under the Bill. Only medication for behaviour control is subject to the authorisation regime set out in clauses 49 to 53. However, as described above the Bill does propose to extend the accountability and transparency regime to the use of all medication, regardless of whether it is medication for behaviour control.

Meaning of restraint

Clause 45 defines *restraint*. Restraint of a forensic disability client is the use of an approved mechanical appliance preventing the free movement of the client's body or a limb of the client.

However, this clause excludes the use of a surgical, medical appliance for the proper treatment of physical disease or injury from the definition of restraint.

Meaning of seclusion

Clause 46 defines *seclusion*. Seclusion of a forensic disability client is the confinement of the client at any time of the day or night alone in a room or area from which free exit is prevented.

Relationship with *Disability Services Act 2006*

Clause 47 clarifies that the *Disability Services Act 2006*, Part 10A applies to a forensic disability client only if the client is absent from the service undertaking limited community treatment, or under a temporary absence approval. Part 10A of the *Disability Services Act 2006* regulates the use of restrictive practices by funded service providers who provide disability services to an adult with an intellectual or cognitive disability. The forensic disability service is not a funded service for the purpose of the *Disability Services Act 2006*. If restrictive practices, as regulated under Part 10A of the *Disability Services Act 2006*, are used on a client when they are undertaking limited community treatment to a funded disability service for example, then the practice must be authorised or approved as provided for under that Part.

Relationship with *Guardianship and Administration Act 2000*

Clause 48 clarifies that this Chapter does not limit the extent to which a person is authorised under the *Guardianship and Administration Act 2000*

to make a decision about the health care of a person who is a forensic disability client. This exclusion is necessary as the definition of behaviour control medication excludes medication for health care as defined under the *Guardianship and Administration Act*, schedule 2, section 5. Therefore, it is envisaged that the existing regime for the use of medication for health care under the *Guardianship and Administration Act* and the regime under this Bill for the use of behaviour control medication will complement each other. As it is a psychiatrist who prescribes medication for behaviour control under this Bill, the prescribing psychiatrist will determine if the medication is for 'health care' or for behaviour control.

Part 2 Behaviour Control

Division 1 Behaviour control medication

Offence to administer behaviour control medication

Clause 49 provides that it is an offence punishable by a maximum of 50 penalty units to administer behaviour control medication to a forensic disability client other than under this division.

Use of behaviour control medication

Clause 50 states the conditions under which behaviour control medication may be administered. Behaviour control medication may only be administered to a forensic disability client by a senior practitioner who is a doctor or registered nurse, or a doctor or registered nurse acting under the direction of a senior practitioner who is a doctor or a registered nurse, and only if:

- a psychiatrist prescribes the medication as medication for behaviour control for the client; and
- the medication is administered in accordance with the psychiatrist's directions, including directions about the dose, route and frequency of the medication and any restrictions on its use; and

- the client is observed in accordance with the psychiatrist's direction.

Obligations of senior practitioner

Clause 51 sets out the obligations of the senior practitioner if a psychiatrist prescribes behaviour control medication for the forensic disability client. The details of the medication must be recorded in the client's file and the client's individual development plan. The client's file must include the name of the medication and the time that it was administered and the person who administered it. For medication administered as and when needed, the client's file must include the circumstances in which the medication was administered. The client's individual development plan must include details as required under clause 15(3).

Review of client's behaviour control medication

Clause 52 states the requirements for regular review of the client's behaviour control medication and for the results of that review to be recorded in the client's file. A senior practitioner is responsible for ensuring a psychiatrist regularly reviews a forensic disability client's need for, and the appropriateness of, the behaviour control medication prescribed for the client. The minimum time for review is every 3 months, however the client's individual development plan may state that reviews must happen more regularly.

There is also capacity for the Director of Forensic Disability to request an immediate review of a client's need for and appropriateness of the behaviour control medication prescribed for the client.

Consent of client not required

Clause 53 clarifies that the consent of a forensic disability client to the administration of behaviour control medication under this division is not required.

Division 2 Restraint

Offence to use restraint

Clause 54 provides that it is an offence punishable by a maximum of 50 penalty units to use restraint on a forensic disability client detained in the forensic disability service other than in the manner provided for by the Bill.

Approval of appliances for restraint

Clause 55 provides that the Director of Forensic Disability must approve the appliances that may be used for the restraint of a forensic disability client and state the approved mechanical appliances in a policy or practice guideline issued under clause 91.

Authorisation of use of restraint

Clause 56 provides for the actual authorisation of the use of restraint. The Director of Forensic Disability may authorise the use of mechanical restraint on a forensic disability client only if satisfied it is the least restrictive way to protect the health and safety of the client or to protect others.

In authorising the restraint, the Director of Forensic Disability must have regard to the client's individual development plan and must authorise the restraint to be applied for only the minimum period or periods possible.

The Director of Forensic Disability must provide authorisation by giving a written order to a senior practitioner or authorised practitioner.

This clause also sets out what the written order must state. A written order for the authorisation of restraint cannot exceed 3 hours.

Obligations of senior practitioner or authorised practitioner

Clause 57 provides that a senior practitioner or authorised practitioner must:

- ensure a copy of the Director of Forensic Disability's written order under clause 56 is included in the client's file; and
- use the restraint as authorised by the Director of Forensic Disability; and

- record the required details in the client's file.

Removal of restraint before authorisation ends

Clause 58 relates to the removal of restraints before an authorisation ends. A senior practitioner or authorised practitioner must remove mechanical restraints immediately if, before the authorisation ends:

- a senior practitioner or authorised practitioner is satisfied the client can be safely cared for without the restraint; or
- the Director of Forensic Disability orders a senior practitioner or authorised practitioner to remove the restraint.

Consent of client not required

Clause 59 clarifies that it is not necessary to obtain the consent of a client to the use of a restraint under this division.

Division 3 Seclusion

Offence to keep client in seclusion

Clause 60 provides that it is an offence, punishable by a maximum of 50 penalty units, to keep a forensic disability client detained in the forensic disability service in seclusion in a manner other than provided for by the Bill.

When client may be placed in seclusion

Clause 61 provides for when a forensic disability client may be placed in seclusion in the forensic disability service. While the Bill provides that it is the senior practitioner that must authorise seclusion, there is provision for a client to be placed in seclusion by an authorised practitioner (if authorised by a senior practitioner), or in urgent circumstances.

However, a senior practitioner may place a client in seclusion or authorise the seclusion of a client only if reasonably satisfied -

- the seclusion is necessary to protect the client or other persons from imminent physical harm; and

- there is no less restrictive way to protect the clients health and safety or to protect others.

An authorised practitioner acting in urgent circumstances must also be satisfied of these matters.

How authorisation of seclusion is given

Clause 62 provides that a senior practitioner's authorisation for seclusion must be given in a written order to an authorised practitioner, and sets out the details required in the written order.

The written authorisation of seclusion must not exceed 3 hours. However, the written order may state the maximum time periods for example during that 3 hours for which a client may be secluded.

A client who is subject to seclusion must be either observed continuously or at intervals of not longer than 15 minutes as stated in the order.

The senior practitioner must ensure a copy of the order is placed in the client's file.

Obligations of senior practitioner or authorised practitioner

Clause 63 provides for the obligations on either a senior practitioner or authorised practitioner when placing a client in seclusion or authorising the seclusion. Both a senior practitioner and authorised practitioner must have regard to the client's individual development plan. Either a senior practitioner, or an authorised practitioner who places a client in seclusion (under a senior practitioner's authorisation), must record the details required in this clause in the client's file.

Other obligations if authorised practitioner places client in seclusion in urgent circumstances

Clause 64 applies when an authorised practitioner places a client in seclusion without the authorisation of the senior practitioner in urgent circumstances. If this occurs, the authorised practitioner must immediately tell a senior practitioner of the seclusion and record the details required by this clause in the client's file.

Further, the senior practitioner must ensure the client is examined as soon as practicable by a senior practitioner who must record the time of the examination in the client's file. At the time of the examination, the senior

practitioner must either order the client's release from seclusion or authorise the client's seclusion.

When authorised practitioner may end seclusion or return client to seclusion

Clause 65 clarifies that where an authorised practitioner is acting under authorisation provided by a senior practitioner to place a client in seclusion, the authorised practitioner may release a client from, or return a client to seclusion. An authorised practitioner may release the client from seclusion if satisfied that seclusion of the client is no longer necessary; and return the client to seclusion if:

- the senior practitioner's authorisation is still in force; and
- the authorised practitioner is reasonably satisfied of the matters stated in clause 61(2).

After releasing the client from, or returning the client to, seclusion the authorised practitioner must immediately record the required details in the client's file.

Ending seclusion on Director of Forensic Disability's order

Clause 66 provides for the Director of Forensic Disability to order that the client be immediately released from seclusion.

Consent of client not required

Clause 67 clarifies that it is not necessary to obtain the consent of a forensic disability client in order to seclude the client under this division.

Division 4 Other provisions about regulated behaviour controls

Use of reasonable force

Clause 68 provides that a senior practitioner or authorised practitioner (and a person helping them) may use the minimum force that is necessary and reasonable in the circumstances to:

- administer behaviour control medication to a forensic disability client under Division 1; or
- apply mechanical restraint to a forensic disability client under Division 2; or
- place a forensic disability client in seclusion under Division 3.

Ensuring client's reasonable needs are met while subject to a regulated behaviour control

Clause 69 provides that if the client is subject to a regulated behaviour control, a senior practitioner or authorised practitioner must ensure the reasonable needs of the client are met, including, for example, being given sufficient bedding and clothing, sufficient food and drink and access to toilet facilities.

Observation of client while restrained or secluded

Clause 70 provides that a senior practitioner or authorised practitioner must ensure a forensic disability client to whom restraint is applied is observed as required under the Director of Forensic Disability's authorisation for the restraint.

A senior practitioner or authorised practitioner must also ensure a forensic disability client is continuously observed while secluded.

However, the forensic disability client in seclusion need not be continually observed if the seclusion is authorised by order of a senior practitioner and the order states:

- it is not necessary to continuously observe the client while secluded; and
- the intervals (not longer than 15 minutes) at which the client must be observed while secluded.

Administrator must notify director of Forensic Disability about prescription of fixed dose behaviour control medication

Clause 71 provides that the administrator must give the Director of Forensic Disability written notice when behaviour control medication is prescribed for a forensic disability client. This only applies to fixed dose

medication (medication administered at fixed intervals and times). The notice must include the information required by the director.

Administrator must notify director about use of other regulated behaviour controls

Clause 72 provides that the administrator must give the Director of Forensic Disability written notice about the use of regulated behaviour control on a forensic disability client. This includes restraint, seclusion and medication for behaviour control, other than fixed dose medication mentioned in clause 71.

It would be impracticable for an administrator to provide notice every time fixed dose medication is administered, as this may be several times a day. However, clause 71 provides for the director to be alerted when this is prescribed for a client. This clause relates specifically to medication used on a *PRN* basis (as and when required). Each time this type of behaviour control medication is used on a client it must be reported to the director.

The notice must be given as soon as practicable after the medication or restraint is used on the client or the client is placed in seclusion. The notice must include the information required by the director.

What individual development plan must state about regulated behaviour controls

Clause 73 requires strategies for avoiding, reducing and eliminating any further use of the behaviour control to be included in the forensic disability client's individual development plan if regulated behaviour control is used.

Register of use of regulated behaviour control

Clause 74 provides for a key component of the transparency and accountability regime for the use of behaviour control. The administrator must keep a register of the use of regulated behaviour control under Chapter 6. The register must include the details prescribed under a regulation. This register may be searched by the Director of Forensic Disability (under his powers and functions in clauses 87 and 88, the community visitors who visit the service (as it will be a visitable site under the *Guardianship and Administration Act 2000*), and the Adult Guardian and the Public Advocate as part of their usual statutory functions. The Bill

specifically amends the schedule to the *Guardianship and Administration Regulation 2000* to make the forensic disability service a visitable site.

Chapter 7 Security of forensic disability service

Part 1 Searching forensic disability clients and possessions

Purpose of pt 1

Clause 75 states that the purposes of this part is to ensure the protection of forensic disability clients and the security and good order of the forensic disability service. To achieve this purpose, this part provides for the carrying out searches of forensic disability clients detained in the forensic disability service and their possessions.

Authority to search

Clause 76 empowers the senior practitioner or authorised practitioner with the authority to search a forensic disability client or their possessions, with or without the client's consent if they reasonably believe a client is in possession of a harmful thing. However, before carrying out the search, the senior practitioner or authorised practitioner must tell the person the reasons for the search and how it is to be carried out in a language or way that the client is most likely to understand, having regard to the client's age, culture and disability. This may involve for example, the use of augmentative communication strategies.

Carrying out search

Clause 77 sets out what the senior practitioner or authorised practitioner is allowed to do in order to carry out the search. Additional restrictions are placed on how the search is to be conducted if more invasive searching techniques are used. If clothing other than an outer garment or footwear is

required to be removed, the approval of the administrator of the forensic disability service is required. However, the administrator may give the approval only if satisfied it is necessary in the circumstances for carrying out the search. In addition, the practitioner must be the same sex as the forensic disability client, and the search is required to be carried out in a part of a building that ensures the client's privacy.

In order to carry out the search, the practitioner is authorised to use the help and the force that is necessary and reasonable in the circumstances. Accordingly, the practitioner must carry out the search in a way that respects the person's dignity to the greatest possible extent, and causes as little inconvenience to the person as is practicable in the circumstances.

While it is only a senior practitioner or authorised practitioner who is authorised under this clause to carry out a search of a forensic disability client, this clause does allow the practitioner to use help and the minimum force that is necessary and reasonable in the circumstances.

Seizure of things

Clause 78 authorises the senior practitioner or authorised practitioner at the forensic disability service to seize anything found during the search that the practitioner reasonably believes is a harmful thing.

What happens to thing seized

Clause 79 provides the administrator with appropriate options where a thing has been seized under clause 78, including keeping the harmful thing until the client's release from the forensic disability service, giving it to someone else who may be entitled to it or disposing of it.

If an administrator believes the seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, it requires the administrator to give the thing to an authorised person under that Act. The administrator is required to make a written record of the decision about what happens to a seized thing. In this clause, an authorised person under an Act means a person authorised to perform an inspection and enforcement functions under that Act.

Record of search

Clause 80 specifies the circumstances in which a search must be recorded, which is when a senior practitioner or authorised practitioner carries out a

search or seizes anything found during a search under this part. It provides for the details which the practitioner must record including the reasons for the search, the practitioner's name, how the search was carried out, the results of the search and anything seized.

Compensation for damage to possessions

Clause 81 establishes the right of a forensic disability client to claim compensation from the State, in relation to damage which occurred in the exercise or purported exercise of a power under this part. The clause also provides that proceedings to recover an amount claimed or an offence against this Act brought against the forensic disability client which may be claimed and ordered in a proceeding. The court has the discretion to order the amount to be paid where the court considers it just to make the order, in the circumstances of the case. It also provides that a regulation may prescribe matters that may, or must be taken into account by the court when considering whether it is just to make the order.

Part 2 Excluding visitors

Administrator may refuse to allow a person to visit a client

Clause 82 allows the administrator to refuse to allow a person to visit a forensic disability client detained in the forensic disability service, if the administrator is satisfied that the proposed visit will adversely affect the client's care and support. The clause requires that the administrator gives the visitor written notice of the decision, and state the reasons for the decision, that a decision may be appealed within 28 days after the person receives the notice and how the appeal is made.

Who may appeal

Clause 83 allows a visitor to appeal a decision of an administrator to refuse to allow the person to visit the forensic disability client to the Mental Health Review Tribunal.

Procedure for appeal

Clause 84 provides that an appeal may be started and carried out as stated in the *Mental Health Act 2000*, sections 376 to 380. These are applied provisions under Chapter 10 of the Bill. When applying sections 376(2) and 377 (1) for the purposes of this Bill, the reference to an administrator of an authorised mental health service should be replaced with a reference to an administrator of the forensic disability service.

Chapter 8 Administration

Chapter 8 provide for key statutory provisions to administer, operate and oversee the forensic disability service and to ensure the care and support of persons detained in the forensic disability service.

Part 1 Director of Forensic Disability

Appointment

Clause 85 establishes the position of the Director of Forensic Disability. This is an independent position which will have statutory oversight of the forensic disability service and will be appointed by the Governor in Council under this Act and not under the *Public Service Act 2008*.

Duration of appointment

Clause 86 provides that the Director of Forensic Disability holds office for the term stated in the instrument of his appointment within a statutory limit of five years. The Director of Forensic Disability may be reappointed by virtue of the effect of section 25(1)(c) of the *Acts Interpretation Act 1954*.

Functions

Clause 87 sets out the functions of the Director of Forensic Disability. These functions include ensuring the protection of the rights of forensic

disability clients under the Act and ensuring the involuntary detention, assessment, care and support and protection of forensic disability clients complies with the Act, promoting community awareness and understanding of the administration of the Act, advising and reporting to the Minister at the Director of Disability's own initiative or at the request of the Minister. Other functions of the Director of Forensic Disability are also consistent with the Director of Disability's statutory oversight and monitoring function.

Powers - general

Clause 88 declares the general powers of the Director of Forensic Disability under the Act and the power to do all things necessary or convenient to be done in performing the Director of Forensic Disability's functions.

Independence of director

Clause 89 ensures the independence of the Director of Forensic Disability by providing that, in exercising a power under this Act, the Director of Forensic Disability is not under the control of the Minister.

Delegation of director's powers

Clause 90 provides for the Director of Forensic Disability to delegate certain powers under this Act. The powers are only to be delegated to appropriately qualified persons. The clause provides that certain powers can never be delegated.

Policies and procedures detention, care and support of clients

Clause 91 requires the Director of Forensic Disability to issue policies and practice guidelines about the detention, care and protection of forensic disability clients. The clause lists some policies that must be issued by the Director of Forensic Disability including policies about the review and change of individual development plans, the use of regulated behaviour controls and the detention, care and support and protection of special notification clients. The clause clarifies that if a policy or practice guideline is inconsistent with this Act, the policy or guideline is invalid to the extent of the inconsistency.

Giving information about client to Director of Mental Health or nominee

Clause 92 provides that the Director of Forensic Disability, or a person nominated by the director may give information about a person who is or was a forensic disability client to the Director of Mental Health or a person nominated by the Director of Mental Health. However, the Director of Forensic Disability may only give the information if satisfied that the information is reasonably necessary for enabling the Director of Mental Health to perform that director's functions under the *Mental Health Act 2000*.

This clause envisages the scenario when a forensic patient is transferred to an authorised mental health service from a forensic disability service, or detained in the latter temporarily.

Annual report

Clause 93 requires the Director of Forensic Disability to provide an annual report on the administration of the Act to the Minister and requires the Minister to table a copy of the report in Parliament.

Acting director

Clause 94 provides that an acting director may be appointed by the Governor in Council if there is a vacancy in the office of the Director of Forensic Disability or the Director of Forensic Disability is absent from duty or is otherwise unable to perform the functions of the office.

Part 2 Forensic disability service and administrator

Declaration of forensic disability service

Clause 95 provides for a regulation to declare a place, or part of a place, to be the forensic disability service. Only one place may be declared to be the forensic disability service.

Declaration of administrator of forensic disability service

Clause 96 provides that the Director of Forensic Disability may declare a person to be the administrator of the forensic disability service by gazette notice. The authorised administrator is responsible for the day-to-day operations of the forensic disability service.

Delegation of administrator's powers

Clause 97 enables the administrator to delegate their powers under this Act to an appropriately qualified person or employee of the forensic disability service.

Administrator's obligation to ensure forensic order is given effect

Clause 98 requires the administrator to ensure that a forensic disability client's forensic order is given effect. For example, this may require but is not limited to changing the client's individual development plan, authorising limited community treatment or requiring the client to return to the forensic disability service.

Administrator's obligation to ensure policies and procedures are given effect

Clause 99 requires the administrator of the forensic disability service to ensure that any relevant policies and practice guidelines issued by the Director of Forensic Disability are given effect.

Acting administrator

Clause 100 provides that the Director of Forensic Disability may appoint a person to be the administrator of the forensic disability service, during any period, there is a vacancy in the office of the administrator or the administrator is absent from duty or unable to perform the functions of the office.

Part 3 Practitioners

Part 3 provides for the appointment and powers of senior practitioners, authorised practitioners and practitioners. They are appropriately skilled, qualified or experienced persons who are appointed by the administrator who may exercise the designated powers under the Forensic Disability Act. Although, the Bill does provide for a practitioners powers to be limited by their instrument of appointment.

For all practitioners appointed under clause the administrator must have regard to:

- The need for a multidisciplinary approach within the forensic disability service;
- The person's commitment to the principles stated in section 7 of the Act; and
- The person's skills and expertise in supporting people with an intellectual or cognitive disability, mental condition or offending behaviour.

Appointment of senior practitioners and authorised practitioners by administrator

Clause 101 allows the administrator to appoint a senior practitioner or an authorised practitioner if they have the necessary expertise or experience relevant to the role to which the person is appointed.

An appointment made under this section may limit the senior practitioner's, or authorised practitioner's powers under this Act.

The senior practitioner holds a senior position in the service, performing a key role and exercising important powers and functions central to the care and support of forensic disability clients such as responsibility for the development of the individual development plan and the power to authorise limited community treatment (if ordered or approved by the Mental Health Court or the Mental Health Review Tribunal).

Appointment of administrator as a senior practitioner

Clause 102 provides for the Director of Forensic Disability to appoint the administrator to be a senior practitioner for a forensic disability service

only if the administrator has the necessary expertise or experience to be a senior practitioner.

Powers of senior practitioners and authorised practitioners

Clause 103 provides that a senior practitioner or authorised practitioner has the powers provided for under this Act, but clarifies that their instrument of appointment may limit their powers.

For a senior practitioner or authorised practitioner to be able to exercise powers under Chapter 6 of the Bill (that relates to regulated behaviour controls), this must be explicitly authorised by their instrument of appointment.

Appointment of other persons to perform the role of a practitioner

Clause 104 provides for the appointment by the administrator of a person to the role of a practitioner for a forensic disability service.

The functions that a practitioner may perform may be limited by the terms of the person's instrument of appointment and include for example, conveying persons between an authorised mental health service and the forensic disability service, and acting under the direction of a senior practitioner in relation to the development of individual development plans. This clause makes it clear that a practitioner (who does not also hold an appointment as a senior practitioner or authorised practitioner) may not exercise the powers of the senior practitioner or authorised practitioner under Chapter 6 (Regulation of behaviour control).

Register of practitioners and other persons

Clause 105 requires the administrator to keep a register of appointed senior practitioners, authorised practitioners and persons to perform the role of a practitioner. Importantly, the register must also identify the senior practitioners and authorised practitioner's instrument of appointment which states the powers under Chapter 6 (Regulation of behaviour control).

Part 4 Authorised officers

Appointment of authorised officers

Clause 106 allows the Director of Forensic Disability or the chief executive to appoint a person to be an authorised officer under the Act.

The authorised officer may be a registered health practitioner, a social worker engaged in providing disability services, a lawyer or other person. An authorised officer can not be a forensic disability service employee. The chief executive or Director of Forensic Disability must be of the opinion that the person has the necessary expertise to be an authorised officer.

The authorised officer is independent from the forensic disability service and is empowered to undertake investigations of the service under Chapter 9, Part 5 of the Bill.

Appointment conditions and limit on powers

Clause 107 provides that the authorised officer holds the appointment on the conditions stated in the officer's instrument of appointment. However, the instrument of appointment may limit the authorised officers powers under this Act.

Approval of identity cards

Clause 108 provides for identity cards to be issued for authorised officers.

When an authorised officer ceases to hold office

Clause 109 provides for the circumstances in which an authorised officer ceases to hold office.

Resignation

Clause 110 provides for the resignation of the authorised officer by providing the appointing entity (either the Director of Forensic Disability or the chief executive) with a signed notice.

Powers

Clause 111 provides that an authorised officer has powers provided under this Act subject to their instrument of appointment that may limit their powers.

Chapter 9 Enforcement, evidence and legal proceedings

Part 1 Return of forensic disability clients to forensic disability service for care and support

Senior practitioner may require return of client

Clause 112 provides for the senior practitioner to require the return of a forensic disability client to the forensic disability service. This may be:

- to give effect to a change to the client's individual development plan; or
- to give effect to a decision or order of the Mental Health Review Tribunal or Mental Health Court; or
- if the senior practitioner reasonably believes:
 - the client has not complied with the client's individual development plan; and
 - it is necessary in the interests of the health or safety of the client or the safety of others.

The senior practitioner must provide a written notice to the client containing the reasons for the requirement to return and talk to the client about the reasons.

However, the senior practitioner need not comply with the requirement to talk to the client if the senior practitioner reasonably believes that to do so

would not be in the interests of the health or safety of the client or the safety of others.

Taking client to forensic disability service or authorised mental health service

Clause 113 allows a practitioner, with the reasonable help of a police officer if necessary to take a client to the forensic disability service or an authorised mental health service if:

- a client required by notice under clause 112 to return to the forensic disability service; or
- a client for who an approval for a temporary absence was given under clause 41 and the approval is revoked or the approved period of absence ends; or
- a client whose period of limited community treatment has ended; or
- a client who has absconded from the charge of an authorised person mentioned in clause 117(2); or
- a client who has absconded from detention in the forensic disability service.

If it is not reasonably practicable to return the client to the forensic disability service and the Director of Forensic Disability and the Director of Mental Health agree, then this clause authorises a practitioner to take the client to an authorised mental health service to be temporarily detained there as provided for under new section 309B of the *Mental Health Act 2000*.

Where a client has been taken to an authorised mental health service and the client's period of detention under section 309B of the *Mental Health Act 2000* has ended, this clause also authorises a practitioner to take the client to the forensic disability service, if the client is to be detained in the forensic disability service as mentioned in section 309C(4)(b)(i) of the *Mental Health Act 2000*, or a place where the client is to undertake limited community treatment as mentioned in section 309C(4)(b)(ii) of the *Mental Health Act 2000*.

A health practitioner (appointed under the *Mental Health Act 2000*) may, under arrangements made between the Director of Forensic Disability and the Director of Mental Health, also take a client to either a forensic

disability service or an authorised mental health service to be temporarily detained there as provided for under new section 309B of the *Mental Health Act 2000*, if it is not reasonably practicable for a practitioner appointed under this Bill to do that. In carrying this out the health practitioner may exercise the powers and has the obligations of a health practitioner appointed under the *Mental Health Act 2000* as if the forensic disability client were a forensic patient being taken to an authorised mental health service.

This clause also allows the practitioner or health practitioner to ask for assistance from a police officer. In responding to this request, the police officer is taken to have responded to a request made by a public official under section 16(3) of the *Police Powers and Responsibilities Act 2000*.

In effect, this will allow the police officer to utilise general enforcement powers under the *Police Powers and Responsibilities Act 2000*, for example, the power to enter a place to arrest or detain a person under section 21 – including the power to detain a person under the Forensic Disability Act (as set out in this clause).

This clause also makes it clear that the police officer may detain the client. This may be necessary, for example, if the nearest authorised mental health service or the forensic disability service is some distance away from where the client is located.

Part 2 Entry of places

Application of pt 2

Clause 114 provides for the application of this part if under section 113 a practitioner is authorised to take a forensic disability client to the forensic disability service or an authorised mental health service or a place where the client is to undertake limited community treatment.

Entry of places

Clause 115 provides for the power of a practitioner to enter a place if:

- the occupier of the place consents to the entry; or

- it is a public place and the entry is made when the place is open to the public.

Part 3 Offences

Offences relating to ill-treatment

Clause 116 provides that it is an offence, punishable by a maximum of 150 penalty units or 1 year imprisonment, to ill-treat a forensic disability client. This applies to a person who has responsibility under the Bill for the detention, care and support and protection of a forensic disability client in the service, or a person has responsibility for the care or custody of a client while they are in the service or undertaking limited community treatment.

Offences relating to forensic disability clients absconding

Clause 117 provides that it is an offence, punishable by a maximum penalty of 200 penalty units or 2 years imprisonment, for an authorised person to wilfully allow a client to abscond while in their charge. Subsection (1) of the clause provides the circumstances in which a client will be in an authorised person's charge, for example, if the authorised person is accompanying a client to while the client is undertaking limited community treatment. The clause also prohibits a person from knowingly helping the client to abscond from the authorised person's charge.

Other offences relating to absence of forensic disability clients

Clause 118 provides that it is an offence, punishable by 200 penalty units or 2 years imprisonment for a person to induce, or knowingly help a forensic disability client to unlawfully absent himself or herself from the service or to knowingly harbour a forensic disability client who is unlawfully absent from the forensic disability service.

In this clause, a forensic disability client is unlawfully absent from the forensic disability service if the client has absconded from the charge of an authorised person mentioned in section 117(2).

A forensic disability service employee must not wilfully allow a forensic disability client detained in the forensic disability service to absent himself or herself from the service.

Obstruction of official

Clause 119 provides that it is an offence, punishable by a maximum penalty of 40 penalty units, for a person to obstruct an official in the exercise of a power under the Bill. However, it is a defence to this offence to show that the person had a reasonable excuse for their act or omission.

A forensic disability client does not commit the offence of obstructing an official under this clause merely because they resist the exercise of a power by an official in relation to himself or herself.

An official is defined under this clause.

False or misleading documents

Clause 120 provides that it is an offence, punishable by a maximum penalty of 40 penalty units, for a person to make a false or misleading statement in a document used for the purposes of the Act.

Part 4 Confidentiality

Confidentiality of information – allied persons

Clause 121 provides that it is an offence, punishable by a maximum penalty of 50 penalty unit or 6 months imprisonment, for a person to disclose, or give access to a document containing information about a forensic client's or another person's affairs.

This applies to a person who is or has been the allied person of a forensic disability client and, in that capacity, acquired information about the client's or another person's affairs; or a person who has access to, or custody of, a document about the affairs of a forensic disability client or another person.

However, a person may disclose, or give access to a document containing information about a forensic client's or another person's affairs if:

- the disclosure or giving of access is otherwise required or permitted by law; or

-
- the person to whom the information relates agrees to the disclosure or giving of access and the person is an adult when the agreement is made.

Confidentiality of information – other persons

Clause 122 provides that it is an offence, punishable by a maximum penalty of 100 penalty units, to disclose confidential information gained through the person's involvement in the administration of the Act to anyone, other than under the terms of section 123, or as provided in this clause in subsection (4) of the clause. Subsection (4) provides that a person may disclose information to someone else:

- for administering, monitoring or enforcing compliance with the Bill; or
- to discharge a function under another law; or
- for a proceeding in a court or tribunal; or
- if authorised under another law or a regulation made under the Bill; or
- if:
 - the person is authorised in writing by the person to whom the information relates; and
 - the person to whom the information relates is an adult when the authorisation is given; or
- to protect a forensic disability client from abuse, neglect or exploitation.

For the purposes of this clause, 'confidential information' includes information about a person's affairs but does not include:

- information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

Disclosure of confidential information

Clause 123 provides for the authorised disclosure of confidential information to a relevant person exercising a power under this Act in the following circumstances:

- a designated person under the *Health Services Act 1991*, Part 7 may disclose to the relevant person information that is confidential information under that part; and
- the director or an officer, employee or agent of the department in which the *Mental Health Act 2000* is administered may disclose to the relevant person information that is subject to confidentiality under the *Private Health Facilities Act 1999*, section 147.

This clause clarifies that the authorised disclosure of confidential information to a relevant person under this clause does not apply to the preparation of an annual report under clause 93 by the Director of Forensic Disability.

Part 5 Investigations

This part provides for the powers of authorised officers (appointed under clause 106) to conduct investigations.

Authorised officer may visit forensic disability service

Clause 124 allows an authorised officer, for the proper and efficient administration of the Bill, to visit the forensic disability service between the hours of 8am and 6pm. The authorised officer may visit with or without notice. The authorised officer also has specified powers they may exercise during the visit and the administrator or another person employed by the service are required to give reasonable help in the exercise of those powers.

It is an offence, punishable by a maximum penalty of 40 penalty units, to fail to comply with a requirement to provide reasonable help unless the person has a reasonable excuse. The authorised officer must warn the administrator or the other person that it is an offence not to comply with the requirement unless the person has a reasonable excuse.

If a person is required, to give reasonable help by giving information or producing a document, it is a reasonable excuse if complying with the requirement might tend to incriminate the person.

Authorised officer may require production of documents etc.

Clause 125 sets out the powers of the authorised officer by written notice to require the administrator to provide documents and other information.

It is an offence, punishable by a maximum penalty of 40 penalty units, for the administrator to fail to comply with a request to produce a document or provide information under this clause unless the administrator has a reasonable excuse.

It is a reasonable excuse if complying with the notice may tend to incriminate the administrator.

If a document, including a medical record, is produced to the authorised officer, the officer:

- may inspect it and make copies of, or take extracts from, the document if it is relevant to the administration of the Bill; and
- for an original document, must return it to the administrator within a reasonable time after it is produced.

Part 6 Evidence and legal proceedings

Evidentiary provisions

Clause 126 is an evidentiary provision that applies to a proceeding under, or in relation to, the Act and relates to the proof of the appointment of, or of a signature, of key statutory positions under the Forensic Disability Act.

Proceedings for offences

Clause 127 provides that a proceeding for an offence against this Bill must be taken in a summary way under the *Justices Act 1886*.

The proceeding must start:

- within 1 year after the offence is committed; or

- within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Protection of officials from liability

Clause 128 protects an official from incurring civil liability for an act done, or omission made, honestly and without negligence under the Bill.

If this clause prevents civil liability from attaching to an official, then the liability attaches to the State instead.

Chapter 10 Application of Mental Health Act

Part 10 contains the scheme for applying provisions of the *Mental Health Act 2000* for forensic disability clients. Rather than extensively amend the *Mental Health Act 2000* to adapt it for forensic disability clients, the Bill has a scheme for applying certain provisions. Where provisions of the *Mental Health Act 2000* are applied, clause 139 applies. This clause provides for replacing certain terms in the *Mental Health Act 2000* with appropriate terms from the Forensic Disability Act.

Part 1 Applied provisions

Applications for tribunal order for transfer of client to authorised mental health service

Clause 129 provides that the provisions of Chapter 5, Part 1, Division 2A, Subdivision 2 (other than section 169G(2) and (3) and 169H) of the *Mental Health Act 2000* are applied in relation to an application to the Mental Health Review Tribunal for a transfer order for a forensic disability client.

Applications for tribunal approval for client to move out of Queensland

Clause 130 provides that the provisions of Chapter 5, Part 1, Division 3, (other than section 175) of the *Mental Health Act 2000* are applied for an application to the Mental Health Review Tribunal for an approval that a forensic disability client move out of Queensland.

Reviews by tribunal

Clause 131 provides that certain parts of Chapter 6 of the *Mental Health Act 2000* are applied for reviews for forensic disability clients.

Tribunal's decisions to be given effect

Clause 132 requires the administrator to ensure that the Mental Health Review Tribunal's decision is given effect.

Examinations, references and orders for clients charged with offences

Clause 133 provides that certain parts of Chapter 7 of the *Mental Health Act 2000* are applied for examinations, references and orders for forensic disability clients charged with offences.

Forensic information orders

Clause 134 provides that Chapter 7A, Part 2 (other than sections 318O(1)(e) and (g), 318Y(f) and 318ZB) of the *Mental Health Act 2000* are applied in relation to forensic information orders for forensic disability clients.

Appeals against tribunal decisions

Clause 135 provides that certain divisions of Chapter 8, Part 1 of the *Mental Health Act 2000* are applied in relation to appeals against Mental Health Review Tribunal decisions for forensic disability clients.

Appeals against Mental Health Court decisions on references

Clause 136 provides that the provisions of Chapter 8, Part 2 of the *Mental Health Act 2000* are applied in relation to appeals against a decision of the Mental Health Court on a reference for forensic disability clients.

Inquiries into detention of clients in forensic disability service

Clause 137 provides that Chapter 11, Part 9 of the *Mental Health Act 2000* is applied in relation to inquiries into the detention of a forensic disability client in the forensic disability service to decide whether the person's detention is lawful.

Participation and representation at tribunal hearings

Clause 138 provides that certain parts of Chapter 12 of the *Mental Health Act 2000* are applied in relation to Mental Health Review Tribunal proceedings for forensic disability clients.

Part 2 Facilitation of application of applied provisions

Application of applied provisions

Clause 139 provides for applying the applied provisions of the *Mental Health Act 2000* for forensic disability clients by replacing certain references in the *Mental Health Act 2000* with appropriate terms under the Forensic Disability Act, and applying the provisions with any other necessary changes.

Subsection (3) provides that when applying certain provisions of the *Mental Health Act 2000* listed in that subsection, for forensic disability clients, the references in those sections are not replaced.

The table below is a general guide for how the applied provisions work but may not provide an exhaustive list of the necessary changes and appropriate references to be replaced

Table: Summary of Applied Provisions

Clause	Applied provisions MHA	References in MHA to be replaced
129 and 139	<p data-bbox="277 374 689 456"><u>Application for tribunal order for transfer of client to authorised mental health service</u></p> <p data-bbox="277 462 689 553">(Chapter 5, Part 1, Division 2A, Subdivision 2, other than new section 169G(2) and (3) and 169H)</p> <p data-bbox="277 558 689 748">This subdivision is applied for an application to the Mental Health Review Tribunal by the Director of Forensic Disability in relation to a transfer of a forensic disability client to an authorised mental health service.</p> <p data-bbox="277 753 689 924">Such applications may be made under clause 33 of the Bill where the Director of Mental Health does not agree to the transfer of a forensic disability client to an authorised mental health service.</p> <p data-bbox="277 930 689 1070">Subdivision 2 sets out the application and decision-making processes for the Mental Health Review Tribunal to make a transfer order when the Director of Mental Health disagrees.</p> <p data-bbox="277 1075 689 1324">New subsections 169G(2) and (3) are excluded. These subsections do not need to be applied provisions as they specifically relates to the factors the tribunal must have regard to when considering the transfer of a patient from an authorised mental health service to the forensic disability service.</p> <p data-bbox="277 1330 689 1639">Likewise, section 169H is also excluded as it specifically relates to the issuing of a certificate by the chief executive (of the department responsible for administering the forensic disability Act) that the tribunal must have regard to when considering the transfer of a patient from an authorised mental health service to the forensic disability service.</p>	<p data-bbox="693 374 1135 456">The reference to an application under 169A(3) should be read as a reference to an application under clauses 33 and 34.</p> <p data-bbox="693 462 1135 525">-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p data-bbox="693 531 1135 622">-A reference to <u>transfer order</u> is a reference to a <u>transfer order within the meaning of the Forensic Disability Act</u></p> <p data-bbox="693 627 1135 718">-A reference to the <u>administrator</u> is a reference to the <u>administrator of the forensic disability service</u></p> <p data-bbox="693 724 1135 788">-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p data-bbox="693 793 1135 875">-A reference to an <u>allied person</u> is a reference to <u>allied person under the Forensic Disability Act</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
130 and 139	<p><u>Application for tribunal approval for client to move out of Queensland</u> (Chapter 5, Part 1, Division 3 (other than section 175))</p> <p>This division is applied for an application to the Mental Health Review Tribunal for a forensic disability client to move out of Queensland. This division sets out the authority of the tribunal and other procedural matters in relation to the hearing by the tribunal.</p> <p>Section 175 is excluded as it specifically relates to involuntary patients under an involuntary treatment order. This section is, therefore, not relevant to forensic disability clients.</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p> <p>-A reference to a <u>treating health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to <u>treatment or care</u> is a reference to <u>care and support</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
131(a) and 139	<p><u>Reviews by tribunal</u> (Chapter 6, Part 3 (other than sections 203(2)(d) and (6), 204(5) and (6), 204A and 206)</p> <p>This part is applied for reviews by the Mental Health Review Tribunal of forensic disability clients. This part sets out the authority of the tribunal to conduct reviews, the timing of reviews, notification requirements and the decisions the tribunal may make on review. Upon review, the tribunal may revoke a forensic order; order, approve or revoke limited community treatment; or transfer a forensic disability client to an authorised mental health service.</p> <p>The amended section 203 will also enable the tribunal to transfer a forensic patient to the forensic disability service.</p> <p>Section 203(2)(d) is excluded as it specifically relates to the transfers of forensic patients between authorised mental health services.</p> <p>Section 203(6) is excluded as it only applies to matters the tribunal must consider in relation to a patient subject to an order other than the new forensic order (Mental Health Court – Disability).</p> <p>Section 204(5) and (6), and 204A are not applied provisions as they refer specifically to factors the tribunal must consider in making an order to transfer a person subject to a forensic order from an authorised mental health service to the forensic disability service.</p> <p>Section 206 is excluded as it requires the administrator of the patient’s treating health service to ensure that the tribunal’s decision is given effect. A mirror provision for the administrator of the forensic disability service is in clause 132 of the Forensic Disability Bill.</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to a <u>special notification forensic patient</u> is a reference to a <u>special notification client</u></p> <p>-A reference to the <u>administrator or administrator of the authorised mental health service</u> is a reference to the <u>administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p> <p>-A reference to <u>authorised psychiatrist</u> is a reference to a <u>senior practitioner</u></p> <p>-A reference to a <u>treating health service or authorised mental health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to the <u>forensic disability service</u> is a reference to an <u>authorised mental health service</u></p> <p>-A reference to a <u>treatment plan</u> is a reference to an <u>individual development plan</u></p> <p>-A reference to <u>limited community treatment</u> is a reference to <u>limited community treatment within the meaning of the Forensic Disability Act</u></p> <p>-A reference to an <u>examination of a patient</u> is a reference to an <u>assessment of a forensic disability client</u>.</p>

Clause	Applied provisions MHA	References in MHA to be replaced
131(b) and 139	<p><u>Reviews by tribunal of mental condition of persons to decide fitness for trial</u> (Chapter 6, Part 4)</p> <p>This part is applied for the review of a forensic disability client’s fitness for trial by the Mental Health Review Tribunal when the forensic disability client has been found unfit for trial by the Mental Health Court, but the unfitness for trial is not of a permanent nature. The tribunal is required to review the mental condition of a person every 3 months for a period of 12 months from the date of the court’s finding and afterwards at intervals of not more than 6 months.</p> <p>This part also sets out who may make an application and how an application may be made to the tribunal and notification requirements for a review of a person’s mental condition and the decisions the tribunal may make on review.</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p> <p>-A reference to <u>treatment or care</u> is a reference to <u>care and support</u></p> <p>-A reference to a <u>health practitioner</u> is a reference to a <u>practitioner</u></p> <p>-A reference to the <u>authorised mental health service</u> or <u>treating health service</u> is a reference to the <u>forensic disability service</u></p>
132 and 139	<p><u>Tribunal’s decision to be given effect</u></p> <p>This clause requires the administrator of the forensic disability service to give effect to decisions of the tribunal on review.</p> <p>This is a mirror provision of section 206 of the <i>Mental Health Act 2000</i> that requires the administrator of the patient’s treating health service to ensure that the tribunal’s decision is given effect.</p> <p>Chapter 6, Part 3 <i>Mental Health Act 2000</i> applies to these reviews and is an applied provision as described above.</p>	

Clause	Applied provisions MHA	References in MHA to be replaced
133(a) and 139	<p><u>Examinations, references and orders for clients charged with offences – interpretation & procedures for particular involuntary patients charged with offences</u> (Chapter 7, Parts 1 and 2)</p> <p>Certain parts of Chapter 7 of the <i>Mental Health Act 2000</i> are applied for examinations, references, and orders for existing forensic disability clients charged with offences.</p> <p>Parts 1 and 2 apply to a forensic disability client who is charged with a simple or indictable offence. These parts, when applied, impose obligations on the administrator of the forensic disability service to arrange for a forensic disability client to be examined by a psychiatrist and on the Director of Forensic Disability to refer the matter to the Mental Health Court or Director of Public Prosecutions.</p> <p>These parts set out how and by whom the references are to be made, the information that must be provided and how the part relates to proceedings for an offence, ability of a court to grant bail and remand a person in custody.</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p> <p>-A reference to <u>authorised doctor</u> is a reference to a <u>senior practitioner</u></p> <p>-A reference to <u>treating health service</u> is a reference <u>forensic disability service</u></p> <p>-A reference to <u>treatment</u> is a reference to <u>care and support</u></p> <p>-A reference to an <u>examination of a patient</u> is a reference to an <u>assessment of a forensic disability client</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
133(b)) and 139	<p><u>Examinations, references and orders for clients charged with offences – procedure on reference to director of public prosecutions</u></p> <p>(Chapter 7, Part 3 (other than section 252A, 253 and 254))</p> <p>This part applies if under section 240 of the <i>Mental Health Act 2000</i> the Director of Forensic Disability refers the matter of the forensic disability client’s mental condition relating to an offence to the Director of Public Prosecutions. This part sets out the matters the Director of Public Prosecutions must have regard to when considering a reference to the Mental Health Court, how references are to be made and who should be notified.</p> <p>Sections 252A, 253 and 254 are excluded because they relate specifically to classified patients. The classified patient provisions in the <i>Mental Health Act 2000</i> do not apply to forensic disability clients.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to the <u>authorised mental health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
133(c) and 139	<p><u>Examinations, references and orders for clients charged with offences – references to Mental Health Court generally</u></p> <p>(Chapter 7, Part 4 (other than section 257(1)(d) and (2))</p> <p>This part sets out the procedures for references to the Mental Health Court generally for a forensic disability client, including who may make a reference and how a reference may be made.</p> <p>Section 257(1)(d) is not applied as it relates to a reference made to the Mental Health Court by the Director of Mental Health in relation to a person receiving treatment for a mental illness, which does not apply to forensic disability clients.</p> <p>Section 257(2) is not applied as it refers to the Director of Mental Health making a reference to the court for persons not under a forensic order. Forensic disability clients are always subject to a forensic order.</p>	These provisions apply with any necessary changes.
133(d) and 139	<p><u>Examinations, references and orders for clients charged with offences – withdrawal of references to the Mental Health Court</u></p> <p>(Chapter 7, Part 5)</p> <p>This part is applied for the withdrawal of references to the Mental Health Court for forensic disability clients. It sets out when a reference may be withdrawn and the actions that must be taken by the Registrar and the court.</p>	These provisions apply with any necessary changes.

Clause	Applied provisions MHA	References in MHA to be replaced
133(e) and 139	<p><u>Examinations, references and orders for clients charged with offences – inquiries on references to Mental Health Court</u></p> <p>(Chapter 7, Part 6 (other than Division 3, and section 287))</p> <p>This part is applied for what must happen when a reference is received by the Mental Health Court for a forensic disability client, including who must receive notice and the matters to be decided by the Mental Health Court.</p> <p>Division 3 is excluded because it is about arrangements where the Mental Health Court finds a person fit for trial (who was originally found by the court to be unfit for trial for an alleged offence). It is unnecessary to apply these provisions as they specifically apply to any person subject to this order of the court. A person subject to this order may be remanded in custody, granted bail or detained in an authorised mental health service to await trial.</p> <p>Section 287 is excluded because it relates to classified patients. The classified patient provisions in the <i>Mental Health Act 2000</i> do not apply to forensic disability clients.</p>	<p>-A reference to an <u>involuntary patient</u> is a reference to a forensic disability client</p> <p>-A reference to <u>administrator</u> is a reference to the <u>administrator of the forensic disability service</u></p> <p>-A reference to <u>authorised mental health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to <u>treatment and care</u> is a reference to <u>care and support</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
133(f) and 139	<p><u>Examinations, references and orders for clients charged with offences – forensic patients.</u></p> <p>(Chapter 7, Part 7 (other than section 294 and divisions 2 and 3)</p> <p>This part is applied for the making of forensic orders for existing forensic disability clients.</p> <p>Section 294 requires the administrator of a patient’s treating health service to ensure a forensic order is given effect. It is unnecessary to apply this provision, an equivalent provision is provided for forensic disability clients in clause 98.</p> <p>Division 2 has not been applied as it relates to forensic orders following jury findings or by the Minister, and people on these orders are not within the scope of people who can be detained in the forensic disability service under the Bill.</p> <p>Division 3, comprising sections 305A to 309C, has not been applied because:</p> <p>–Section 305A has been mirrored in the Bill via the inclusion of the definition of special notification client in the dictionary</p> <p>–Sections 306 to 309 relate to forensic orders following jury findings and are matters relating to care and support that are covered in the Bill</p> <p>–Sections 309B and 309C do not need to be applied as these relate specifically to the temporary detention of forensic disability clients in authorised mental health services</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to the <u>authorised mental health service</u>, or health service is a reference to the <u>forensic disability service</u></p> <p>-A reference to the <u>administrator or administrator of the treating health service</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to a <u>health practitioner</u> is a reference to a <u>practitioner</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
133(g)) and 139	<p><u>Examinations, references and orders for clients charged with offences – right to trial retained</u> (Chapter 7, Part 8)</p> <p>This part is applied for forensic disability clients who have been found unsound of mind by the Mental Health Court.</p> <p>It provides that despite the courts decision the person may elect to be brought to trial for the offence.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p>
133(h) and 139	<p><u>Examinations, references and orders for clients charged with offences – admissibility and use of evidence.</u> (Chapter 7, Part 9 (other than section 315(a)(iv))</p> <p>This part is applied for forensic disability clients who are the subject of a reference to the Mental Health Court.</p> <p>This part provides for the admissibility and use of evidence by the Mental Health Court.</p> <p>Section 315(a)(iv) is excluded as it relates to the making of a forensic order (Criminal Code), and people on these orders are not within the scope of the people who can be detained in the forensic disability service under the Bill.</p>	<p>-A reference to the <u>administrator or administrator of the treating health service</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to <u>authorised mental health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to <u>treatment or care</u> is a reference to <u>care and support</u>.</p>

Clause	Applied provisions MHA	References in MHA to be replaced
134 and 139	<p><u>Forensic information orders</u></p> <p>(Chapter 7A, Part 2 (other than section 318O(1)(e) and (g), 318Y(f) and 318ZB)</p> <p>This part is applied for forensic information orders for forensic disability clients. Forensic information orders allow victims of an alleged offence to receive prescribed information about forensic disability clients.</p> <p>This part provides for applications to the Mental Health Review Tribunal for a forensic information order including who may make the application, how the application is made, how the application may be decided, notice requirements and imposing and changing conditions.</p> <p>Section 318O(1)(e) is excluded because it relates to the transfer of a patient from one authorised mental health service to another authorised mental health service, which does not relevant for forensic disability clients.</p> <p>Sections 318O(1)(g) and 318Y(f) are excluded as these subsections only relates to the transfer of patients to another state under an interstate agreement which is not relevant for forensic disability clients.</p> <p>Section 318ZB provides that for section 62B of the <i>Health Services Act 1991</i>, the disclosure of information under a forensic information order is a disclosure permitted by an Act, and is not applied as the <i>Health Service Act 1991</i> is only relevant to the provision of public health services.</p>	<p>-A reference to a <u>patient or forensic patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p> <p>-A reference to <u>limited community treatment</u> is a reference to <u>limited community treatment within the meaning of the Forensic Disability Act</u></p> <p>-A reference to the <u>authorised mental health service, or treating health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to <u>treatment or care</u> is a reference to <u>care and support</u></p> <p>-A reference to <u>limited community treatment</u> is a reference to <u>limited community treatment within the definition of the Forensic Disability Act</u></p> <p>-A reference to the <u>forensic disability service</u> is a reference to an <u>authorised mental health service</u></p> <p>-A reference to <u>in-patient facility</u> is a reference to <u>forensic disability service</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
135(a) and 139	<p><u>Appeals against tribunal decisions - making and hearing appeals</u></p> <p>(Chapter 8, Part 1, Division 2 (other than section 319(b))</p> <p>Chapter 8, Part 1, enables an appeal against a decision of the Mental Health Review Tribunal to be made to the Mental Health Court in relation to a review decision and a decision on application to move out of Queensland.</p> <p>Division 2 is applied for making and hearing appeals by forensic disability clients against Mental Health Review Tribunal orders.</p> <p>This division sets out the process for making and hearing appeals.</p> <p>Section 319(b) is excluded because it concerns a treatment application which is not relevant for a forensic disability client.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>authorised mental health service, or treating health service</u> is a reference to the <u>forensic disability service</u></p>
135(b)) and 139	<p><u>Appeals against tribunal orders - participation and representation at appeals</u></p> <p>(Chapter 8, Part 1, Division 3 (other than section 329)</p> <p>Chapter 8, Part 1, enables an appeal against a decision of the Mental Health Review Tribunal to be made to the Mental Health Court in relation to a review decision and a decision on application to move out of Queensland.</p> <p>Division 3 is applied for participation and representation for forensic disability clients at a hearing by the Mental Health Court of an appeal against a decision by the Mental Health Review Tribunal.</p> <p>Section 329 is excluded because it relates to a treatment application which is not relevant for a forensic disability client.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p>-A reference to an <u>allied person</u> is a reference to an <u>allied person under the Forensic Disability Act</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
135(c) and 139	<p><u>Appeals against tribunal orders - procedural provisions</u> (Chapter 8, Part 1, Division 4)</p> <p>Chapter 8, Part 1, enables an appeal against a decision of the Mental Health Review Tribunal to be made to the Mental Health Court in relation to a review decision and a decision on application to move out of Queensland.</p> <p>Division 4 is applied for procedures during the hearing of an appeal against a decision of the tribunal by a forensic disability client.</p>	
136 and 139	<p><u>Appeals against Mental Health Court decisions on references</u> (Chapter 8, Part 2)</p> <p>Chapter 8, Part 2 enables an appeal to be made to the Court of Appeal against a decision of the Mental Health Court on a reference.</p> <p>This part is applied for appeals against a decision of the Mental Health Court on a reference for forensic disability clients.</p> <p>Part 2 provides for who can apply for an appeal, and sets out a number of procedural matters in relation to the appeal.</p>	-A reference to the <u>authorised mental health service</u> , or health service is a reference to the <u>forensic disability service</u>
137 and 139	<p><u>Inquiries into detention of clients in forensic disability service</u> (Chapter 11, Part 9)</p> <p>This part is applied for inquiries by the Mental Health Court into the detention of a forensic disability client in the forensic disability service to decide whether the client's detention is lawful.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>authorised mental health service</u>, or health service is a reference to the <u>forensic disability service</u></p> <p>-A reference to the <u>administrator</u> is a reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to <u>examine a patient</u> is a reference to <u>assess a forensic disability client</u></p>

Clause	Applied provisions MHA	References in MHA to be replaced
<p>138(a) and 139</p>	<p><u>Participation and representation at tribunal hearings</u> (Chapter 12, Part 4 (other than section 451))</p> <p>This part, relating to representation and right of appearance at hearings of the Mental Health Review Tribunal is applied for tribunal proceedings for forensic disability clients.</p> <p>Part 4 sets out who may attend a hearing and clarifies that a hearing may proceed in the absence of the client the subject of the proceeding under certain circumstances.</p> <p>Section 451 is excluded as it relates to treatment applications which are not relevant to forensic disability clients.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to the <u>authorised mental health service</u> or treating health service is a reference to the <u>forensic disability service</u></p> <p>-A reference to the <u>administrator</u> reference to <u>the administrator of the forensic disability service</u></p> <p>-A reference to the <u>director</u> is a reference to the <u>Director of Forensic Disability</u></p> <p><u>-A reference to an allied person is a reference to an allied person under the Forensic Disability Act</u></p>
<p>138(b) and 139</p>	<p><u>Participation and representation at tribunal hearings</u> (Chapter 12, Parts 5 and 6)</p> <p>These parts, relating to examinations, confidentiality orders and procedural provisions, are applied for tribunal proceedings for forensic disability clients.</p> <p>Part 5 enables the Mental Health Review Tribunal to order the examination of a person subject to a proceeding as well as the making of a confidentiality order prohibiting or restricting the disclosure of information to the person subject of the proceeding.</p> <p>Part 6 sets out a range of procedural matters that are relevant to the conduct of hearings before the Mental Health Review Tribunal including for example hearings not being open to the public, appointment of assistants and ability to adjourn hearings.</p>	<p>-A reference to a <u>patient</u> is a reference to a <u>forensic disability client</u></p> <p>-A reference to <u>treating health service</u> is a reference to the <u>forensic disability service</u></p> <p>-A reference to a <u>health practitioner</u> is a reference to a <u>practitioner</u></p> <p>-A reference to <u>limited community treatment</u> is a reference to <u>limited community treatment within the meaning of the Forensic Disability Act</u></p> <p>-A reference to <u>treatment or care</u> is a reference to <u>care and support</u></p> <p>-A reference to <u>examination of a patient</u> is a reference to <u>assessment of a forensic disability client</u></p>

Part 3 Declaration about other Mental Health Act provisions

Operation of provision other than applied provision or excluded provision

Clause 140 clarifies that Chapter 10 does not affect the operation of a provision of the *Mental Health Act 2000* that is not an applied provision. Excluded provisions include those that are expressly excluded from being an applied provision in Part 1. Chapter 6, Part 6 is also an excluded provision. This part of the *Mental Health Act 2000* relates to treatment applications such as electroconvulsive therapy and psychosurgery under that Act.

Chapter 11 5-year review of client's benefit from care and support

Review by Director of Forensic Disability

Clause 141 provides that the administrator must ensure the Director of Forensic Disability conducts a review of a forensic disability client who has been a client of the forensic disability service for a continuous 5 year period.

The purpose of this review is to determine if the client is receiving benefit from the care and support provided by the forensic disability service and could continue to receive benefit from the model of care provided by the service. 'Benefit' is a key term for the Bill and means a benefit by way of individual development, opportunities for quality of life and participation and inclusion in the community.

This clause also clarifies that the client continues to be a client of the forensic disability service even while temporarily absent from the service, or undertaking limited community treatment, for any period the client was detained temporarily in an authorised mental health service under section

309B of the *Mental Health Act 2000*, or absent from the health service while undertaking limited community treatment.

It is envisaged that the Mental Health Review Tribunal will also consider the outcome of the review in the next review of the client's mental condition under section 203 of the *Mental Health Act 2000*. For this reason the clause requires the Director of Forensic Disability to give a report of the review to the administrator of the forensic disability service who must then provide the tribunal with a copy of the report when a notice is received under section 202 of the *Mental Health Act 2000* for a hearing of the review of the client's mental condition by the tribunal.

Transfer from forensic disability service to authorised mental health service

Clause 142 provides that if the Director of Forensic Disability comes to the conclusion that a client is not likely to continue to benefit from the care and support in the forensic disability service, then the Director of Forensic Disability may make an order for the clients transfer to an authorised mental health service. Clause 33(2) to (4) applies for the transfer.

This outcome is not the only outcome that could result from the 5 year review by the Director of Forensic Disability. The Director of Forensic Disability may decide that the person could continue to benefit from the service or that a further period of time is required to determine this. The review may also result in other recommendations to the Mental Health Review Tribunal such as approval of limited community treatment in order to get care and support from another disability service.

Chapter 12 Miscellaneous provisions

Part 1 Other provisions about administration or use of medication

Definition for Pt 1

Clause 143 clarifies that medication for Part 1 does not include behaviour control medication.

Administration of medication for particular purposes

Clause 144 provides that despite the absence or refusal of a forensic disabilities client's consent, medication may be administered to the client by a doctor or a registered nurse under the instruction of a doctor, if the doctor is satisfied it is necessary to ensure the safety of the client and others before or while the client is being transferred to an authorised mental health service under a transfer order.

A doctor or registered nurse may administer medication with help, using minimum force that is reasonable in the circumstances. The doctor or registered nurse who administers the medication must keep a written record of the details of the administration of the medication including the name of the medication and the dose, route and frequency of administration.

Review of client's medication

Clause 145 provides for the regular review of a client's medication (other than behaviour control medication which is required to be reviewed under clause 52) by a doctor. A review must be carried out at least every 3 months and if required by the Director of Forensic Disability, an immediate review must be carried out. The doctor must record the details of the review in the client's file.

Part 2 Compliance with particular provisions

Compliance with provisions as soon as practicable

Clause 146 provides that where a person is required or permitted under the Act to make, prepare or give a document to someone, or to talk or tell someone about a matter, and no time is specified for doing so, it must be done as soon as practicable.

Compliance with provision to extent reasonably practicable

Clause 147 provides that where a person is authorised or required to give notice or tell someone about a matter under the Forensic Disability Act, the person need only comply with the requirement to the extent that is reasonably practicable in the circumstances.

Administrator taken to have complied with particular requirements

Clause 148 validates the actions of the administrator of the forensic disability service in relation to giving notice to or telling a client's allied person about a matter in circumstances where an administrator mistakenly gives notice to or tells a person about a matter under the honest and reasonable belief that the person is the client's allied person.

Director of Forensic Disability taken to have complied with particular requirements

Clause 149 provides that the Director of Forensic Disability may enter into a written agreement with the Director of Mental Health for the Director of Mental Health, or a person nominated by the Director of Mental Health to give information, a notice or a copy of a notice to a person under a prescribed provision of the *Mental Health Act 2000* on behalf of the Director of Forensic Disability. The prescribed provisions listed in the clause relate to the making and revocation of forensic information orders, and are applied under Chapter 10 of the Bill. Forensic information orders allow a victim of an alleged offence allegedly committed by a person subject to a forensic order to access particular information about the person and the forensic order.

The Director of Forensic Disability is taken to have complied with a prescribed provision if the Director of Mental Health gives the information as required under the prescribed provision. The clause validates actions of the Director of Forensic Disability in relation to information or notices given in purported compliance with a prescribed provision of the *Mental Health Act 2000*.

It is envisaged that such an agreement will be developed to enable information under a forensic information order concerning a forensic disability client to be provided by the Queensland Health Victim Support Service. This specialised state-wide service was established as a key recommendation of the review of the *Mental Health Act 2000* conducted by Brendan Butler AM SC in 2006. It provides information and support to the victims of persons who have committed an offence but are diverted from the criminal justice system because they are placed on a forensic order by the Mental Health Court or become a classified patient under the *Mental Health Act 2000*.

Part 3 Other provisions

Legal custody of client

Clause 150 provides that the legal custody of a forensic disability client is vested in the administrator.

Taking client to appear before court and return to forensic disability service

Clause 151 provides that a practitioner can take a forensic disability client to and from court for a court appearance.

Application of Mental Health Act for client detained temporarily in authorised mental health service

Clause 152 provides that sections 309B and 309C of the *Mental Health Act 2000* provide for the detention and care of a forensic disability client who is taken to an authorised mental health service under section 113(2)(b) or (4).

Official to identify himself or herself before exercising powers

Clause 153 sets out the circumstances when an official (as defined) must identify himself or herself, and anyone else helping the official exercise a power.

Ensuring client understands things told or explained to the client

Clause 154 places an onus on a person who is required to tell or explain something to a forensic disability client to do so in a language or way that the client is most likely to understand and is appropriate given the client's age, culture, disability and communication ability.

This may include for example the use of visual or other communicative aids.

If the person believes the client has not understood what the person told or explained to the client, the person must record details of the fact in the client's file.

Use of reasonable force

Clause 155 provides that a practitioner or administrator may exercise power, with help and using the minimum force that is necessary and reasonable in the circumstances. However, the use of reasonable force is limited to the exercise of the administrator's power to detain a forensic disability client under the Forensic Disability Act or the applicable forensic order in the forensic disability service, or a practitioner's powers under section 37 (Taking client to an authorised mental health service if transferred), section 113(2) or (3) (Taking client to forensic disability service or authorised mental health service) or section 151 (Taking client to appear before court and return to the forensic disability service).

When force is used, it must be the minimum force that is necessary and reasonable in the circumstances.

Period counted as imprisonment

Clause 156 specifies the period a person is a forensic disability client is to be counted toward any period of imprisonment or detention under the *Penalties and Sentences Act 1992*, *Corrective Services Act 2006* or *Youth Justice Act 1992*.

Review of the Act

Clause 157 requires the Minister to review the efficacy and efficiency of the Forensic Disability Act as soon as practicable 3 years after the commencement of the Act. The review report must be tabled in the Legislative Assembly, as soon as practicable after finishing the review.

In conducting the review, if the Minister is not responsible for administering the *Mental Health Act 2000*, the Minister must consult with the Minister responsible for administering that Act.

Approved forms

Clause 158 allows the Director of Forensic Disability to approve forms for use under the Forensic Disability Act.

Regulation-making power

Clause 159 provides that the Governor in Council may make regulations under the Act. A regulation may be made about the records to be kept and returns to be made by persons and the inspection of records. It may also provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

Chapter 13 Transitional provision

Initial director

Clause 160 is a transitional provision for the Director of Forensic Disability. When this section commences, the person who is currently appointed as the chief practitioner of disability under the *Public Service Act 2008*, will be the Director of Forensic Disability. The duration of this appointment as the Director of Forensic Disability will be 5 years or until a Director of Forensic Disability is appointed under section 85 or the chief practitioner disability resigns as the Director of Forensic Disability or the Governor in Council removes the chief practitioner disability from the office of Director of Forensic Disability.

Chapter 14 Legislation amended

Part 1 Amendment of Bail Act 1980

Act amended

Clause 161 provides that Part 1 amends the *Bail Act 1980*.

Amendment of s 21 (Sureties)

Clause 162 amends section 21(1)(c) to exclude a forensic disability client within the meaning of the Forensic Disability Act from being a surety to an undertaking.

Part 2 Amendment of Commissions of Inquiry Act 1950

Act amended

Clause 163 provides that Part 2 amends the *Commissions of Inquiry Act 1950*.

Amendment of s5B (Attendance of prisoner or patient before commission)

Clause 164 amends section 5B to replace the heading ‘prisoner or patient’ to include a reference to ‘forensic disability client’. The clause inserts in section 5B(1) where a chairperson requires the attendance of a forensic disability client before a commission, to insert that a chairperson may serve a signed notice on the administrator of the forensic disability service, to direct the administrator to produce a forensic disability client at the time and place stated in the direction.

The clause also amends section 5B(2) to replace ‘such prisoner or patient’ with ‘the prisoner, patient or client.’

The clause amends the definition of ‘administrator’ in section 5B(3) to mean a person declared under the *Mental Health Act 2000* to be the administrator of the health service or a person declared under the Forensic Disability Act to be the administrator of the forensic disability service. It also makes reference to the definition of ‘forensic disability client’ and ‘forensic disability service’ in the Forensic Disability Act.

Part 3 Amendment of Coroners Act 2003

Act amended

Clause 165 provides that Part 3 amends the *Coroners Act 2003*.

Amendment of s 9 (*Death in care defined*)

Clause 166 amends section 9(1) to provide that a person’s death is a death in care if, when the person died, the person, under the Forensic Disability Act, was being taken to, or detained in, the forensic disability service as a forensic disability client or an authorised mental health service under sections 37 or 113(2)(b) or (4) of that Act; or where the person was undertaking limited community treatment while accompanied by a practitioner or was absent from the forensic disability service under a temporary absence approval while accompanied by a practitioner; or where the person was awaiting admission at an authorised mental health service under an order for the person’s transfer from a forensic disability service to the authorised mental health service.

This clause also amends section 9(1)(b) to provide that a person’s death is a death in care if, when the person died, the person was, under the *Mental Health Act 2000*, absent from an authorised mental health service under an approval given under section 186 of that Act while accompanied by an employee of a health service, being detained temporarily in an authorised mental health service under section 309B of that Act or being taken to the forensic disability service under section 169J of that Act.

Section 9(4) also inserts reference to the definition of ‘forensic disability client’ and ‘forensic disability service’ in the Forensic Disability Act.

Amendment of s 10 (Death in custody defined)

Clause 167 amends section 10(2)(c) to define ‘death in custody’ to include detention under the authority of an Act of the State, other than the Forensic Disability Act.

Amendment of s 47 (Coroner’s comments and findings for particular deaths)

Clause 168 amends section 47(3)(a) definition to provide that a relevant Act means for the death in care of a person mentioned in section 9(1)(aa) - the Forensic Disability Act.

The effect of this amendment is to provide that the coroner must give a written copy of the findings and comments in relation to the investigation of a death under section 9(1)(aa) to the chief executive of the department that administers the Forensic Disability Act and to the Minister who administers the Forensic Disability Act.

Part 4 Amendment of Crime and Misconduct Act 2001

Act amended

Clause 169 provides that Part 4 amends the *Crime and Misconduct Act 2001*.

Amendment of s 83 (Notice to attend hearing—prisoner or patient)

Clause 170 amends the heading of section 83 to replace ‘or patient’ with ‘patient or forensic disability client’. The clause amends section 83 to allow the chairperson of the commission to direct the forensic disability service administrator to produce a forensic disability client detained in the forensic disability service if the client’s attendance before the commission is required. The direction of the chairperson is lawful authority to the

person to whom it is given for production of the forensic disability client, which must be complied with.

This clause also amends the section to provide that a forensic disability client produced under this section remains in the custody of the chief executive (corrective services), hospital administrator or forensic disability service administrator. The clause inserts in section 83(6) reference to the definitions of ‘forensic disability client’, ‘forensic disability service’ and ‘forensic disability service administrator’ within the meaning of the Forensic Disability Act.

Part 5 Amendment of Criminal Code

Code amended

Clause 171 provides that Part 5 amends the Criminal Code.

Amendment of s145A (Sections 141 to 144 do not apply to certain types of custody)

Clause 172 amends section 145A to provide that offences in the Criminal Code relating to the escape of persons from lawful custody does not include the custody of a forensic disability client under the Forensic Disability Act.

Amendment of s 227C (Persons who are not criminally responsible for offences against ss 227A and 227B)

Clause 173 amends section 227C to provide that lawful custody includes detention under the *Mental Health Act 2000* in the forensic disability service within the meaning of the Forensic Disability Act.

The effect of this amendment is to provide that a person is not responsible for an offence against section 227A(1) or (2) (Observations and recordings in breach of privacy) or 227B (Distributing prohibiting visual recordings), in relation to an observation or visual recording of another person who is detained in the forensic disability service, if the person is, at the time of the offence, acting in the course of the person’s duties in relation to the person’s detention, and the person’s conduct is reasonable in the circumstances for the performance of the duties.

Amendment of s 266 (Prevention of crimes and offences for which an offender may be arrested without warrant—prevention of violence by patients under Mental Health Act 2000)

Clause 174 amends section 266 provide that it is lawful for any person to use such force as reasonably necessary in order to prevent a person who the person believes, on reasonable grounds, to be a forensic disability client under the Forensic Disability Act from doing any violence to any person or property.

Amendment of s 358 (Unlawful custody of patient under Mental Health Act 2000)

Clause 175 amends section 358 to provide that a person who detains or assumes the custody of a forensic disability client under the Forensic Disability Act is guilty of a misdemeanour.

Part 6 Amendment of Criminal Practice Rules 1999

Rules amended

Clause 176 provides that Part 6 amends the *Criminal Practice Rules 1999*.

Amendment of sch 3 (Forms for indictments, informations and complaints—statement of offences under the Code)

Clause 177 amends form 203 in schedule 3 relating to breaches of section 358 of the Criminal Code to reflect the amendment of section 358 in clause 175 which makes it a misdemeanour for a person to detain or assume the custody of a forensic disability client under the Forensic Disability Act.

Part 7 Amendment of Disability Services Act 2006

Act amended

Clause 178 provides that Part 7 amends the *Disability Services Act 2006*.

Amendment of s 123B (Service providers to which pt 10A applies)

Clause 179 amends section 123B of the *Disability Services Act 2006* to make it clear that the application of provisions in Part 10A of *Disability Services Act 2006* regulating the use of restrictive practices by funded disability service providers applies subject to section 47 of the Forensic Disability Act.

Clause 47 of the Bill provides that Part 10A of the *Disability Services Act 2006* applies only to a forensic disability client who is absent from the forensic disability service undertaking limited community treatment or under a temporary absence approval. This is because the Bill regulates the use of restrictive practices within the forensic disability service. However, the Bill makes amendments (see below) to provisions of Part 10A to ensure it applies to forensic disability clients who receive care and support outside the forensic disability service.

Amendment of s123E (Definitions for pt 10A)

Clause 180 amends the definition of authorised psychiatrist in section 123E of the *Disability Services Act 2006* to reflect machinery change renaming schedule 2 in the *Mental Health Act 2000* to schedule in the Bill.

Amendment of section 123Q (Chief executive to decide whether multidisciplinary assessment of adult will be conducted)

Clause 181 inserts a new subsection into section 123Q(3) of the *Disability Services Act 2006* to provide that the chief executive, must in deciding whether to conduct a multidisciplinary assessment, on the basis that the chief executive considers it may be necessary for a relevant service provider to contain or seclude an adult with an intellectual or cognitive disability, consult with a senior practitioner responsible for the care and

support of the adult under the Forensic Disability Act, if the chief executive is aware the adult is a forensic disability client.

Amendment of s 123T (Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order)

Clause 182 amends section 123T of the *Disability Services Act 2006* to expand its operation to adults with an intellectual or cognitive disability who are forensic disability clients. Currently, section 123T provides that, where the chief executive is aware an adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000* and the chief executive develops a positive behaviour support plan for the seclusion or containment of the adult, the chief executive must ensure the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000* is given the opportunity to participate in the development of the positive behaviour support plan.

The Bill amends section 123T to provide that it also applies where the chief executive is aware an adult is a forensic disability client and that, in this case, the chief executive must ensure the senior practitioner responsible for the care and support of the adult under the Forensic Disability Act is given the opportunity to participate in the development of the positive behaviour support plan.

Amendment of s 123X (Requirements for chief executive's decision about whether change should be made)

Clause 183 amends section 123X of the *Disability Services Act 2006* to provide that the chief executive, in deciding to change an adult's positive behaviour support plan for seclusion or containment because the adult is a forensic disability patient, the chief executive must consult a senior practitioner responsible for the care and support of the adult under the Forensic Disability Act. This amendment aligns with the current requirements in section 123X relating to adults subject to forensic orders under the *Mental Health Act 2000*.

Amendment of s 123Y (Action of chief executive after deciding whether change should be made)

Clause 184 amends section 123Y(5)(b) of the *Disability Services Act 2006* to provide that the chief executive after deciding to change a positive

behaviour support plan for seclusion or containment, must as soon as practicable after making the decision, give a prescribed notice to the Director of Forensic Disability and the relevant service provider to which the existing containment or seclusion approval relates, if the chief executive was required to decide whether to change the plan because the adult is a forensic disability client. This amendment aligns with the requirements in section 123Y relating to adults subject to forensic orders under the *Mental Health Act 2000*.

Amendment of s 123ZF (Requirements for development of positive behaviour support plan—assessment and consultation)

Clause 185 inserts a new subsection into section 123ZF(2) of the *Disability Services Act 2006* to provide that a relevant service provider must, in developing a positive behaviour support plan for the use of restrictive practices other than containment and seclusion, ensure a senior practitioner responsible for the care and support of the adult under the Forensic Disability Act is given the opportunity to participate in the development of the plan, if the provider is aware the adult is a forensic disability client.

Amendment of s 123ZH (Requirement for relevant service provider to consider whether plan should be changed)

Clause 186 amends section 123ZH to provide that if a positive behaviour support plan is developed for an adult for the use of restrictive practices other than containment and seclusion and the relevant service provider becomes aware that the adult is a forensic disability client, the service provider must consider whether the positive behaviour support plan should be changed. Section 123ZH has also been amended to provide that, in this case, in deciding whether the plan should be changed, the relevant service provider must consult with the senior practitioner responsible for the care and support of the adult under the Forensic Disability Act and consider the senior practitioner's views about the use of any restrictive practice provided for in the plan. This amendment aligns with the current requirements in section 123ZH relating to relating to adults subject to forensic orders under the *Mental Health Act 2000*.

Amendment of s 123ZI (Requirement for relevant service provider to notify guardian)

Clause 187 expands the application of section 123ZI, which currently sets out requirements of service providers related to adults subject to a forensic order or involuntary order under the *Mental Health Act 2000*, to forensic disability clients. Section 123ZI has been amended to provide that if a service provider is required to consult a senior practitioner responsible for the care and support of the adult under the Forensic Disability Act under sections 123ZF(2) or 123ZH(3), and the senior practitioner does not agree with the use of restrictive practice provided for in the positive behaviour support plan, the service provider must, as soon as practicable, notify a relevant decision maker (as defined in the section) on the senior practitioner's views regarding the use of the restrictive practice.

Amendment of s 123ZJ (Requirement for relevant service provider to notify Director of Mental Health)

Clause 188 amends section 123ZJ of the *Disability Services Act 2006* to expand its application to forensic disability clients, as it currently relates to requirements of service providers in relation to adults subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.

The section has been amended to also apply where a relevant service provider develops or changes a positive behaviour support plan for the use of restrictive practices other than containment or seclusion, and a guardian for a restrictive practice (general) matter, or an informal decision-maker for the adult consents to the use of a restrictive practice, and the relevant service provider is or becomes aware the adult is a forensic disability client. The section has been amended to provide that, in this case, the relevant service provider must give the Director of Forensic Disability notice of the terms of the consent as soon as practicable after the consent is given or the service provider becomes aware that the adult is a forensic disability client, and provide the Director of Forensic Disability with a copy of the positive behaviour support plan if the Director of Forensic Disability asks for it.

Amendment of s 123ZK (Short term approval for use of restrictive practices other than containment or seclusion)

Clause 189 amends section 123ZK(4) of the *Disability Services Act 2006* to provide that the chief executive in deciding whether to approve the short term use of a restrictive practice other than containment or seclusion, must,

if practical, consult with a senior practitioner responsible for the care and support of the adult under the Forensic Disability Act, if the chief executive is aware the adult is a forensic disability client.

Amendment of sch 7 (Dictionary)

Clause 190 amends the dictionary in the *Disability Services Act 2006* to provide definitions of ‘Director of Forensic Disability’ and ‘forensic disability client’.

Part 8 Amendment of Guardianship and Administration Act 2000

Act amended

Clause 191 provides that Part 8 amends the *Guardianship and Administration Act 2000*.

Amendment of s 29 (Other review of appointment)

Clause 192 inserts a new subsection 29(1)(c)(vii) to provide that the tribunal may review an appointment of a guardian for a restrictive practice matter on the application of the Director of Forensic Disability, if the adult is a forensic disability client.

Amendment of s80U (Definitions for ch 5B)

Clause 193 inserts in section 80U definitions of ‘Director of Forensic Disability’, ‘forensic disability client’, ‘forensic disability service’, and ‘senior practitioner’ for the purpose of Chapter 5B (Restrictive practices).

Amendment of s 80W (Matters tribunal must consider)

Clause 194 provides the matters that a tribunal must consider when deciding to give a containment or seclusion approval. If the tribunal is aware the adult is a forensic disability client, the tribunal must consider the terms of the forensic order under the *Mental Health Act 2000* for the adult’s detention in the forensic disability service and the views of a senior

practitioner responsible for the care and support of the adult under the Forensic Disability Act.

Amendment of s 80ZA (When containment or seclusion approval may be reviewed)

Clause 195 amends section 80ZA to include that the tribunal may review a containment or seclusion approval at any time if the adult is a forensic disability client.

Amendment of s 80ZE (Requirements for giving consent – guardian for restrictive practice (general) matter)

Clause 196 inserts a new subsection to section 80ZE to provide that in deciding whether to give consent for the use of a restrictive practice, if the guardian is aware the adult is a forensic disability client, the guardian must consider the terms of the forensic order under the *Mental Health Act 2000* for the adult's detention in the forensic disability service and the views of a senior practitioner responsible for the care and support of the adult under the Forensic Disability Act about the use of the restrictive practice.

Amendment of s 80ZH (When adult guardian may give short term approval for use of containment or seclusion)

Clause 197 provides for an amendment to include that when deciding to give short term approval for use of containment or seclusion, the adult guardian must, unless it is not practicable in the circumstances, consult with the senior practitioner responsible for the care and support of a forensic disability client under the Forensic Disability Act.

Amendment of s 80ZP (Who may apply for appointment of guardian for restrictive practice matter)

Clause 198 amends section 80ZP to provide that an application of a guardian for a restrictive practice matter can be made by the Director of Forensic Disability if the adult is a forensic disability client.

Amendment of s 80ZQ (Who is an *active party*)

Clause 199 amends section 80ZQ to provide that if an adult is a forensic disability client, the Director of Forensic Disability is an active party for a proceeding.

Amendment of s 80ZS (Requirements for informal decision makers – consenting to use of restrictive practices)

Clause 200 amends section 80ZS to provide that an informal decision maker, in giving consent to the use of a restrictive practice, the informal decision maker must be satisfied that the senior practitioner responsible for the care and support of the adult under the Forensic Disability Act has been given an opportunity to participate in the development of the positive behaviour support plan, if the informal decision maker is aware the adult is a forensic disability patient.

Amendment of s 118 (Tribunal advises persons concerned of hearing)

Clause 201 amends section 118 to provide that at least 7 days before the hearing of an application about a proceeding under Chapter 5B, the tribunal must give notice of the hearing to the adult concerned in the proceeding and, as far as practicable, the Director of Forensic Disability, if the tribunal is aware the adult is a forensic disability client.

Amendment of s222 (Definitions of ch 10)

Clause 202 renumbers paragraph (b) to (c) to provide that a consumer means for a visitable site that is a forensic disability service, any person who lives or receives services at the visitable site.

Amendment of s 230 (Reports by community visitors)

Clause 203 inserts new section 230(4)(da) to provide that the chief executive may give a report after a visit to a visitable site to the Director of Forensic Disability.

Amendment of s 231 (Appointment)

Clause 204 renumbers section 231(4)(a)(ii) and (iii) to 231(4)(a)(iii) and (iv) and inserts a new section 231(4)(a)(ii) to provide that a person may not

hold office as a community visitor while they are a public service employee of a department which administers the Forensic Disability Act.

Insertion of new ch 12, pt 12

Clause 205 inserts a new transitional provision as Chapter 12, Part 12 to provide that the amendment of the *Guardianship and Administration Regulation 2000* by the Forensic Disability Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Amendment of sch 4 (Dictionary)

Clause 206 amends schedule 4 of the dictionary to provide the meaning of ‘Director of Forensic Disability’, ‘forensic disability client’, ‘forensic disability service’, and ‘senior practitioner.’

Part 9 Amendment of Guardianship and Administration Regulation 2000

Regulation amended

Clause 207 provides that Part 9 amends the *Guardianship and Administration Regulation 2000*.

Amendment of sch 2 (Visitable sites)

Clause 208 amends schedule 2 to insert as a visitable site, the forensic disability service under the Forensic Disability Act.

Part 10 Amendment of Limitation of Actions Act 1974

Act amended

Clause 209 provides that Part 10 amends the *Limitations of Actions Act 1974*.

Amendment of s 5 (Interpretation)

Clause 210 amends section 5(3) to provide that a person is presumed conclusively to be of unsound mind while the person is a forensic disability client under the Forensic Disability Act.

Part 11 Amendment of Mental Health Act 2000

Act amended

Clause 211 provides that Part 11 provides for amendments to the *Mental Health Act 2000*.

The *Mental Health Act 2000* establishes a scheme to determine criminal responsibility and fitness for trial for persons charged with an indictable offence and makes provision for the ongoing detention and management of the accused under a forensic order.

The amendments to the *Mental Health Act 2000* in this Bill will improve the overall effectiveness of the broader forensic mental health system with respect to meeting the needs of persons with an intellectual or cognitive disability. It should be noted that for the purposes of the *Mental Health Act 2000*, the Bill amends the term ‘intellectual disability’ to include a ‘cognitive disability’.

These amendments, in response to the Butler report, follow two previous sets of amendments to the *Mental Health Act 2000* that implemented key recommendations in that report. The first set of amendments were enacted via the *Health and Other Legislation Amendment Act 2007*, and the second were enacted via the *Mental Health Amendment Act 2007*.

To ensure consistency of application for those persons who may be managed under either the *Mental Health Act 2000* or the Forensic Disability Act at a point in time, a number of provisions within the *Mental Health Act 2000* have been applied under the Forensic Disability Act. The use of applied provisions across the two pieces of legislation ensures that amendments being made to the *Mental Health Act 2000* are made in the most judicious manner to minimise the impact on consumers, agencies and statutory bodies, which have been using the *Mental Health Act 2000* over the last ten years.

Where a provision of the *Mental Health Act 2000* has been applied in the Forensic Disability Act, the provision is to be read with any changes necessary to provide for its effective operation under the Forensic Disability Act (see the notes to clause 139 of the Forensic Disability Act). For an applied provision this means, for example, that a reference to ‘forensic patient’, while appropriate for the *Mental Health Act 2000*, is taken to be a reference to ‘forensic disability client’ in the Forensic Disability Act which implements a disability rather than mental health focused model of care. The explanatory notes to the applied provisions in Chapter 10 of the Forensic Disability Bill 2011 provide a useful guide for identifying and replacing appropriate references.

Schedule 2 of the Bill also provides for minor and consequential amendments necessary to support the commencement of the Forensic Disability Act and where necessary align the *Mental Health Act 2000* with the Forensic Disability Act to ensure consistency of application for those persons who may be managed under either Act at a particular point in time.

Amendment of s8 (General principles for administration of Act)

Clause 212 amends section 8, which sets out a number of general principles to guide the administration of the *Mental Health Act 2000* in so far as it relates to a person who has a mental illness. As outlined above, amendments are being made to the *Mental Health Act 2000* to improve the overall effectiveness of the broader forensic mental health system with respect to persons with an intellectual or cognitive disability. As part of these amendments, the principles stated in section 7 of the Forensic Disability Act apply to the administration of the *Mental Health Act 2000* in so far as it relates to a person with an intellectual or cognitive disability. These principles will help guide the actions of the Director of Mental Health, Mental Health Review Tribunal, Mental Health Court and other persons when exercising their statutory responsibilities and powers in relation to persons with an intellectual or cognitive disability.

As section 7 of the Forensic Disability Act is being applied for the purposes of the *Mental Health Act 2000*, clause 212 also clarifies that when applying this section:

- a reference to the Forensic Disability Act is to be taken to be a reference to the *Mental Health Act 2000*; and
- a reference to the term ‘care and support’ in the Forensic Disability Act is to be taken to be a reference to ‘care’ in the

Mental Health Act 2000. While different terms are used in the two pieces of legislation, these terms have the same meaning - namely, the provision of habilitation, rehabilitation, support and other services.

Amendment of s9 (Principles for exercising powers and performing functions)

Clause 213 amends section 9 which specifies that a power or function under the *Mental Health Act 2000* must be exercised or performed in a way that does not adversely affect a person's liberty and rights unless there is no less restrictive way to protect their health and safety or the safety of others and is the minimum necessary in the circumstances. This clause amends section 9 to include persons with an intellectual or cognitive disability who may be subject to a power or function under the *Mental Health Act 2000*. As discussed above, for the purpose of the *Mental Health Act 2000*, the term 'intellectual disability' has been defined to include cognitive disability.

Amendment of s 124 (Preparing treatment plan)

Clause 214 amends section 124 of the *Mental Health Act 2000* to clarify that a treatment plan for an involuntary patient (including a person on a forensic order) must address the relevant needs of the patient. That is, the plan must address the treatment and care needs for a person with mental illness, or the care needs for a person with an intellectual disability. The purpose of this section is to ensure accountability of the treatment or care the patient is to receive while being managed by an authorised mental health service.

In this clause, and throughout the *Mental Health Act 2000*, consequential amendments are required to reflect a distinction between the involuntary treatment and care of persons with mental illness; and the care of persons with an intellectual disability. For the purposes of the *Mental Health Act 2000*, the term 'treatment' is limited in its application to persons who have a mental illness and is defined as meaning anything done, or to be done, with the intention of having a therapeutic effect on the person's illness. Whereas, the term 'care' may apply to a person with a mental illness or an intellectual or cognitive disability. The Bill provides for the definition of care to be amended to include 'habilitation' to mirror the definition of 'care and support' in the Forensic Disability Act. Care will therefore be defined,

for the purposes of the *Mental Health Act 2000* as including the provision of habilitation, rehabilitation, support and other services.

This clause also provides for an amendment to section 124 to ensure that any treatment plan developed for a patient takes into account any existing individual development plan prepared for the person under section 14 of the Forensic Disability Act that applied immediately before their transfer to the authorised mental health service. Currently, section 124 requires that consideration be given to any existing plan of treatment or advance health directive under the *Powers of Attorney Act 1998* for the person. This amendment ensures that if a person is transferred from the forensic disability service to an authorised mental health service, previous and existing care regimes in place for the person are taken into account in formulating the new treatment plan.

The consideration of individual development plans in the development of the treatment plan will necessarily be limited by the ability to provide disability forensic care services in an authorised mental health service. As the patient will be transitioning to a health service, and not a specialised service for people with intellectual or cognitive disability, the treatment plan will be reflective of the capacity of an authorised mental health service to provide specialised programs to patients with an intellectual or cognitive disability. Given the potential limitations on an authorised mental health service providing a disability framework within a mental health setting, these programs may differ from those available to forensic disability clients in the forensic disability service.

Amendment of s 131 (What treatment plan must state for limited community treatment)

Clause 215 amends section 131(1)(b)(i) to require that a treatment plan must include in specific terms the conditions an authorised doctor for the patient's treating health service considers necessary for the clinical management of the patient's treatment, or for the management of the patient's care, or where the patient is authorised to undertake limited community treatment. The amendment is necessary to reflect the distinction made throughout the *Mental Health Act 2000* between the involuntary treatment and care of persons with mental illness; and the care of persons with an intellectual or cognitive disability.

Amendment of s 141 (Meaning of *mechanical restraint* for div 3)

Clause 216 amends the definition of mechanical restraint to reflect the requirement of new section 141A (see clause 217 below) that the Director of Mental Health must approve the mechanical appliances that may be used as mechanical restraint in an authorised mental health service. Mechanical restraint of a person is defined in the *Mental Health Act 2000* as the restraint of the person by the use of an approved mechanical appliance preventing the free movement of the person's body or a limb of the person. The definition specifically excludes the use of a surgical or medical appliance for the proper treatment of physical disease or injury.

It should be noted that schedule 2 of the Bill provides for a range of machinery amendments to be made to the *Mental Health Act 2000*, including that the new section 141A when inserted into the *Mental Health Act 2000* be renumbered as section 162B. Consequently, the amendment to section 141 makes to reference to how the specified section will be numbered once the amendments to the Act commence – that is 162B rather than 141A.

Insertion of new s 141A

Clause 217 inserts a new section 141A (Approval of mechanical appliances) into the *Mental Health Act 2000*. This section specifies that the Director of Mental Health must approve the mechanical appliances that may be used for the mechanical restraint of a patient in an authorised mental health service. As currently provided for by the Act, the mechanical restraint of a patient must be authorised by a doctor only if the doctor is satisfied it is the most clinically appropriate way of preventing injury to the patient or someone else (see section 143). Services will be informed about what appliances have been approved by the Director of Mental Health, as the legislation requires that a policy or practice guideline listing the approved mechanical appliances be issued by the Director of Mental Health. Furthermore, if mechanical restraint is deemed to be necessary as the most clinically appropriate way of preventing harm to a patient or another person, the mechanical appliance must be applied in accordance with the policy or practice guideline issued by the Director of Mental Health.

As noted above, schedule 2 of the Bill provides for a range of machinery amendments to be made to the *Mental Health Act 2000*, including that the

new section 141A when inserted into the *Mental Health Act 2000* be renumbered as section 162B.

Amendment of section 144 (How authorisation is given)

Clause 218 amends section 144 which sets out how a doctor may authorise the use of mechanical restraint, including the details which must be recorded in a patient's clinical file. The amendment inserts a new section 144(g) into the *Mental Health Act 2000* to require the doctor authorising the use of the mechanical restraint to make a record in the patient's file about the time (not longer than 3 hours after the authorisation is given) when the authorisation ends.

Insertion of new s 144A

Clause 219 inserts a new section 144A (Use of reasonable force) into the *Mental Health Act 2000*. This section gives authority to a doctor or senior registered nurse on duty, to obtain help and use the minimum force necessary and reasonable in the circumstances to apply a mechanical restraint to a patient, if authorised. The insertion of this provision is consistent with the equivalent provisions regarding the use of reasonable force relating to seclusion that are currently included in the *Mental Health Act 2000* (see section 159).

Replacement of ss 146 and 147

Clause 220 replaces sections 146 and 147 to incorporate additional safeguards regarding the use of mechanical restraint in authorised mental health services.

New section 146 (Removal of restraint before authorisation ends) empowers the Director of Mental Health to, at any time, order the mechanical restraint of a patient to end. If the Director of Mental Health orders that the mechanical restraint of a patient must end, the senior registered nurse on duty must immediately direct the removal of the mechanical restraint. This new safeguard is in addition to the safeguard allowing the senior registered nurse on duty, to immediately direct the removal of the mechanical restraint, if satisfied the patient can be safely treated or cared for without being mechanically restrained.

An order of the Director of Mental Health to end the mechanical restraint of a patient, or following the senior registered nurse's decision that the

patient can be safely treated without being mechanically restrained, must immediately result in the direction that the mechanical restraint be removed. This direction must occur regardless of any authorisation by a doctor that is in place for the patient for the use of mechanical restraint.

New section 147 (Administrator must notify director about mechanical restraint) increases the obligation on the administrator of an authorised mental health service to notify the Director of Mental Health about the use of mechanical restraint in that service. The new section 147 specifically requires the administrator to notify the Director of Mental Health about the mechanical restraint of a patient in an authorised mental health service as soon as practicable after the patient is restrained. Currently, the administrator of an authorised mental health service is only required to report on the use of mechanical restraint if requested by the Director of Mental Health. Reporting to the Director of Mental Health as soon as practicable after a patient has been mechanically restrained rather than waiting for a request for the information ensures that the Director of Mental Health is fully informed about the use of mechanical restraint in authorised mental health services and provides an additional safeguard for patients in a service.

Amendment of s 153 (Seclusion authorised by doctor)

Clause 221 amends section 153(2)(c) to reduce the maximum duration of a seclusion order from up to 12 hours to up to three hours to reflect national and international best practice on the time limitation of seclusion orders. Reducing the use of, and where possible, eliminating seclusion and restraint is one of the four priority areas of the National Safety Priorities in Mental Health: a national plan for reducing harm (the National Safety Priorities). To support this priority, in 2008, the Director of Mental Health issued a policy statement on reducing and where possible eliminating restraint and seclusion in Queensland mental health services. This statement provides mental health services with clear and specific directions and guidance on reducing the use of physical and mechanical restraint and seclusion, within a context of least restrictive principles.

In considering best practice, the Director of Mental Health has recommended that in Queensland mental health services, the maximum timeframe that a patient subject to seclusion must be examined by a medical practitioner be reduced to three hours. The amendment to section 153 achieves this recommendation, and ensures that Queensland mental health services comply with the National Mental Health Seclusion and

Restraint Project's (a collaborative initiative between the Australian Government and State and Territory Governments) recommendation that a patient in seclusion must be examined by a medical practitioner at least every four hours.

This clause also amends section 153(2)(e) to require that a written order by a doctor authorising seclusion for a patient must state the specific measures necessary to ensure the patient's proper treatment or care while the patient is secluded. The amendment is necessary to reflect the distinction made throughout the *Mental Health Act 2000* between the involuntary treatment and care of persons with mental illness; and the care of persons with an intellectual disability.

Replacement of s 160 (Director may require reports about seclusions)

Clause 222 inserts a new section 159A and replaces section 160 to include additional safeguards regarding the use of seclusion in authorised mental health services.

New section 159A (Ending seclusion on director's order) empowers the Director of Mental Health to, at any time, order a patient to be released from seclusion. If the Director of Mental Health orders that the seclusion of a patient must end, a doctor or the senior registered nurse on duty must immediately release the patient from seclusion.

An order of the Director of Mental Health to release a patient from seclusion must immediately result in the patient being released from seclusion regardless of any authorisation by a doctor that is in place for the patient authorising the use of seclusion.

This new safeguard is in addition to the existing safeguard allowing the doctor's order for the seclusion of a patient, to enable the senior registered nurse on duty, to immediately direct that a patient be released from seclusion, if satisfied the seclusion of the patient is no longer necessary.

New section 160 (Administrator must notify director about seclusions) provides that the administrator of an authorised mental health service must notify the Director of Mental Health about the use of seclusion in that service. Currently, section 160 only places an obligation on an administrator of an authorised mental health service to send the Director of Mental Health a written report about the use of seclusion in that service only if requested by the Director of Mental Health. However, in practice, authorised mental health services notify the Director of Mental Health

about all instances of seclusion through the use of CIMHA, the Consumer Integrated Mental Health Application database. Instances where a patient has been secluded in an authorised mental health service are recorded in CIMHA as soon as practicable after the patient is placed in seclusion. The Director of Mental Health has open access to this data and can access information about seclusion through this mechanism rather than waiting for a request for the information to be complied with. The new section 160 provides a legislative basis reflective of the current practice for recording information relating to the seclusion of a patient. The use of the CIMHA database ensures the Director of Mental Health is fully informed about the use of seclusion in authorised mental health services and provides an additional safeguard for patients in the service.

Omission of s 164 (Administration of medication while being moved in an authorised mental health service)

Clause 223 omits section 164 of the *Mental Health Act 2000*. Section 164 authorises the administration of medication to a patient while being moved within an authorised mental health service only if a doctor is satisfied it is necessary to ensure the safety of the patient or others. This section is being omitted as a new section which authorises the administration of medication in a number of transfer circumstances (for example between an authorised mental health service and the forensic disability service, as well as for transfers within the same service) is to be inserted into the *Mental Health Act 2000* by clause 224 of the Bill, inserting new section 169N.

Insertion of new ch 5, pt 1, div 2A and 2B

Clause 224 inserts a new Division 2A (Transfers from authorised mental health service to forensic disability service) and new Division 2B (Administration of medication for particular purposes) in Chapter 5, Part 1 of the *Mental Health Act 2000*.

For the purposes of the *Mental Health Act 2000* a new definition has been included for the term ‘transfer order’. This term is defined as meaning an order made by the Director of Mental Health under section 169A or 602, the Mental Health Review Tribunal or the Mental Health Court for the transfer of a patient from an authorised mental health service to the forensic disability service.

Division 2A (comprising sections 169A to 169M) enables a patient to be transferred from an authorised mental health service to the forensic

disability service in certain circumstances. As the forensic disability service only has a limited capacity in respect to the number of persons that can be cared for at that service, it is anticipated that there will be a need for persons with an intellectual or cognitive disability on a forensic order to be cared for at an authorised mental health service. However, over the course of time, it may become apparent that a person's care could be more appropriately managed in the forensic disability service. Consequently, a new raft of provisions is to be included in the *Mental Health Act 2000* and Forensic Disability Act to provide for the transfer of a person with an intellectual or cognitive disability, who is subject to a forensic order, from an authorised mental health service to the forensic disability service or from the forensic disability service to an authorised mental health service. For information purposes only, where a reciprocal provision has been included in the Forensic Disability Act, it is listed below.

Section 169A empowers the Director of Mental Health to order that a patient, who is subject to a forensic order (Mental Health Court – Disability), be transferred from an authorised mental health service to the forensic disability service.

The Director of Mental Health must order the transfer by written order and may only make the transfer order if satisfied it is in the best interests of the patient. Additionally, the Director of Forensic Disability must agree to the transfer of the patient to the forensic disability service. However, should an agreement between the directors not be reached, an application may be made by the Director of Mental Health to the Mental Health Review Tribunal for the patient to be transferred to the forensic disability service.

If the tribunal orders the transfer, the patient must be transferred to the forensic disability service. However, this may not occur if an appeal against the tribunal's decision is made to the Mental Health Court under Chapter 8 of the *Mental Health Act 2000* and the tribunal's decision is stayed by the court under section 323 of the *Mental Health Act 2000* to secure the effectiveness of the appeal.

A reciprocal provision has been included as section 33 of the Forensic Disability Act.

Section 169B provides that, within 7 days of making a transfer order under section 169A, the Director of Mental Health must provide written notice of the order to the Mental Health Review Tribunal and the administrator of the patient's treating health service. In addition, if any proceedings involving the patient were started prior to the transfer order being made, notice must

also be given to each entity the Director considers has a sufficient interest in the proceedings. For example, an entity may include the Director of Public Prosecutions or another prosecuting authority.

A reciprocal provision has been included as section 35 of the Forensic Disability Act.

Section 169C requires the administrator of the patient's treating health service to give notice of the transfer order to the patient and the patient's allied person.

A reciprocal provision has been included as section 36 of the Forensic Disability Act.

Section 169D sets out the application requirements for a transfer order to be made by the Mental Health Review Tribunal. As provided for by new subsection 169A, the Director of Mental Health may apply to the tribunal for an order to transfer a patient to the forensic disability service, if it has not been possible to obtain the agreement of the Director of Forensic Disability. An application may be made at any time but must be made in writing and given to the tribunal.

Section 169E sets out the persons to whom the Mental Health Review Tribunal must provide written notice of a hearing in relation to an application by the Director of Mental Health for the transfer of a patient from an authorised mental health service to the forensic disability service. The notice must be given to the persons listed in the provision at least 7 days before the hearing - that is, the Director of Mental Health, the Director of Forensic Disability, the Attorney-General, the administrator of the patient's treating health service, the administrator under the Forensic Disability Act, the patient and the patient's allied person. The notice must state specific information, including the time and place of the hearing, the nature of the hearing and the right of the parties to the proceeding to be represented at the hearing.

Section 169F enables an application to the Mental Health Review Tribunal for a transfer order to be heard by the President of the tribunal on written materials and submissions, rather than holding a hearing involving the relevant parties. This will help ensure that such applications are considered and dealt with in a timely manner.

Section 169G requires that the Mental Health Review Tribunal must decide to either make or refuse to make a transfer order. In deciding an application for the transfer of a patient, the tribunal must have regard to

whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act (see sections 11 and 12 of that Act) but does not require involuntary treatment for a mental illness under the *Mental Health Act 2000* and whether the patient is likely to benefit from the care and support provided in the forensic disability service. Section 169G also provides that the tribunal must not make a transfer order for a patient unless a certificate given to the tribunal under section 169H states that the forensic disability service has the capacity for the patient's detention and care.

The term benefit is defined for the purposes of this section to mean, benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

Section 169H provides for the Director of Forensic Disability to give a certificate, issued by the chief executive (of the department responsible for administering the Forensic Disability Act), to the Mental Health Review Tribunal for the purpose of the deciding an application for a transfer order for a patient. The section provides that, if asked by the Director of Forensic Disability, the chief executive must give the Director of Forensic Disability a certificate stating whether or not the forensic disability service has the capacity for the patient's detention and care. The Director of Forensic Disability may then provide the certificate to the tribunal.

The section also provides that the tribunal may ask the Director of Forensic Disability to give the tribunal a certificate of the chief executive stating whether or not the forensic disability service has the capacity for the patient's detention and care. The Director of Forensic Disability must give the certificate to the tribunal within 7 days after receiving the request or any longer period allowed by the tribunal. Given the forensic disability service has limited capacity in terms of the number of people who can be detained in the service, the purpose of section 169H is to ensure that a person is only detained to the service where the service has the capacity to accommodate the person.

It should be noted that subsection 169G(2) and (3), and 169H are not applied for the purposes of the Forensic Disability Act. Consequently, the tribunal is not required to have regard to the criteria listed in 169(2) and the certificate issued by the chief executive in section 169(G)(3) and 169H when determining an application for a transfer a forensic disability client to an authorised mental health service as consideration of these matters is limited to an application for a patient detained at an authorised mental health service to be transferred to the forensic disability service.

Section 169I specifies that the Mental Health Review Tribunal must give a copy of its decision to all of the parties involved in a proceeding for a transfer order, the patient's allied person and the administrator of the patient's treating health service. Under this section, a party may request that it be provided with the reasons for the tribunal's decision, if the request is made within 7 days of the tribunal giving the party the notice of its decision. Under these circumstances, the tribunal must comply with the request within 21 days.

Sections 169D to 169I (which comprise Chapter 5, Part 1, Division 2A, Subdivision 2, of the *Mental Health Act 2000*) are applied for the purposes of the Forensic Disability Act by way of section 129 and 139. Under the Forensic Disability Act, the Director of Forensic Disability may apply to the Mental Health Review Tribunal for an application for a transfer order under section 33 (which is also called up by section 34 and 142). That is, where it is not possible to reach agreement with the Director of Mental Health about the transfer of a forensic disability client to an authorised mental health service.

In order to facilitate the transfer of a person between the two services, a number of mirrored provisions have been included in the Forensic Disability Act and *Mental Health Act 2000*. For example, section 39 of the Forensic Disability Act and new section 169L of the *Mental Health Act 2000* specify that if a transfer order is made by the tribunal, the forensic order relating to the person continues to apply and is to be read with any changes necessary to give effect to the person's care by the relevant service.

Section 169J authorises a health practitioner to take a patient, who is the subject of a transfer order, to the forensic disability service. The health practitioner may exercise this power with the help, and using the force, that is necessary and reasonable in the circumstances. This may include assistance from the police, if necessary, to ensure the safe transfer of the patient.

A reciprocal provision has been included as section 37 of the Forensic Disability Act.

Section 169K provides for the giving of certain information in order to facilitate the transfer of patients from an authorised mental health service to the forensic disability service. Under this section, the Director of Mental Health may give specified information to the Director of Forensic Disability if a transfer order has been made for the transfer of a forensic patient to the forensic disability service. The purpose of this provision is

to: facilitate a continuum of care for the persons across the services; help inform decisions by the forensic disability service about risk management of the person; and ensure due regard is had to the protection of the community when the person is transferred.

In line with this object, section 169K lists certain information that may be provided to the Director of Forensic Disability including the patient's personal and medical information; their forensic background (including any details of the circumstances giving rise to any forensic orders for the patient); details of the patient's treatment plan; details of any instance where the patient has been mechanically restrained or secluded; details relating to any approved, ordered or revoked limited community care; review dates for the patient's forensic order; any previous decisions of the Mental Health Review Tribunal or the Mental Health Court about the patient; any information relating to a decision made in relation to the patient under the *Mental Health Act 2000* or the Forensic Disability Act; and where they are in place, details of the patient's allied person, guardian or informal decision maker, or any forensic information orders.

A reciprocal provision has been included as section 38 of the Forensic Disability Act.

Section 169L clarifies the status of a patient's forensic order when admitted to the forensic disability service under a transfer order. This new section provides that the patient's existing forensic order (that provided for their detention in a stated authorised mental health service) will apply as if it was an order made for their detention as a forensic disability client to the forensic disability service. The person's order is to be read, or continued in force, with any changes necessary to make it consistent with the Forensic Disability Act and to adapt its operation to that Act.

This section also clarifies that while a person's forensic order is to be managed in accordance with the Forensic Disability Act; this does not prevent the Mental Health Review Tribunal or Mental Health Court from exercising a power under the *Mental Health Act 2000* in relation to the person's order. For example, 6 monthly reviews of the person's mental condition by the tribunal under Chapter 6, Part 3 of the *Mental Health Act 2000*.

A reciprocal provision has been included as section 39 of the Forensic Disability Act.

Section 169M provides for the continuation of any action or thing brought into existence for a matter under the *Mental Health Act 2000* that is an

applied provision under the Forensic Disability Act prior to a transfer order being made to transfer a forensic patient to the forensic disability service. On the patient's admission to the forensic disability service under the transfer order, the previous action or thing is taken to have been done or brought into existence for a matter in relation to the patient as a forensic disability client.

A reciprocal provision has been included as section 40 of the Forensic Disability Act.

The new Division 2B (Administration of medication for particular purposes) is comprised of section 169N. This section authorises the use of medication if a patient is, or is to be:

- moved within an authorised mental health service (see existing section 163 of the *Mental Health Act 2000*);
- transferred to another authorised mental service (see existing sections 165, 166 or 167 of the *Mental Health Act 2000*);
- transferred to the forensic disability service (see new sections 169A and 602 of the *Mental Health Act 2000*).

Medication may be administered to the patient before or while the patient is being transferred by a doctor, or a registered nurse under the instruction of a doctor. The doctor's instructions must include the name of the medication, the dose and route and frequency of administration.

To protect against the inappropriate application of this provision, a doctor must be satisfied that the administration of medication is necessary to ensure the safety of the patient or others while the patient is being transferred, and the medication must be administered by a doctor or a registered nurse under the instruction of the doctor.

The provisions in relation to the provision of non-consensual health care under the *Guardianship and Administration Act 2000* do not apply in the giving of medication under this clause.

A reciprocal provision has been included as section 144 of the Forensic Disability Act.

Amendment of s 203 (Decisions on review)

Clause 225 makes a number of consequential amendments to section 203 as a consequence of amendments being made to section 288 to enable the

Mental Health Court to make a forensic order (Mental Health Court) or a forensic order (Mental Health Court – Disability).

Section 203 sets out the actions to be taken on review of a patient's mental condition (which must be conducted every 6 months or on application by specified persons). The tribunal may revoke or confirm the forensic order. If the forensic order is confirmed, the tribunal may also make (a) an order that the patient have limited community treatment subject to the reasonable conditions the tribunal considers appropriate; (b) an order approving limited community treatment for the patient subject to the reasonable conditions the tribunal considers appropriate; (c) an order revoking an order or approval for limited community treatment for the patient; or (d) an order that the patient be transferred from one authorised mental health service to another authorised mental health service.

Section 203 is to be amended to insert subsection 203(2)(e) to also enable the tribunal, when confirming a person's forensic order, to make an order that the patient be transferred from an authorised mental health service to the forensic disability service. As this is applied under section 131 of the Forensic Disability Act the tribunal is also empowered to order the transfer of a forensic disability client from the forensic disability service to an authorised mental health service.

This clause also inserts a new subsection 203(6A) to set out the matters the tribunal must have regard to in making a decision about a patient subject to a forensic order (Mental Health Court – Disability). In making a decision to confirm or revoke a client's forensic order under section 203, the tribunal must have regard to specified criteria. That is, the patient's mental state; the patient's intellectual or cognitive disability; each offence leading to the patient becoming subject to the forensic order; the patient's social circumstances; the patient's treatment plan; the patient's behaviour in response to that plan, including behaviour that places the patient's health or safety or the safety of others at risk; and any report by the Director of Forensic Disability on a review about the patient under section 141 of the Forensic Disability Act.

This is also an applied provision under Chapter 10 of the Forensic Disability Act, so that for the purposes of that Act and reviews of forensic disability clients, references to 'a treatment plan' should be replaced with references to an individual development plan for forensic disability clients.

Section 141 of the Forensic Disability Act applies to a forensic disability client who has been a client of the forensic disability service for a

continuous period of 5 years. Under that section, the Director of Forensic Disability and the administrator of the forensic disability service are required to ensure that a review is conducted to determine if a client will continue to benefit from the care and support provided to the client by the forensic disability service. Under section 141, if the administrator receives a notice from the tribunal about a hearing of a review of a forensic disability client's mental condition, the administrator must give a copy of the 5 year review report to the tribunal.

As a consequence of the inclusion of the new subsection 203(6A), subsection 203(6) is to be amended to clarify that the criteria listed in subsection (6) only apply to those forensic patients whose most recent forensic order was not a forensic order (Mental Health Court – Disability), that is the forensic patient is subject to either a forensic order (Mental Health Court) made under 288, a forensic order (Criminal Code) made under section 299 or a forensic order (Minister) made under section 302 of the *Mental Health Act 2000*. For these patients, as currently specified under subsection (6), when making a decision on the review of a patient's mental condition, the tribunal must have regard to: the patient's mental state and psychiatric history; each offence leading to the patient becoming a forensic patient; the patient's social circumstances; and the patient's response to treatment and willingness to continue treatment.

Section 131 and 139 of the Forensic Disability Act apply for section 203 and other relevant provisions of Chapter 6 of the *Mental Health Act 2000* to enable forensic disability clients to be reviewed by the tribunal.

Amendments of s 203A (Tribunal may order examination etc.)

Clause 226 amends section 203A as a consequence of the amendments to section 288 (see section 230 below) that empower the Mental Health Court to make either a forensic order (Mental Health Court – Disability) or a forensic order (Mental Health Court). Section 203A enables the Mental Health Review Tribunal when conducting a review of a forensic patient's mental condition under Chapter 6, Part 3 to order a patient, who is also a special notification forensic patient, to submit to an examination.

A special notification forensic patient is defined under section 305A of the *Mental Health Act 2000* as being a forensic patient who has been, or is charged with, particular serious offences under the Criminal Code (including murder, manslaughter, attempted murder, rape or assault with intent to rape, dangerous driving causing death).

The amendment to section 203A will enable the tribunal to order that, if a patient is subject to a forensic order (Mental Health Court – Disability), the patient must submit to an examination by a stated person with expertise in the aetiology and behaviour of persons with an intellectual disability. However, the stated person may not be a health practitioner who is engaged in providing health services at the treating health service. As currently provided for by the *Mental Health Act 2000*, the examination of a patient on a forensic order (Mental Health Court) may be conducted by a stated psychiatrist who is not an authorised psychiatrist for the patient’s treating health service.

Section 131 and 139 of the Forensic Disability Act apply for section 203A and other relevant provisions of Chapter 6 of the *Mental Health Act 2000* to enable forensic disability clients to be reviewed by the tribunal.

Amendment of s204 (Restrictions on review decisions)

Clause 227 amends section 204, which imposes restrictions on the decisions the Mental Health Review Tribunal may make on the review of a forensic patient’s mental condition under Chapter 6, Part 3. As a consequence of the amendments made to section 203 (see clause 225 above), a new subsection has been inserted to require the tribunal to have regard to specified criteria when deciding whether to make an order to transfer a patient from an authorised mental health service to the forensic disability service. That is, whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under the *Mental Health Act 2000* and whether the patient is likely to benefit from care and support in the forensic disability service. The tribunal must not make a transfer order for a patient under section 203(2)(e) unless a certificate given to the tribunal under section 204A (inserted into the *Mental Health Act 2000* by the Bill, see clause 228) states that the forensic disability service has the capacity for the patient’s detention and care. The term benefit is defined for the purposes of this section to mean, benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

Insertion of new s204A

Clause 228 inserts a new section 204A into the *Mental Health Act 2000* to provide for the Director of Forensic Disability to give a certificate, issued by the chief executive (of the department responsible for administering the

Forensic Disability Act), to the Mental Health Review Tribunal for the purpose of deciding whether to make a transfer order for a patient under section 203(2)(e).

The new section 204A provides that, if asked by the Director of Forensic Disability, the chief executive must give the Director of Forensic Disability a certificate stating whether or not the forensic disability service has the capacity for the patient's detention and care. The Director of Forensic Disability may then provide the certificate to the tribunal.

The section also provides that the tribunal may ask the Director of Forensic Disability to give the tribunal a certificate of the chief executive stating whether or not the forensic disability service has the capacity for the patient's detention and care. The Director of Forensic Disability must give the certificate to the tribunal within 7 days after receiving the request or any longer period allowed by the tribunal.

Section 131 and 139 of the Forensic Disability Act apply for section 204 and other relevant provisions of Chapter 6 of the *Mental Health Act 2000* to enable forensic disability clients to be reviewed by the tribunal.

However, it should be noted that new subsection 204(5) and (6) and 204A are not applied for the purposes of the Forensic Disability Act. Consequently, the tribunal is not required to have regard to the criteria listed in subsection 204(5) or the certificate issued by the chief executive under subsection 204(6) and 204A when deciding whether to make an order to transfer a forensic disability client to an authorised mental health service as consideration of these matters is limited to deciding whether to transfer a patient detained at an authorised mental health service to the forensic disability service.

Amendment of s 257 (Reference to Mental Health Court)

Clause 229 amends subsection 257(1) to enable a reference to be made to the Mental Health Court in relation to a person with an intellectual disability. A reference may be made to the Mental Health Court by the Director of Mental Health if the person is receiving care under the *Mental Health Act 2000*.

This section and other sections in Chapter 7, Part 4 of the *Mental Health Act 2000* are applied for the purposes of the Forensic Disability Act by sections 133 and 139 of that Act. As such, a reference may be made to the Mental Health Court by the Director of Forensic Disability for a person

with an intellectual or cognitive disability who is receiving care and support under the Forensic Disability Act.

As the forensic disability service will have limited capacity in respect to the number of persons that can be cared for at that service, there will likely be instances where persons with an intellectual or cognitive disability on a forensic order may be cared for at an authorised mental health service. Given this, it is necessary for both the Director of Mental Health and the Director of Forensic Disability to be able to make a reference to the Mental Health Court in relation to a person receiving care for an intellectual or cognitive disability. However, a director will only be able to make a reference for a person who is receiving care in their respective services. The Director of Mental Health, for example, will only be able to make a reference for a person with an intellectual or cognitive disability on a forensic order detaining them to an authorised mental health service.

Section 133 and 139 of the Forensic Disability Act apply for section 257 and other relevant provisions of Chapter 7 of the *Mental Health Act 2000* to enable matters about examinations, references and orders for forensic disability clients charged with offences to be dealt with.

Replacement of s 288 (Mental Health Court may make forensic order) – The amendments to this provision remain an outstanding issue

Clause 230 replaces section 288, which sets out when the Mental Health Court may make a forensic order if a reference has been made to the court under section 256.

New section 288 provides that the Mental Health Court may make two different types of forensic orders under the section – namely, a forensic order (Mental Health Court – Disability) and a forensic order (Mental Health Court) – and provides the court with an alternative option for detention in the forensic disability service for a person subject to a forensic order (Mental Health Court – Disability).

Clause 230 also inserts a new section 288AA into the *Mental Health Act 2000* to provide for a certificate, issued by the chief executive (of the department responsible for administering the Forensic Disability Act), to be given by the Director of Forensic Disability to the Mental Health Court stating whether the forensic disability service has capacity to detain a person for whom a forensic order (Mental Health Court – Disability) has been made under section 288.

The amended section 288 provides that the Mental Health Court may make a forensic order for a person to be detained for involuntary treatment or care under a forensic order (Mental Health Court) or for care under a forensic order (Mental Health Court – Disability) if the person was of unsound mind when the alleged offence was committed, or is permanently unfit for trial. The section further provides that the court must make either a forensic order (Mental Health Court) or a forensic order (Mental Health Court – Disability) for a person to be detained for involuntary treatment or care if the person is unfit for trial but the unfitness is not permanent. In making either order, the court must consider the seriousness of the offence, the person’s treatment or care needs and the protection of the community.

After deciding to make a forensic order, the court must consider whether the person’s unsoundness of mind or unfitness for trial is a consequence of an intellectual or cognitive disability. If the court considers that the person’s unsoundness of mind or unfitness for trial is not a consequence of an intellectual or cognitive disability, and the court makes a forensic order, the forensic order must be a forensic order (Mental Health Court), and must state that the person is to be detained in stated authorised mental health service for treatment or care.

If the court considers that the person’s unsoundness of mind or unfitness for trial is a consequence of an intellectual or cognitive disability, the forensic order must be a forensic order (Mental Health Court – Disability), and the order must state if the person is to be detained for care in the forensic disability service or an stated authorised mental health service. The *Mental Health Act 2000* defines intellectual disability to include cognitive disability.

Section 288(8) provides that in deciding whether the forensic order (Mental Health Court – Disability) is to state that the person is to be detained in the forensic disability service, the court must have regard to:

- whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under the *Mental Health Act 2000*; and
- whether the patient is likely to benefit from care and support in the forensic disability service.

Benefit is defined to mean benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

If the order is a forensic order (Mental Health Court—Disability), the order must not state that the person be detained in the forensic disability service for care unless a certificate given to the court under section 288AA states that the forensic disability service has the capacity for the person's detention and care.

However, the court is not required to have regard to the matters in section 288(8) or to the certificate given to the court under section 288AA in deciding whether to make a forensic order, and only has regard to these matters in deciding where to detain the person.

The new section 288AA applies for the purpose of the Mental Health Court deciding whether a forensic order (Mental Health Court – Disability) is to state that the person subject to the order is to be detained in the forensic disability service.

If asked by the Director of Forensic Disability, the chief executive (of the department responsible for administering the Forensic Disability Act) may give the Director of Forensic Disability a certificate stating whether or not the forensic disability service has the capacity for the person's detention and care. This certificate may be given to the court. Further, if requested by the court, the Director of Forensic Disability must give the court a certificate of the chief executive stating whether or not the forensic disability service has the capacity for the person's detention and care. The Director of Forensic Disability must give the court the certificate within 7 days of the request or any longer period allowed by the court. Given the forensic disability service has limited capacity in terms of the number of people who can be detained at the service, the purpose of section 288AA is to ensure that a person is only detained to the service under an order by the Mental Health Court where the service has the capacity to accommodate the person. It is intended that the concept of the 'capacity' of the forensic disability service for the person's detention and care is not limited to the capacity of the service to physically accommodate the person, but also captures the capacity of the service to provide limited community treatment for the person, where appropriate, as ordered by the court under section 289.

Sections 133 and 139 of the Forensic Disability Act apply for section 288 and 288AA and other relevant provisions of Chapter 7 of the *Mental Health Act 2000* to enable matters about examinations, references and orders for forensic disability clients charged with offences to be dealt with.

Amendment of s288A (Effect of new forensic order on existing forensic order)

Clause 231 amends section 288A as a consequence of the amendments being made to section 288. Section 288A addresses the situation where a person may already be on a forensic order and a reference is made to the Mental Health Court because the person has allegedly committed another indictable offence. The amendment clarifies that if a new forensic order is made by the Court under section 288, the new forensic order prevails over the old forensic order to the extent of the inconsistency in relation to any limited community treatment ordered or approved under the orders or the place of detention under the orders.

Section 133 and 139 of the Forensic Disability Act applies for section 288A and other relevant provisions of Chapter 7 to enable matters about examinations, references and orders for forensic disability clients charged with offences to be dealt with.

Replacement of ch 7, pt 7, div 2, sdiv 4 hdg (Miscellaneous provisions)

Clause 232 makes a machinery amendment to the *Mental Health Act 2000* to renumber Chapter 7, Part 7, Division 2, Subdivision 4 as Chapter 7, Part 7, Division 3, Subdivision 1.

Amendment of s306 (Administrator to give notice of forensic order to patient's allied person)

Clause 233 makes a consequential amendment to section 306, which currently requires the administrator of a patient's treating health service to notify a patient's allied person if the person has been placed on a forensic order. As a result of the insertion of the transitional provisions under clause 254 (as discussed below), the administrator will also be required to notify a patient's allied person if any change to a patient's forensic order has been made under the new section 607.

Amendment of s309A (Policies and practice guidelines about treatment and care of forensic patients etc.)

Clause 234 amends section 309A which requires that the Director of Mental Health must issue policies and practice guidelines about the treatment and care of forensic patients. Without limiting this requirement,

subsection (2) is amended to specify that the Director of Mental Health must issue policies and practice guidelines about the care of a patient subject to a forensic order (Mental Health Court – Disability) which will apply to those patients who are detained to authorised mental health services. This section has also been amended to require the Director of Mental Health to consult with the Director of Forensic Disability when preparing these policies and practice guidelines. However, the validity of a policy or practice guidelines will not be affected should the Director of Mental Health not be in a position to consult with the Director of Forensic Disability.

A similar provision has been inserted as section 91 of the Forensic Disability Act which requires the Director of Forensic Disability to issue policies and procedures about the detention, care and support, and protection of forensic disability clients.

Insertion of new ch 7, pt 7, div 3, sdiv 2

Clause 235 inserts new subdivision 2 (Temporary detention of particular forensic disability clients) comprised of sections 309B and 309C.

New section 309B provides for the temporary detention of a forensic disability client in an authorised mental health service in certain circumstances. As the forensic disability service only has a limited capacity in respect to the number of persons that can be cared for at that service and is only physically located in south east Queensland, it is anticipated that there may be circumstances where a forensic disability client may need to be temporarily detained in an authorised mental health service.

The circumstances when a forensic disability client may be temporarily detained in an authorised mental health service are listed in section 113 of the Forensic Disability Act. For example, a senior practitioner requiring the client's return to the service; a client being absent without permission (that is, the client has absconded, or an approved period of temporary absence has ended or been revoked) or if a period of limited community treatment has ended. This section of the Forensic Disability Act clarifies that the temporary detention of a forensic disability client in an authorised mental health service may only occur if it is not reasonably practicable to return the client to the forensic disability service; and the Director of Mental Health and Director of Forensic Disability agree to the client being taken to an authorised mental health service for temporary detention under section

309B of the *Mental Health Act 2000*. Section 152 of the Forensic Disability Act also clarifies that if a forensic disability client is taken to an authorised mental health service under section 113; the person may be detained and cared for in the authorised mental health service as provided for under section 309B and 309C of the *Mental Health Act 2000*.

Under new section 309B, a forensic disability client may be temporarily detained in an authorised mental health service for up to 3 days. However, the Director of Mental Health and Director of Forensic Disability may agree that the client be detained in the authorised mental health service for a longer period if both directors are satisfied it is in the client's best interest to continue the temporary detention period having regard to the client's health and safety; and the Director of Forensic Disability has provided the Director of Mental Health with written notice detailing the process for returning the client to the forensic disability service, before or at the end of the agreed period. If an agreement is made between the two directors about the temporary detention of a forensic disability client in an authorised mental health service, the Director of Mental Health must give the administrator of the health service, at which the person is to be temporarily detained, written notice about the person's detention at the health service.

Section 309C provides that while a forensic disability client is temporarily detained in an authorised mental health service, the forensic order in force for the client is taken to be an order that the client be detained in an authorised mental health service and that the *Mental Health Act 2000* is to be read with any changes necessary to enable the client to be detained and cared for in the health service. This is necessary to facilitate a continuum of care for the client whilst they are temporarily detained in an authorised mental health service, and to ensure that persons managing the client in that service are clear of their obligations and rights in relation to the client. While the client is temporarily detained in an authorised mental health service, a person may exercise a power or fulfil an obligation under the *Mental Health Act 2000* in relation to the client as if the client was a patient under the *Mental Health Act 2000*.

Section 309C also clarifies that sections 34, 152 and 156 of the Forensic Disability Act apply (and other provisions of that Act do not apply) to the client while they are temporarily detained in an authorised mental health service.

Section 34 (Transfer if detained temporarily in authorised mental health service) of the Forensic Disability Act provides that the Director of

Forensic Disability may order the transfer of a forensic disability client to an authorised mental health service if the client's period of temporary detention in the health service has not ended; if satisfied it is in the client's best interest; and the Director of Mental Health agrees to the transfer. Section 309C(4) specifies that at the end of a client's period of temporary detention in an authorised mental health service, unless the client is transferred to an authorised mental health service under section 34 of the Forensic Disability Act, the client is to be detained in the forensic disability service or undertake limited community treatment (as approved or ordered for the client) under their forensic order and the Forensic Disability Act applies to the client. However, should an agreement between the directors not be reached under section 34, an application may be made by the Director of Forensic Disability to the Mental Health Review Tribunal for an order to be made by the tribunal for the patient to be transferred to the authorised mental health service (see sections 33, 129 and 139 of that Act).

Section 152 (Application of Mental Health Act for client detained temporarily in authorised mental health service) of the Forensic Disability Act specifies that a forensic disability client may be detained and cared for temporarily in an authorised mental health service.

Section 156 (Period counted as imprisonment) of the Forensic Disability Act specifies the period a person is a forensic disability client is to be counted toward any period of imprisonment under the *Penalties and Sentences Act 1992*, the *Corrective Services Act 2006* or the *Youth Justice Act 1992*. Consequently, any period a client is temporarily detained in an authorised mental health service under new section 309B is also to be counted as imprisonment for the purposes of these Acts.

Amendment of s 318O (Tribunal may make forensic patient information order)

Clause 236 amends section 318O to reflect the change in terminology for an order under this section from a 'forensic patient information order' to a 'forensic information order'. In order to ensure consistency across the *Mental Health Act 2000* and the Forensic Disability Act, it is proposed the more generic term of 'forensic information order' be used. Consistency of language in this instance is appropriate given the interrelations between the two pieces of legislation (e.g. when a person on a forensic order who is also subject to a forensic information order is transferred from an authorised mental health service to the forensic disability service).

This clause also amends the list of matters in subsection 318O(1) for which an eligible person may be given notice. That is:

- the fact that a patient has been transferred from an authorised mental health service to the forensic disability service;
- the fact that an application has been made to allow a forensic patient to move interstate under section 171 of the *Mental Health Act 2000*. Currently, a person may be given notice under a forensic information order made by the tribunal regarding the fact that an approval has been given for a patient to move interstate but not when an application for such a move is first made; and
- the fact that a forensic disability client is to be temporarily detained in an authorised mental health service, if the period of detention is for more than three days.

The Director of Mental Health is responsible for providing information to a person for whom a forensic information order is made if the order relates to a patient in an authorised mental health service. If the forensic information order relates to a person in the forensic disability service, the Director of Forensic Disability is responsible for providing information to a person for whom the order is made. However, it should be noted that clause 149 of the Forensic Disability Act enables the Director of Forensic Disability to enter into a written agreement with the Director of Mental Health to enable the Director of Mental Health or a person nominated by that Director to give specified information, a notice or a copy of a notice on behalf of the Director of Forensic Disability. It is envisaged that such an agreement will be developed to enable information under a forensic information order concerning a forensic disability client to be provided by the Queensland Health Victim Support Service. This specialised state-wide service was established as a key recommendation of the review of the *Mental Health Act 2000* conducted by Brendan Butler AM SC in 2006. It provides information and support to the victims of persons who have committed an offence but are diverted from the criminal justice system because they are placed on a forensic order by the Mental Health Court or become a classified patient under the *Mental Health Act 2000*.

Sections 134 and 139 of the Forensic Disability Act applies the relevant provisions of Chapter 7A of the *Mental Health Act 2000* for forensic information orders for forensic disability clients.

Amendment of s319 (Decisions to which part applies)

Clause 237 amends section 319 which sets out the decisions of the Mental Health Review Tribunal which may be appealed to the Mental Health Court. This section is to be amended as a consequence of the insertion of the new Chapter 5, Part 1, Division 2A. That is, to enable a decision of the tribunal on an application for a transfer order by the Director of Mental Health or Director of Forensic Disability to be appealed to the Mental Health Court.

Sections 135 and 139 of the Forensic Disability Act apply the relevant provisions of Chapter 8, Part 1 of the *Mental Health Act 2000* for appeals to the Mental Health Court against decisions of the Mental Health Review Tribunal for forensic disability clients.

Amendment of s 325 (Appeal powers)

Clause 238 amends section 325 which sets out the powers of the Mental Health Court on deciding an appeal. That is to confirm or set aside the decision appealed against. If the decision is set aside, the court may make a decision the Mental Health Review Tribunal could have made on the review or application; and the decision is taken to be that of the tribunal. As the new Chapter 5, Part 1, Division 2A is applied for the purposes of the Forensic Disability Act, it is necessary to refer to this Act in section 325 of the *Mental Health Act 2000*. This would be applicable if the Mental Health Court set aside a decision of the tribunal about the transfer of a forensic disability client under section 33.

Sections 135 and 139 of the Forensic Disability Act apply the relevant provisions of Chapter 8, Part 2 of the Mental Health Act for appeals to the Mental Health Court against decisions of the tribunal for forensic disability clients.

Amendment of s 383 (Jurisdiction)

Clause 239 expands the jurisdiction of the Mental Health Court under section 383.

As a consequence of the establishment of the new forensic disability service, the court is to be empowered to investigate the detention of forensic disability clients in the forensic disability service. In carrying out such investigations, the court has broad powers of inquiry and may inform itself in any way it considers appropriate. The court is not bound by the

rules of evidence (unless the court determines otherwise in a particular matter) and can accept material that might otherwise be inadmissible in court proceedings.

In addition, the jurisdiction of the court has been expanded to recognise the new role it will take on in deciding applications for an order to change a forensic order (Mental Health Court) to a forensic order (Mental Health Court – Disability) as provided for under the transitional provisions to be inserted into the *Mental Health Act 2000* by clause 254.

Sections 137 and 139 of the Forensic Disability Act apply Chapter 11, Part 9 of the *Mental Health Act 2000* for inquiries into the detention of a forensic disability client in the forensic disability service to decide whether the client's detention is lawful.

Amendment of s 389 (Functions)

Clause 240 amends the functions of the assisting psychiatrists for the Mental Health Court set out in section 389 to enable the psychiatrists to advise the court about clinical issues relating to the treatment, care and detention needs of persons under the *Mental Health Act 2000*; and the care and detention needs of persons under the Forensic Disability Act. This amendment reflects the distinction made throughout the *Mental Health Act 2000* between the treatment or care of a person with a mental illness and the care of a person with an intellectual or cognitive disability. Additionally, it enables the assisting psychiatrist to advise the court in relation to clinical issues regarding persons detained in the forensic disability service.

Amendment of s 400 (Registrar's power to require production of documents)

Clause 241 amends section 400(1) to confer on the Registrar of the Mental Health Court the power to require documents in the possession of the administrator for the forensic disability service to be produced to the court. This is in addition to the Registrar's power to request documents from the administrator of an authorised mental health service. The obligation for the administrator of the forensic disability service to produce the documents overrides any confidentiality provisions of any Act the administrator would otherwise have been bound by.

This clause also amends section 400 to include other prosecuting authorities aside from only the Commissioner of the Police Service or the

Director of Public Prosecutions which may have information on the offences in the requirement to provide this information. The broadening of this provision is necessary to reflect circumstances whereby a person is charged with an offence by an agency other than the Queensland Police Service or the Director of Public Prosecutions. A definition for the term 'prosecuting authority' is inserted into the Dictionary for the *Mental Health Act 2000* by clause 255. A prosecuting authority, for an offence, 'means the commissioner of the police service, director of public prosecutions or other entity responsible for prosecuting the proceeding for the offence'.

Amendment of s 401 (Registrar's power to require person to be brought before Mental Health Court)

Clause 242 amends subsection 401(1) to confer on the Registrar the power to require the administrator of the forensic disability service to produce a forensic disability client to the Mental Health Court. This is in addition to the Registrar's power to request the administrator of an authorised mental health service or custodian to produce a patient or prisoner to the court.

Amendment of s 410 (Appointment of assistants)

Clause 243 amends section 410 to clarify that a person with expertise in the aetiology, behaviour and care of persons with an intellectual or cognitive disability may be appointed by the Mental Health Court to assist either the court, the person to whom the hearing relates, or both parties with the hearing. It is intended that this will allow the court to appoint persons to assist with, for example, interpretation of language or specific communication needs in order to facilitate the court's ability to interpret evidence in a hearing involving a person with an intellectual or cognitive disability. Additionally, the court may also use this section to appoint a person to assist the person who is the subject of the hearing to understand proceedings.

Amendment of s 437 (Jurisdiction)

Clause 244 expands the jurisdiction of the Mental Health Review Tribunal under section 437 to enable the tribunal to review and make decisions relating to persons with an intellectual or cognitive disability on a forensic order detained to either the forensic disability service or an authorised mental health service. To facilitate this expansion, an amendment has

firstly been made to subsection 437(c) to enable the tribunal to review the mental condition of a person on a forensic order detained to the forensic disability service as well as review the mental condition of a person on a forensic order detained to an authorised mental health service.

This clause also inserts new subsections 437(i) and 437(j) to enable the tribunal to decide appeals against a decision of the administrator of the forensic disability service not to allow a person to visit a client detained in the forensic disability service; and applications for transfer between authorised mental health services and the forensic disability service.

Section 437 is further amended to reflect the change in terminology for an order under this section from a ‘forensic patient information order’ to a ‘forensic information order’.

Sections 138 and 139 of the Forensic Disability Act apply relevant provisions of the Chapter 12 of the *Mental Health Act 2000* for proceedings of the Mental Health review Tribunal for matters dealing with forensic disability clients.

Amendment of s 440 (Appointment of members)

Clause 245 amends section 440 to insert a new requirement that if the Minister responsible for administering the *Mental Health Act 2000* is not the Minister responsible for administering the Forensic Disability Act, the Minister responsible for administering the *Mental Health Act 2000* must consult with the Minister responsible for administering the Forensic Disability Act in relation to recommending persons for appointment as members of the Mental Health Review Tribunal. This new requirement is intended to ensure that the membership of the tribunal will incorporate the experience relevant to making decisions regarding the care of persons with an intellectual or cognitive disability on a forensic order.

Amendment of s 447 (Members constituting tribunal for hearings)

Clause 246 amends section 447 which sets out how the Mental Health Review Tribunal is to be constituted for hearing particular matters (e.g. in relation to the review of a patient’s mental condition, an application for approval for a patient to move out of Queensland, etc).

As a consequence of the changes being made to the jurisdiction of the tribunal (as outlined above in clause 244), amendments are to be made to

section 447. That is, to clarify how the tribunal is to be constituted when hearing: an application for an order for the transfer of a person between an authorised mental health service and the forensic disability service; or an appeal against a decision of the administrator under the Forensic Disability Act to refuse to allow a person to visit a forensic disability client in the forensic disability service.

In these instances, the tribunal must be constituted by at least three, but not more than five, members of whom at least one must be a lawyer; at least one must be a psychiatrist or, if a psychiatrist is not readily available but another doctor is available, the doctor; and at least one who is not a lawyer or doctor.

Clause 246 also amends section 447 as a consequence of the change in terminology from ‘forensic patient information order’ to a ‘forensic information order’.

Amendment of s 448 (When tribunal may be constituted by less than 3 members)

Clause 247 amends section 448 to provide that the Mental Health Review Tribunal may be constituted by less than three members for determining appeals against a decision of the administrator of the forensic disability service not to allow a person to visit a person detained to the service; and deciding applications for a transfer order for a patient to be transferred between authorised mental health services and the forensic disability service. The President may only order the tribunal’s constitution to be less than 3 members for these purposes if the President is satisfied it is appropriate and expedient to do so.

Insertion of new s 451A

Clause 248 inserts a new section 451A (Right of appearance–application for order for transfer to forensic disability service) to reflect the inclusion of new Chapter 5, Part 1, Division 2A, Subdivision 2 inserted by clause 224 of the Bill and provides for who may appear in person at a Mental Health Review Tribunal hearing for an application for an order, made by the Director of Mental Health, for the transfer, of a patient from an authorised mental health service to the forensic disability service.

Under this section, the patient, the Director of Mental Health, the Director of Forensic Disability and the Attorney-General will have a right of appearance at a hearing. These individuals may be represented at the

hearing by a lawyer or, with the leave of the tribunal, an agent. However, if a patient is not represented, the tribunal may appoint a person to represent the patient's views, wishes and interests.

This provision is applied for the purposes of the Forensic Disability Act in relation to who may appear in person at the hearing of an application for a transfer order for a forensic disability client from the forensic disability service to an authorised mental health service made by the Director of Forensic Disability (see section 138 and 139 of that Act).

Amendment of s 462 (Appointment of assistants)

Clause 249 amends section 462 to expand the example provided in the section regarding who the Mental Health Review Tribunal may appoint to assist during a hearing. The example has been expanded to include a person with expertise in the aetiology, behaviour and care of persons with an intellectual or cognitive disability. This may include such persons as behavioural psychologists or social workers experienced in forensic disability care. This provision is intentionally broad to enable the tribunal to appoint persons on a case by case basis to assist the tribunal in interpreting evidence or assist the person the subject of the hearing to understand the proceedings.

Insertion of new s 493B

Clause 250 inserts a new section 493B (Giving information about patient to Director of Forensic Disability) or nominee) to enable the Director of Mental Health, or a person nominated by the Director of Mental Health to give information about a person who is or was, a patient of an authorised mental health service, to the Director of Forensic Disability or a person nominated by the Director of Forensic Disability. However, the Director of Mental Health may only give the information if the Director of Mental Health is satisfied the information is reasonably necessary for enabling the Director of Forensic Disability to perform his or her functions under the Forensic Disability Act.

A reciprocal provision has been inserted as section 92 of the Forensic Disability Act.

Amendment of s 518 (Offence relating to ill-treatment)

Clause 251 amends section 518 to increase the maximum penalty units from 100 units or 1 year imprisonment to 150 units or 1 year imprisonment for an offence relating to the ill-treatment of a patient by a person who has responsibility for the assessment, examination, detention, treatment or care of the patient; or for the ill-treatment of the patient by a person who has the care or custody of a patient in an authorised mental health service.

Increasing the penalty units in this provision ensures that the offence relating to the ill-treatment of a patient has a maximum penalty reflective of the purpose of the *Mental Health Act 2000* with respect to safeguarding the rights and freedoms of persons who have a mental illness. Further, the amendment aligns the *Mental Health Act 2000* with the reciprocal provisions in the Forensic Disability Act (see section 116 of that Act) with respect to the ill-treatment of a forensic disability client.

Amendment of s 519 (Offences relating to patient in custody absconding)

Clause 252 amends section 519 which sets out the circumstances under which it is an offence for a person to wilfully allow or knowingly help specified patients, including a forensic patient, to unlawfully absent themselves from an authorised mental health service or authorised person. The amendment extends this offence to those circumstances where a forensic patient may be taken from an authorised mental health service to the forensic disability service. As currently specified, the maximum penalty for a breach of section 519 is 200 penalty units or 2 years imprisonment.

Insertion of new ss 541A and 541B

Clause 253 inserts new sections 541A and 541B.

New section 541A (Ensuring patient understands things told or explained to the patient) provides that where a person is required to tell or explain something to a patient, that person must explain or tell the patient the information in a language or way the patient is most likely to understand. The person must also convey the information to the patient in a way that is appropriate having regard to the patient's age, culture, mental illness, communication ability and any disability the patient may have. Further section 541A requires the person to record details about the fact that a

patient has not understood the information if the person believes that to be the case.

By including a general application provision that requires persons acting under the *Mental Health Act 2000* to ensure a patient understands the things being told or explained to them, or requiring documentation of the fact that a patient does not understand, the *Mental Health Act 2000* aligns with the comparable provision of the Forensic Disability Act (see section 154). This ensures consistency across the legislation with respect to recognition of a patient's language, age, cultural or communication related requirements. However it should be noted that the requirement under section 541A for a person to have regard to a patient's mental illness when explaining or telling things to a patient is not provided for in the Forensic Disability Act as that Act does not extend to the treatment of person's with a mental illness.

New section 541B (Effect of order for transfer on forensic order) clarifies that if a person is transferred to an authorised mental health service from another authorised mental health service, the forensic order for the person continues to apply in relation to the person. Under these circumstances, the forensic order is to be read with any changes necessary to give effect to the order in relation to the person's treatment or care in the authorised mental health service to which the person is transferred.

Transfers of this type may be approved under section 166 (Transfer order-other patients), section 167 (Transfers to high security units) or under an order of the Mental Health Review Tribunal or Mental Health Court.

Section 166 enables a forensic patient to be transferred from one authorised mental health service to another on the written order of the Director of the Mental Health, which may be required to give effect to a decision of the Mental Health Review Tribunal under section 203 of the *Mental Health Act 2000*.

Section 167 enables a forensic patient to be transferred to a high security unit, if satisfied it is in the patient's best interests to do so having regard to the person's mental state and psychiatric history; the person's treatment and security requirements; any offence with which the person has been charged or for which the person is serving a sentence of imprisonment or period of detention.

Insertion of new ch 16, pt 5

Clause 254 inserts a new Part 5 (Transitional provision for Forensic Disability Act 2011), in Chapter 16 of the *Mental Health Act 2000*, comprising sections 602 to 617.

Section 602 (Transfer order) sets out the transitional arrangements for the first cohort of clients to be admitted to the forensic disability service. Within 6 months from the commencement of this section, a forensic patient may be transferred from an authorised mental health service to the forensic disability service if the Director of Mental Health is satisfied that the transfer is in the patient's best interests and the Director of Forensic Disability agrees to the transfer.

Section 603 (Director to give notice of transfer order to tribunal and others) requires that within 7 days of making an order for the transfer of a patient under section 602, the Director of Mental Health must give notice to the patient, the administrator of the patient's treating health service and the tribunal. In addition, if any proceedings involving the patient were started prior to the transfer order being made, notice must also be given to each entity the director considers has a sufficient interest in the proceedings. For example, an entity may include the Director of Public Prosecutions or another prosecuting authority.

Section 604 (Administrator to give notice of transfer order to patient and allied person) requires the administrator of the patient's treating health service to notify the patient and patient's allied person of the transfer order.

Section 605 (Continuation of existing forensic order) clarifies that on the admission of a forensic patient to the forensic disability service under a section 602 transfer order, the patient's existing forensic order (that provided for their detention in a stated authorised mental health service) will apply as if it was an order made for their detention as a forensic disability client to the forensic disability service. This provision is similar to section 39 of the Forensic Disability Act and new section 169L of the *Mental Health Act 2000*, as discussed above.

The effect of section 605 will be time limited for a period of up to 1 year starting from the day a person is admitted to the forensic disability service under the transitional arrangements. During this period of time, it is intended that an application be made to the Mental Health Court under section 607 seeking to have the person's existing forensic order (Mental Health Court) changed to a forensic order (Mental Health Court—Disability).

Section 606 (Definitions for div 2) defines the terms ‘commencement’ and ‘existing forensic order’ for the purposes of the new Division 2 being inserted in Chapter 16, Part 5.

Section 607 (Application for order changing existing forensic order) enables an application to be made to the Mental Health Court to enable a person’s existing forensic order (Mental Health Court) to be changed to a forensic order (Mental Health Court – Disability). Such a transitional provision is necessary as the definition of forensic disability client under the Forensic Disability Act is defined as being an adult with an intellectual or cognitive disability for whom a forensic order (Mental Health Court—Disability) is in force for the person’s detention in the forensic disability service.

An application under this section may be made by the person subject to an existing forensic order or someone on behalf of the person, the Director of Mental Health, the Director of Forensic Disability or the two directors acting jointly.

The application must be in writing and be accompanied by sufficient documentation to enable the court to decide the application, for example, a multidisciplinary assessment of the person to whom the order relates, or an expert report previously submitted to the court in relation to the person. A copy of the application and invitation to make a written submission about the application are to be given to the person the subject of the existing forensic order, the Director of Mental Health, the Director of Forensic Disability and the Attorney-General.

Section 608 (Court’s powers) sets out the decisions which may be made by the Mental Health Court when deciding an application to change an existing forensic order – that is to either confirm the existing order or change it to a forensic order (Mental Health Court – Disability).

When making a decision on an application, the court is required to consider whether the person’s unsoundness of mind or unfitness for trial which resulted in the existing forensic order was a consequence of an intellectual or cognitive disability.

Similar to section 288 (as amended by clause 230), the court may only make a forensic order (Mental Health Court – Disability) if the court considers the person’s unsoundness of mind or unfitness for trial was a consequence of an intellectual or cognitive disability.

If the court decides to make a forensic order (Mental Health Court – Disability), the order must state whether the person subject to the order is to be detained in the forensic disability service or an authorised mental health service.

Section 608(5) provides that in deciding if the person is to be detained in the forensic disability service, the court must have regard to whether the patient has an intellectual or cognitive disability within the meaning of the Forensic Disability Act but does not require involuntary treatment for a mental illness under the *Mental Health Act 2000* and whether the patient is likely to benefit from care and support in the forensic disability service. The term benefit is defined for the purposes of this section to mean, benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

However, if the order is changed to a forensic order (Mental Health Court—Disability), it must not state that the person be detained in the forensic disability service for care unless a certificate given to the court under section 288AA of the *Mental Health Act 2000* states that the forensic disability service has the capacity for the person’s detention and care.

The court is not required to have regard to the matters in section 608(5), or a certificate given to the court under section 288AA in deciding whether to make an order, and only has regard to these matters in deciding where to detain the person.

Section 608 does not limit the court’s powers under section 288 or 289 in relation to the existing forensic order or the forensic order (Mental Health Court—Disability).

Section 609 (Notice of decision) specifies that the Registrar of the Mental Health Court must give a copy of the court’s decision to the parties to the proceeding and the Mental Health Review Tribunal.

It should be noted that clause 255 of the Bill amends the dictionary in schedule 2 of the *Mental Health Act 2000* to provide that a party for a proceeding in the Mental Health Court on an application to change a patient’s existing forensic order (Mental Health Court) to a forensic order (Mental Health Court – Disability) is the person to whom the existing forensic order relates or someone else on behalf of the person, the Director of Mental Health, the Director of Forensic Disability, both directors acting jointly and the Attorney-General.

Section 610 (Relevant director to give notice of decision to relevant administrator) requires that the decision of the Mental Health Court on an application for the change of an existing forensic order must be given to the administrator of the service responsible for the person by the Director of Mental Health (if the service is a health service) or the Director of Forensic Disability (if the service is the forensic disability service).

As discussed above, section 306 of the *Mental Health Act 2000* is to be amended as a consequence of these new provisions to require the administrator of the patient's treating health service to notify the patient's allied person if a change in the patient's forensic order is made under section 607.

Section 611 (Effect of order on existing forensic order) clarifies that if there is an inconsistency between the existing forensic order and the new order made under section 608, the order as changed under section 608 will prevail to the extent of any inconsistency.

Section 612 (Appeal against Mental Health Court decision) sets out who may lodge an appeal with the Court of Appeal against a decision of the Mental Health Court to change an existing forensic order to a forensic order (Mental Health Court – Disability) made under section 608. That is, the person subject to an existing forensic order or someone on behalf of the person, the Director of Mental Health, the Director of Forensic Disability or the two Directors acting jointly.

Section 613 (Declaration and validation concerning special notification forensic patients) provides clarity around the application of section 305A. Provisions relating to special notification forensic patients were inserted into the *Mental Health Act 2000* by the *Mental Health and Other Legislation Amendment Act 2007* and commenced on 28 February 2008.

The special notification forensic patient provisions resulted from recommendations of the Butler Review and include:

- Section 305A which establishes who is a special notification forensic patient.
- Section 203A which establishes that the Mental Health Review Tribunal may order that a special notification forensic patient be examined by a psychiatrist independent of the authorised mental health service at which the person is detained, and requires that the tribunal obtain such a report before revoking a forensic order for a special notification forensic patient.

- Section 309A which requires the Director of Mental Health to issue policies and practices guidelines about the treatment and care of a special notification forensic patient.

The policies and practice guidelines issued by the Director of Mental Health establish minimum service requirements for special notification forensic patients. They specify, for example, the frequency of contact with the treating psychiatrist and case manager, the level of clinical expertise of the case manager, the need for an annual clinical assessment by specialist forensic psychiatrist, the need to promptly notify the Director of Mental Health of incidents including absence without permission, and the need to flag clinical files to clearly identify the person as a special notification forensic patient.

Due to the location of section 305A in Chapter 7, Part 7, Division 2, Subdivision 4, the provision has only technically applied to one forensic patient since the special notification forensic patient provisions commenced in 2008. However, the intention of the special notification forensic patient provisions was that they were to apply to all relevant forensic patients (i.e. patients found of unsound mind or unfit for trial in relation to the five offences listed in section 305A), including those forensic patients who had their forensic order made by the Mental Health Court.

In practice, the additional requirements relating to special notification forensic patients have been applied to all relevant forensic patients despite the location of the provisions under Chapter 7, Part 7, Division 2 (Forensic orders following jury findings). That is:

- the additional treatment and care requirements established in the Director of Mental Health policies have applied at the service level; and
- the tribunal has operated on the basis that an independent report is obtained before revocation of a forensic order for a special notification forensic patient (note: the tribunal has authority to obtain a report from an independent psychiatrist under section 457)

Prior to the Butler Review amendments, the special notification forensic patient subcategory operated administratively. Additional treatment and care requirements for this subgroup were established by the Director of Mental Health when the *Mental Health Act 2000* commenced in 2002 and have applied since that time.

As noted above, the Mental Health Review Tribunal has had authority to obtain an independent psychiatrist report under section 457 since the *Mental Health Act 2000* commenced. The Butler Review amendments established that such a report must be obtained prior to revoking a forensic order for special notification forensic patient.

A retrospective transitional provision is to be inserted by the Bill declaring that the special notification forensic patient provisions always applied to forensic orders, regardless of how the forensic order was made (i.e. by the Mental Health Court, following jury findings or by the Minister).

The transitional period established by this provision starts on the 28 February 2008 and ends on the day before the commencement of section 254 of the Forensic Disability Act.

Sections 614-616 provide clarity around the transitional arrangements that are required following the change in terminology from ‘forensic patient information order’ to ‘forensic information order’. Sections 614 (References to forensic patient information) and 615 (References to forensic patient information orders) provide that where it is appropriate, a reference to a ‘forensic patient information order’ or ‘forensic patient information’ in any Act or document is taken to be a reference to a ‘forensic information order’ or ‘forensic information’, respectively. Whereas section 616 (Orders made under s 318O (1) before commencement) provides that an order made under section 318O (1) prior to the commencement of this section is taken to be a forensic information order.

Section 617 (Provision about Mental Health Regulation 2002) provides that the amendment of the *Mental Health Regulation 2002* by the Forensic Disability Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Amendment of sch 2 (Dictionary)

Clause 255 amends the Dictionary in schedule 2 of the *Mental Health Act 2000* to reflect the amendment the Bill makes to the Act.

Part 12 **Amendment of Police Powers and Responsibilities Act 2000**

Act amended

Clause 256 provides that Part 12 amends the *Police Powers and Responsibilities Act 2000*.

Amendment of sch 1 (Acts not affected by this Act)

Clause 257 amends schedule 1 to insert the Forensic Disability Act.

Part 13 **Amendment of Powers of Attorney Act 1998**

Act amended

Clause 258 provides that Part 13 amends the *Powers of Attorney Act 1998*.

Insertion of new s37A

Clause 259 inserts a new section 37A after section 37.

New section 37A provides that in circumstances where the forensic disability client has given a direction about their health care or special health care, whether by an advance health directive or otherwise, an interpretation of the Forensic Disability Act must be consistent with the *Powers of Attorney Act 1998* and the direction is preferred to any other meaning. Where there is inconsistency between the two Acts, then the Forensic Disability Act prevails.

Part 14 Amendment of Queensland Civil and Administrative Tribunal Act 2009

Act amended

Clause 260 provides that Part 10 amends the *Queensland Civil and Administrative Tribunal Act 2009*.

Insertion of new ch 10

Clause 261 inserts new Chapter 10 to provide for a transitional provision for the Forensic Disability Act. It provides that the amendment of *Queensland Civil and Administrative Tribunal Act 2009* by the Forensic Disability Act does not affect the power of the Governor in Council to further amend the rules or repeal them.

Part 15 Amendment of Queensland Civil and Administrative Tribunal Rules 2009

Rules amended

Clause 262 provides that Part 15 amends the *Queensland Civil and Administrative Tribunal Rules 2009*.

Amendment of r 21 (Alternative notice requirements for proceedings about persons with impaired capacity etc.)

Clause 263 amends rule 21(3)(b)(vii) to insert that the principal registrar must give written notice of an application for a proceeding under Chapter 5 of the *Guardianship and Administration Act 2000* to the Director of Forensic Disability if the tribunal is aware the relevant adult is a forensic disability client within the meaning of the Forensic Disability Act.

Part 16 **Amendment of Residential Services (Accreditation) Act 2002**

Act amended

Clause 264 provides that Part 16 amends the *Residential Services (Accreditation) Act 2002*.

Amendment of s 4 (Meaning of *residential service*)

Clause 265 amends section 4(5) to insert that the services that are not residential services include a forensic disability service under the Forensic Disability Act.

Part 17 **Amendment of Residential Tenancies and Rooming Accommodation Act 2008**

Act amended

Clause 266 provides that Part 17 amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

Amendment of s 44 (Rooming accommodation agreements to which Act does not apply)

Clause 267 amends section 44 to insert that rooming accommodation agreements to which this Act does not apply includes accommodation provided at the forensic disability service under the Forensic Disability Act.

Part 18 Amendment of Supreme Court of Queensland Act 1991

Act amended

Clause 268 provides that Part 18 amends the *Supreme Court of Queensland Act 1991*.

Insertion of new s 141

Clause 269 inserts a new section 141 after section 140.

Section 141 provides for a transitional provision for the Forensic Disability Act. It provides that the amendment of the *Criminal Practice Rules 1999* by the Forensic Disability Act does not affect the power of the Governor in Council to further amend the rules or repeal them.

Chapter 15 Other amendment of legislation

Legislation amended

Clause 270 provides Schedule 2 will amend the legislation that it mentions namely the *Child Protection (Offender Reporting) Act 2004*, *Child Protection (Offender Prohibition Order) Act 2008*, *Guardianship and Administration Act 2000*, *Mental Health Act 2000*, and *Mental Health Regulation 2002*.

Schedule 1

Schedule 1 outlines how a standardised measurement of intelligence or adaptive behaviour is to be used in assessing a person's intellectual functioning. Clause 12 defines intellectual disability as a disability within the meaning of the *Disability Services Act 2006* that is characterised by significant limitations in intellectual functioning and adaptive behaviour and originated in a person before the age of 18.

Schedule 1, clause 1 provides that a standardised measurement of intelligence must be used, if practicable, to assess a person's general intellectual functioning. If a standardised measurement of intelligence is used, the person must be taken to have significant limitations in intellectual functioning if the measurement indicates that the person has an intelligence not higher than 2 standard deviations below the population average. The person must not be taken to have significant limitations in intellectual functioning if the measurement indicates that the person has an intelligence not lower than 2 standard deviations below the population average.

Schedule 1 provides that if the standardised measurement of intelligence is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, other indicators of general intellectual functioning may be taken into account in deciding whether or not the person has significant limitations in intellectual functioning.

Schedule 1 provides that for a standardised measurement of intelligence test, the test result must be considered within the 95% confidence level as decided by the standard error of measurement of the test.

Schedule 1, clause 2, outlines when a person will have significant limitations in adaptive behaviour. It provides that a person has significant limitations in adaptive behaviour if the person has significant limitations in 2 or more of the following skill areas—

- (a) communication;
- (b) self-care;
- (c) home living;
- (d) social skills;
- (e) use of community services;
- (f) self-direction;
- (g) health and safety;
- (h) functional academics, including, for example, reading, writing and arithmetic;
- (i) leisure;
- (j) work.

Schedule 1, clause 2 provides that if a standardised measurement of adaptive behaviour is used to assess a person's adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, the person must be taken to have significant limitations in adaptive behaviour.

Schedule 2

Schedule 2 makes minor and consequential amendments to a number of Acts.

Schedule 3

Schedule 3 is the Dictionary for terms used in the Bill.