



# **Forensic Disability Act 2011**

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Queensland

# Forensic Disability Act 2011

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# Forensic Disability Act 2011

**An Act to provide for the involuntary detention, and the care and support and protection, of particular people with an intellectual or cognitive disability**

## Chapter 1 Preliminary

### Part 1 Introduction

#### 1 Short title

This Act may be cited as the *Forensic Disability Act 2011*.

#### 2 Commencement

This Act commences on a day to be fixed by proclamation.

### Part 2 Purpose and application of Act

#### 3 Purpose

The purpose of this Act is to provide for the involuntary detention, and the care and support and protection, of forensic disability clients, while at the same time—

- (a) safeguarding their rights and freedoms; and
- (b) balancing their rights and freedoms with the rights and freedoms of other people; and
- (c) promoting their individual development and enhancing their opportunities for quality of life; and

- (d) maximising their opportunities for reintegration into the community.

*Note—*

See section 10 for who is a forensic disability client.

#### **4 How purpose is to be achieved**

The purpose of this Act is to be achieved mainly by—

- (a) stating the human rights and other principles applying to the administration of this Act in relation to forensic disability clients; and
- (b) providing for the detention, admission, assessment, care and support and protection of clients; and
- (c) 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
- (d) when making a decision under this Act about a client, taking into account each of the following—
  - (i) the protection of the community;
  - (ii) the needs of a victim of the alleged offence to which the applicable forensic order relates;
  - (iii) the client's individual development plan, including any community treatment.

#### **5 Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and all the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

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## **6 Application of Act**

This Act does not prevent a person who is receiving care and support in the forensic disability service under a forensic order (disability) continuing to receive care and support in the service after the order ends.

# **Part 3 Principles for administration of Act**

## **7 General principles**

The following principles apply for the administration of this Act in relation to forensic disability clients—

### **(a) Same human rights**

- the right of all people to the same basic human rights must be recognised and taken into account
- a person's right to respect for the person's human worth and dignity as an individual, and as part of human diversity and humanity, must be recognised and taken into account
- a person's right to live a life free from abuse, neglect or exploitation must be recognised and taken into account
- people with a disability should be empowered to exercise their rights

### **(b) Promoting habilitation and rehabilitation**

- to the greatest extent practicable, a person is to be supported to promote the person's development potential and physical, mental, social and vocational ability, and to enhance the person's quality of life
- support and services provided to a person under this Act must promote the person's opportunities for participation and inclusion in the community

(c) **Meeting individual needs and goals**

- services provided to a person under this Act should be responsive to the person's needs and goals
- a person's physical, age-related, gender-related, religious, cultural, language, communication and other needs must be taken into account

*Example of other needs—*

needs arising because of the person's community of origin

(d) **Maintaining supportive relationships and community participation**

- care and support provided to a person under this Act must take into account the importance of the person's continued participation in community life and maintenance of supportive relationships

(e) **Matters to be considered in making decisions**

- a person is to be encouraged and supported to take part in making decisions affecting the person's life, especially decisions about the services to be provided to the person under this Act
- in making a decision about a person, the person's views, the views of any guardian or informal decision-maker for the person, and the effect on the person's family or carers must be taken into account
- a person is presumed to have capacity to make decisions about the person's care and support and choice of an allied person

(f) **Providing support and information for exercising rights**

- a person must be provided with necessary support, and necessary information in an appropriate accessible format, to enable the person to exercise rights under this Act

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*Example of necessary support and information—*

support and information facilitating access to necessary independent help to represent the person's point of view

(g) **Confidentiality**

- a person's right to confidentiality of information about the person must be recognised and taken into account.

*Note—*

See chapter 9, part 4 for provisions about confidentiality.

## **8 Principles for exercising powers and performing functions**

A power or function under this Act relating to a forensic disability client must be exercised or performed so that—

- (a) the client's liberty and rights are adversely affected only if it is the least restrictive way to protect the client's health and safety or to protect others; and
- (b) any adverse effect on the client's liberty and rights is the minimum necessary in the circumstances.

## **Part 4 Interpretation**

### **9 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

### **10 Who is a *forensic disability client***

- (1) A *forensic disability client* is an adult who has an intellectual or cognitive disability for whom a forensic order (disability) is in force if, under the Mental Health Act, the forensic disability service is responsible for the adult.

*Note—*

See the Mental Health Act, section 147 in relation to who is responsible for an adult for whom a forensic order (disability) is in force.

- (2) To remove any doubt, it is declared that a person who is a forensic disability client remains a forensic disability client while undertaking any community treatment under this Act.

## **11 What is a *cognitive disability***

A *cognitive disability* is a condition that is—

- (a) attributable to a cognitive impairment; and
- (b) a disability within the meaning of the Disability Services Act.

## **12 What is an *intellectual disability***

- (1) An *intellectual disability* is a disability within the meaning of the Disability Services Act that—
  - (a) is characterised by significant limitations in intellectual functioning and adaptive behaviour; and
  - (b) originates in a person before the age of 18.
- (2) Schedule 1 provides for assessing a person's intellectual functioning and adaptive behaviour for subsection (1)(a).

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## Chapter 2 Support and development of forensic disability clients

### Part 1 Individual development plans

#### 13 What is an *individual development plan*

- (1) An *individual development plan* is a written plan, complying with this Act, developed following a multidisciplinary assessment of a forensic disability client and designed—
- (a) to promote the client’s development, habilitation and rehabilitation; and
  - (b) to provide for the client’s care and support; and
  - (c) when appropriate, to support the client’s reintegration into the community.

*Note—*

See section 15 for the content of the plan.

- (2) In this section—

*multidisciplinary assessment* means an assessment by 2 or more persons—

- (a) with the qualifications or experience appropriate to conduct the assessment; and
- (b) whose qualifications or experience are in different disciplines.

*Examples of persons who may have the appropriate qualifications or experience for conducting the assessment—*

behaviour specialists, doctors, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers

#### 14 Preparing plan for client

- (1) A senior practitioner must ensure an individual development plan is prepared for a forensic disability client.

- (2) For preparing the plan, the senior practitioner must consult with and consider the views of the following persons—
- (a) the client;
  - (b) if the client has a guardian or an informal decision-maker—the guardian or informal decision-maker, or each of those persons, as the case may be;
  - (c) anyone else the senior practitioner considers to be integral to the plan’s preparation.

*Example—*

a family member who is part of the client’s support network, the client’s allied person or an advocate for the client

- (3) The plan must be prepared having regard to any relevant policies and procedures about the care and support and protection of forensic disability clients issued by the director under this Act.
- (4) The plan must also take into account any relevant plans or advance health directive for the client.
- (5) Despite subsection (2)(b), the senior practitioner is not required to consult with a person who is an informal decision-maker for the client if—
- (a) the senior practitioner is not, and could not reasonably be expected to be, aware the person is an informal decision-maker for the client; or
  - (b) after taking all reasonable steps, the senior practitioner can not locate the person.
- (6) In this section—
- relevant plans* include the following—
- (a) an individual development plan;
  - (b) a positive behaviour support plan within the meaning of the Disability Services Act;
  - (c) for a client transferred from an authorised mental health service to the forensic disability service—any planned



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treatment and care recorded in the client's health records under the Mental Health Act immediately before the transfer.

## 15 Content of plan

- (1) The individual development plan must state each of the following—
  - (a) an outline of the proposed arrangements for the provision of programs or services for—
    - (i) promoting the client's development, habilitation, rehabilitation and quality of life; and
    - (ii) reducing the intensity, frequency and duration of the client's behaviour that places the client's health or safety or the safety of others at risk; and
    - (iii) when appropriate, supporting the client's reintegration into the community;

*Examples of programs or services for paragraph (a)—*

- programs for developing communication skills, motor skills, life skills or a combination of those skills
  - programs that encourage positive behaviour
- (b) an outline of the proposed plan for the client's transition to participation and inclusion in the community;
  - (c) the intervals for regularly reviewing and, if necessary, changing the plan to ensure its continued appropriateness for promoting the client's development and independence and supporting the client to participate and to be included in the community;
  - (d) the intervals for the client's regular assessment.

*Note—*

Section 19 deals with the client's regular assessment.

- (2) The plan must include a risk management plan for the client.
- (3) The plan must also—

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- (a) include the details of any medication prescribed for the client by a doctor; and
- (b) state the intervals, of not more than 3 months, for regularly reviewing the client's medication as required under sections 52 and 145.

*Note—*

See also section 22 for what the plan must include about community treatment.

## **16 Senior practitioner must tell client about plan**

- (1) A senior practitioner must talk to the client about the client's care and support under the individual development plan.
- (2) If the client has a guardian or an informal decision-maker, a senior practitioner must also talk to the guardian or informal decision-maker, or each of those persons, as the case may be, about the client's care and support under the plan.

*Note—*

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

## **17 Changing plan**

- (1) A senior practitioner, or an authorised practitioner authorised for the purpose by a senior practitioner, may change the client's individual development plan.
- (2) For changing the plan under subsection (1), section 14(2) to (5) applies as if—
  - (a) a reference in those provisions to preparing an individual development plan were a reference to changing an individual development plan; and
  - (b) a reference in those provisions to a senior practitioner included a reference to the authorised practitioner.

- 
- (3) A senior practitioner must change the client's individual development plan—
    - (a) to give effect to a decision or order of the tribunal or Mental Health Court; or
    - (b) to comply with section 22 or 73.
  - (4) A senior practitioner or authorised practitioner mentioned in subsection (1) who changes the client's individual development plan must—
    - (a) make a written record of the change and the reasons for it; and
    - (b) talk to the client about the change and reasons.
  - (5) If the client has a guardian or an informal decision-maker, a senior practitioner must also talk to the guardian or informal decision-maker, or each of those persons, as the case may be, about the change and the reasons for it.

*Note—*

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

## **18 Care and support under plan**

The administrator must ensure the client receives care and support and protection as required under the individual development plan.

## **19 Regular assessment of client**

- (1) The administrator must ensure a senior practitioner carries out regular assessments of the client as required under the individual development plan.
- (2) A senior practitioner carrying out an assessment of the client must record details of it in the client's file.

## Part 2                      Community treatment

### 20      Authorising community treatment

- (1) A senior practitioner may, for a forensic disability client's individual development plan, authorise community treatment for the client.
- (2) However, the senior practitioner may authorise the community treatment only if—
  - (a) the tribunal or Mental Health Court has ordered or approved the community treatment; and
  - (b) the senior practitioner is satisfied, having regard to the matters stated in subsection (3), there is not an unacceptable risk to the safety of the community, because of the client's intellectual or cognitive disability, including the risk of serious harm to other persons or property.
- (3) For subsection (2), the senior practitioner must have regard to the following matters—
  - (a) for limited community treatment—the fact that the purpose of limited community treatment is to support the client's rehabilitation by transitioning the client to living in the community with appropriate care and support;
  - (b) the client's current mental state and intellectual disability;
  - (c) the client's social circumstances, including, for example, family and social support;
  - (d) the client's response to care and support including, if relevant, the client's response to care and support in the community;
  - (e) the client's willingness to continue to receive appropriate care and support;

- (f) the nature of the unlawful act that led to the making of the applicable forensic order and the amount of time that has passed since the act occurred.
- (4) Also, if the senior practitioner authorises the community treatment, the senior practitioner must have regard to the matters mentioned in subsection (3) in deciding the nature and conditions of the community treatment.

## **21 Community treatment on order of tribunal or Mental Health Court**

If the tribunal or Mental Health Court orders that a forensic disability client have community treatment, the administrator must ensure a senior practitioner changes the client's individual development plan to give effect to the order.

## **22 What individual development plan must state about community treatment**

If a forensic disability client is authorised to have community treatment under section 20, or ordered to have community treatment as mentioned in section 21, the client's individual development plan must include, or be changed to include, in specific terms—

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

## Chapter 3 Allied persons

### 23 Who is an *allied person*

An *allied person* is the person chosen by a forensic disability client, or declared, under this part to be the client's allied person.

### 24 Function of allied person

The function of a forensic disability client's allied person is to help the client to represent the client's views, wishes and interests relating to the client's assessment, detention, care and support and protection under this Act.

### 25 Client may choose allied person

- (1) A forensic disability client may choose any 1 of the following persons (other than a forensic disability service employee) who is willing, readily available, capable and culturally appropriate to be the client's allied person—
  - (a) if the client has a personal guardian—the personal guardian;
  - (b) if the client has a personal attorney—the personal attorney;
  - (c) an adult relative or adult close friend of the client;
  - (d) an adult carer of the client;
  - (e) another adult.

*Example of application of subsection (1)—*

The client may choose a person mentioned in paragraph (d) to be the client's allied person even though the client has a personal attorney or personal guardian.

- (2) This section has effect subject to section 26.
- (3) In this section—

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*close friend*, of the client, means a person with whom the client has a close relationship.

*personal attorney* means an attorney for a personal matter under the *Powers of Attorney Act 1998*.

*personal guardian* means a guardian for a personal matter under the Guardianship and Administration Act.

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

- (1) This section applies if the administrator is satisfied a forensic disability client does not have the capacity to choose an allied person.
- (2) If the client, by an advance health directive, has directed that a stated person be the client's allied person under this Act, the stated person is the client's allied person for this Act.
- (3) If subsection (2) does not apply to the client, the administrator must choose a person (other than a forensic disability service employee) to be the client's allied person.
- (4) The person chosen must be—
  - (a) the first person in listed order of the persons mentioned in section 25 who is willing, readily available, capable and culturally appropriate to be the allied person; or
  - (b) if no-one in the list is willing, readily available, capable and culturally appropriate to be the allied person—the public guardian under the *Public Guardian Act 2014*.

## 27 When choice of allied person ends

The choice of an allied person of a forensic disability client ends if—

- (a) under section 25, the client chooses another person to be the allied person; or
- (b) the client tells the administrator the client no longer wishes to have an allied person and the administrator is

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satisfied the client has the capacity to make that decision; or

- (c) under section 26, the administrator chose the allied person but the administrator is no longer satisfied the allied person is willing, readily available, capable and culturally appropriate to be the allied person.

## **28 Administrator to give notice of applicable forensic order to allied person**

The administrator must give notice of the applicable forensic order to a forensic disability client's allied person.

# **Chapter 4 Rights of forensic disability clients and others**

## **Part 1 Statement of rights**

### **29 Preparing statement of rights**

- (1) The director must prepare a written statement (the *statement of rights*) containing information about—
  - (a) the rights of forensic disability clients and their allied persons under this Act; and
  - (b) the rights of clients to make complaints about the service provided at the forensic disability service and how the complaints are made.
- (2) The statement of rights may also contain anything else the director considers appropriate.



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### **30 Giving statement of rights to client and allied person**

- (1) After a forensic disability client is admitted to the forensic disability service, the administrator must give a copy of the statement of rights so far as it is relevant to the client to—
  - (a) the client; and
  - (b) the client's allied person.
- (2) In addition to the statement, the administrator must ensure the client is given an oral explanation of the information in the statement.

*Note—*

See section 146 about complying with provisions as soon as practicable and section 154 about ensuring the client understands things told or explained to the client.

### **31 Notice of rights**

The administrator must ensure a copy of the statement of rights is displayed in a prominent place in the forensic disability service so it is easily visible to forensic disability clients and their allied persons.

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

### **32 Visiting and assessing client and consulting about client's care and support**

- (1) A registered health practitioner, speech pathologist or social worker engaged in providing disability services, other than a forensic disability service employee, may at any reasonable time of the day or night—
  - (a) visit and assess a forensic disability client detained in the forensic disability service; or

- (b) consult with a senior practitioner about the care and support of a forensic disability client.

*Note—*

Subsection (1) does not affect a right or obligation of a forensic disability service employee in relation to a client under this Act.

- (2) A legal or other adviser for a forensic disability client detained in the forensic disability service may visit the client at any reasonable time of the day or night.
- (3) The registered health practitioner, speech pathologist, social worker or adviser may exercise a power under subsection (1) or (2)—
  - (a) only if asked by the client or someone else on the client's behalf; and
  - (b) only under an arrangement made with the administrator.

## **Part 3                      Temporary absence**

### **32A      Absence of client with director's approval**

- (1) The director may, by written notice, approve the absence of a forensic disability client from the forensic disability service—
  - (a) to receive medical, dental or optical treatment; or
  - (b) to appear before a court, tribunal or other body; or
  - (c) for another purpose the director considers to be appropriate on compassionate grounds.
- (2) The notice must state the approved period of absence.
- (3) The approval may be given on the conditions the director considers appropriate, including, for example, a condition that the client is to be in the care of a stated person for the period of absence.

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## Part 4 Rights of allied person

### 32B Allied person to be notified of transfer of responsibility for forensic disability client

- (1) This section applies if the responsibility for a forensic disability client is transferred, under section 113A or the Mental Health Act, chapter 11, part 5—
  - (a) from the forensic disability service to an authorised mental health service; or
  - (b) from an authorised mental health service to the forensic disability service.
- (2) The administrator must give the client's allied person notice of the transfer of responsibility for the client.
- (3) Subsection (2) does not apply if the allied person is the client's nominated support person under the Mental Health Act.

## Chapter 6 Regulation of behaviour control

### Part 1 Preliminary

#### 42 Purpose of ch 6

The purpose of this chapter is to protect the rights of forensic disability clients by regulating the use of behaviour control medication, restraint and seclusion (each a *regulated behaviour control*) under this Act so that the regulated behaviour control is only used—

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- (a) if considered necessary and the least restrictive way to protect the health and safety of clients or to protect others; and
- (b) in a way that—
  - (i) has regard to the human rights of clients; and
  - (ii) aims to reduce or eliminate the need for its use; and
  - (iii) ensures transparency and accountability in its use.

#### **43 Definitions for ch 6**

In this chapter—

*authorised practitioner* means an authorised practitioner whose instrument of appointment states that the practitioner may exercise the powers given to an authorised practitioner under this chapter.

*behaviour control medication* see section 44.

*restraint* see section 45.

*seclusion* see section 46.

*senior practitioner* means a senior practitioner whose instrument of appointment states that the practitioner may exercise the powers given to a senior practitioner under this chapter.

#### **44 Meaning of *behaviour control medication***

- (1) *Behaviour control medication* of a forensic disability client is the use of medication for the primary purpose of controlling the client's behaviour.
- (2) However, using medication for the client's health care is not behaviour control medication.
- (3) In this section—

*health care* see the Guardianship and Administration Act, schedule 2, section 5.

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**45 Meaning of *restraint***

- (1) *Restraint* of a forensic disability client is the restraint of the client by use of an approved mechanical appliance preventing the free movement of the client's body or a limb of the client.
- (2) However, the use of a surgical or medical appliance for the proper treatment of physical disease or injury is not restraint.

**46 Meaning of *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 the client's free exit is prevented.

**47 Relationship with Disability Services Act**

The Disability Services Act, part 6 applies to a forensic disability client only if the client is absent from the forensic disability service—

- (a) while undertaking community treatment; or
- (b) under a temporary absence approval.

*Note—*

The Disability Services Act, part 6 deals with the use of restrictive practices within the meaning of that Act.

**48 Relationship with Guardianship and Administration Act**

- (1) This chapter does not limit the extent to which a person is authorised under the Guardianship and Administration Act to make a decision about the health care of a person who is a forensic disability client.
- (2) In this section—  
*health care* see the Guardianship and Administration Act, schedule 2, section 5.

## **Part 2                      Behaviour control**

### **Division 1                Behaviour control medication**

#### **49            Offence to administer behaviour control medication**

A person must not administer behaviour control medication to a forensic disability client detained in the forensic disability service other than under this division.

Maximum penalty—50 penalty units.

#### **50            Use of behaviour control medication**

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 registered nurse, may administer behaviour control medication to a forensic disability client detained in the forensic disability service if—

- (a) a psychiatrist prescribes the medication as a regulated behaviour control for the client; and
- (b) 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

*Note—*

See also chapter 12, part 1 for the use of other medication on a forensic disability client.

- (c) the client is observed in accordance with the psychiatrist's directions.

#### **51            Obligations of senior practitioner**

- (1) If a psychiatrist prescribes the behaviour control medication as a regulated behaviour control for the client, a senior practitioner must ensure details of the medication, as prescribed by the psychiatrist, are included in—

- (a) the client's file; and
  - (b) the client's individual development plan as required under section 15(3).
- (2) If the medication is administered to the client under section 50, the senior practitioner who administered it, or under whose direction it was administered, must ensure the following details are recorded in the client's file—
- (a) the name of the medication that was administered;
  - (b) the time it was administered;
  - (c) the person who administered it;
  - (d) for medication to be administered as and when needed—the circumstances in which it was administered.

## **52 Review of client's behaviour control medication**

- (1) A senior practitioner must ensure a psychiatrist regularly reviews the client's need for, and the appropriateness of, the behaviour control medication prescribed for the client.
- (2) The review must be carried out at least every 3 months.
- (3) Also, if requested by the director, a senior practitioner must ensure a psychiatrist carries out an immediate review of the client's behaviour control medication as mentioned in subsection (1).
- (4) The psychiatrist must record details of the review in the client's file.

## **53 Consent of client not required**

It is not necessary to obtain the client's consent to the administration of behaviour control medication to the client under this division.

## **Division 2                      Restraint**

### **54            Offence to use restraint**

A person must not use restraint on a forensic disability client detained in the forensic disability service other than under this division.

Maximum penalty—50 penalty units.

### **55            Approval of appliances for restraint**

The director must—

- (a) approve the mechanical appliances that may be used for the restraint of a forensic disability client; and
- (b) state the approved mechanical appliances in a policy or procedure issued under section 91.

### **56            Authorisation of use of restraint**

- (1) The director may authorise the use of restraint on a forensic disability client only if satisfied it is the least restrictive way to protect the client's health and safety or to protect others.
- (2) In authorising the restraint, the director—
  - (a) must have regard to the client's individual development plan; and
  - (b) must authorise the restraint to be applied for only the minimum period or periods possible.
- (3) The authorisation must be given by written order to a senior practitioner or authorised practitioner.
- (4) The order must state the following—
  - (a) the type of restraint authorised to be used;
  - (b) the reasons for the restraint;
  - (c) any restrictions on the circumstances in which the restraint may be used;



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- (d) the maximum period or periods for which the restraint may be used;
  - (e) the intervals at which the client must be observed while restrained;
  - (f) any special measures necessary to ensure the client's proper care and support while restrained;
  - (g) the time (not longer than 3 hours after the order is made) when the authorisation ends.

## **57 Obligations of senior practitioner and authorised practitioner**

A senior practitioner or authorised practitioner must—

- (a) ensure a copy of the director's order under section 56 is included in the client's file; and
- (b) use the restraint as authorised by the director; and
- (c) record the following details in the client's file—
  - (i) the type of restraint used;
  - (ii) if the director's order states any restrictions on the circumstances in which the restraint may be used—the circumstances in which the restraint was used;
  - (iii) the time the restraint was used;
  - (iv) the person who used the restraint;
  - (v) the time the restraint was removed;
  - (vi) the person who removed the restraint.

## **58 Removal of restraint before authorisation ends**

- (1) This section applies if, before the authorisation ends—
  - (a) a senior practitioner or authorised practitioner is satisfied care and support can be safely provided to the client without the restraint; or

- (b) the director orders a senior practitioner or authorised practitioner to remove the restraint.
- (2) The practitioner must immediately remove the restraint.

### **59 Consent of client not required**

It is not necessary to obtain the client's consent to the use of restraint on the client under this division.

## **Division 3 Seclusion**

### **60 Offence to keep client in seclusion**

A person must not keep a forensic disability client detained in the forensic disability service in seclusion other than under this division.

Maximum penalty—50 penalty units.

### **61 When client may be placed in seclusion**

- (1) A forensic disability client may be placed in seclusion in the forensic disability service—
  - (a) by a senior practitioner, at any time; or
  - (b) by an authorised practitioner—
    - (i) if authorised by a senior practitioner; or
    - (ii) in urgent circumstances.
- (2) However, a senior practitioner may place a client in seclusion or authorise the seclusion of a client only if reasonably satisfied—
  - (a) the seclusion is necessary to protect the client or other persons from imminent physical harm; and
  - (b) there is no less restrictive way to protect the client's health and safety or to protect others.

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- (3) An authorised practitioner may place a client in seclusion under subsection (1)(b)(ii) only if reasonably satisfied of the matters mentioned in subsection (2)(a) and (b).

## **62 How authorisation of seclusion is given**

- (1) A senior practitioner's authorisation must be given by written order to an authorised practitioner.
- (2) The order must state the following—
- (a) the reasons for the seclusion;
  - (b) the time the order is made;
  - (c) the time (not longer than 3 hours after the order is made) when the authorisation ends;
  - (d) whether an authorised practitioner is authorised to release the client from, or return the client to, seclusion;
  - (e) the special measures necessary to ensure the client's proper care and support while secluded;
  - (f) whether it is necessary to continuously observe the client while secluded;
  - (g) if the order states that it is not necessary to continuously observe the client while secluded—the intervals (not longer than 15 minutes) at which the client must be observed while secluded.
- (3) The senior practitioner must ensure a copy of the order is included in the client's file.

## **63 Obligations of senior practitioner and authorised practitioner**

- (1) A senior practitioner must have regard to a forensic disability client's individual development plan in placing the client in seclusion, or authorising the seclusion, under this division.
- (2) An authorised practitioner must have regard to a forensic disability client's individual development plan in placing the client in seclusion under this division.

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- (3) An authorised practitioner who places a forensic disability client in seclusion under a senior practitioner's authorisation must place the client in seclusion as authorised.
- (4) A senior practitioner who places a client in seclusion, or an authorised practitioner who places a client in seclusion under a senior practitioner's authorisation, must record the following details in the client's file—
  - (a) the time the client was placed in seclusion;
  - (b) the name of the senior practitioner or authorised practitioner who placed the client in seclusion;
  - (c) the time the client was released from seclusion.

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

- (1) If an authorised practitioner places a forensic disability client in seclusion in the forensic disability service in urgent circumstances, the authorised practitioner must—
  - (a) immediately tell a senior practitioner of the seclusion; and
  - (b) record the following details in the client's file—
    - (i) the reasons for the seclusion;
    - (ii) the time the client was placed in seclusion;
    - (iii) the time the authorised practitioner told the senior practitioner of the seclusion;
    - (iv) the authorised practitioner's name;
    - (v) the senior practitioner's name.
- (2) The senior practitioner must ensure the client is examined as soon as practicable by a senior practitioner.
- (3) On the examination, the examining senior practitioner must—
  - (a) record in the client's file the time of the examination; and

- (b) order the client's release from seclusion or authorise the client's seclusion.

## **65 When authorised practitioner may end seclusion or return client to seclusion**

- (1) This section applies if, under a senior practitioner's authorisation, an authorised practitioner may release a forensic disability client from, or return a client to, seclusion.
- (2) An authorised practitioner may—
  - (a) release the client from seclusion if satisfied the client's seclusion is no longer necessary; and
  - (b) return the client to seclusion if—
    - (i) the senior practitioner's authorisation is still in force; and
    - (ii) the authorised practitioner is reasonably satisfied of the matters mentioned in section 61(2)(a) and (b) in relation to the client.
- (3) Immediately after acting under subsection (2), the authorised practitioner must record the following in the client's file—
  - (a) the time of release from, or return to, seclusion;
  - (b) the reasons for the release or return.

## **66 Ending seclusion on director's order**

A senior practitioner or authorised practitioner must immediately release a forensic disability client from seclusion in the forensic disability service if the director orders that the client be released.

## **67 Consent of client not required**

It is not necessary to obtain a forensic disability client's consent to the client's seclusion under this division.

## **Division 4                      Other provisions about regulated behaviour controls**

### **68        Use of reasonable force**

A senior practitioner or authorised practitioner may, with the help, and using the minimum force, that is necessary and reasonable in the circumstances—

- (a) administer behaviour control medication to a forensic disability client under division 1; or
- (b) use restraint on a forensic disability client under division 2; or
- (c) place a forensic disability client in seclusion under division 3.

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

(1) A senior practitioner or authorised practitioner must ensure a forensic disability client's reasonable needs are met while the client is subject to a regulated behaviour control.

(2) In this section—

*reasonable needs* includes the following—

- (a) sufficient bedding and clothing;
- (b) sufficient food and drink;
- (c) access to toilet facilities.

### **70        Observation of client while restrained or secluded**

(1) A senior practitioner or authorised practitioner must ensure a forensic disability client on whom restraint is used under division 2 is observed as required under the director's authorisation for the restraint.

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- (2) A senior practitioner or authorised practitioner must ensure a forensic disability client is continuously observed while secluded under division 3.
  - (3) However, subsection (2) does not apply if the seclusion is authorised by a senior practitioner's authorisation the order for which states—
    - (a) it is not necessary to continuously observe the client while secluded; and
    - (b) the intervals (not longer than 15 minutes) at which the client must be observed while secluded.

#### **71 Administrator must notify director about prescription of fixed dose behaviour control medication**

- (1) As soon as practicable after a psychiatrist prescribes fixed dose medication for a forensic disability client detained in the forensic disability service, the administrator must give the director written notice about the medication.
- (2) The notice must include the information required by the director.
- (3) In this section—

*fixed dose medication* means behaviour control medication that is administered at fixed intervals and times.

#### **72 Administrator must notify director about use of other regulated behaviour controls**

- (1) The administrator must give the director written notice about the use of a regulated behaviour control (other than fixed dose medication mentioned in section 71) on a forensic disability client detained in the forensic disability service.
- (2) The notice must—
  - (a) be given as soon as practicable after—
    - (i) for behaviour control medication (other than fixed dose medication mentioned in section 71) or

restraint—the regulated behaviour control is used on the client; or

- (ii) for seclusion—the client is placed in seclusion; and
- (b) include the information required by the director.

**73 What individual development plan must state about regulated behaviour controls**

If a regulated behaviour control is used on a forensic disability client, the client’s individual development plan must include strategies for avoiding, reducing and eliminating any further use of the behaviour control.

**74 Register of use of regulated behaviour controls**

- (1) The administrator must keep a register of the use of regulated behaviour controls under this chapter.
- (2) The register must include the details prescribed under a regulation.

## **Chapter 7 Security of forensic disability service**

### **Part 1 Searching forensic disability clients and possessions**

**75 Purpose of pt 1**

- (1) The purpose of this part is to ensure the protection of forensic disability clients and the security and good order of the forensic disability service.



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- (2) For achieving the purpose, this part provides for carrying out searches of clients detained in the service and their possessions.

## **76 Authority to search**

- (1) If a senior practitioner or authorised practitioner reasonably believes a forensic disability client detained in the forensic disability service has possession of a harmful thing, the practitioner may search the client or the client's possessions.
- (2) The search may be carried out without the client's consent.
- (3) However, before carrying out the search, the practitioner must tell the client the reasons for the search and how it is to be carried out.

*Note—*

See section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

## **77 Carrying out search**

- (1) The senior practitioner or authorised practitioner may require the client to submit, or submit the client's possessions, to a search under this section.
- (2) The practitioner may do any or all of the following—
  - (a) pass a hand-held electronic scanning device over or around the client or the client's possessions;
  - (b) open or inspect a thing in the client's possession;
  - (c) remove and inspect an outer garment or footwear of the client;
  - (d) remove and inspect all things from the pockets of the client's clothing;
  - (e) touch the clothing worn by the client to the extent reasonably necessary to detect things in the client's possession;

- (f) remove and inspect any detected thing.
- (3) Also, the practitioner may, with the administrator's approval, remove and inspect all, or part of, the client's other clothing and anything found in the clothing.
- (4) However, the administrator may give the approval only if the administrator is reasonably satisfied it is necessary in the circumstances for carrying out the search.
- (5) The practitioner may—
  - (a) exercise a power of inspection under subsection (2) only if the client is present or has been given the opportunity to be present; or
  - (b) exercise a power under subsection (2)(c) to (f) or (3) only if—
    - (i) the practitioner is the same sex as the client; and
    - (ii) the search is carried out in a part of a building that ensures the client's privacy.
- (6) The practitioner must—
  - (a) carry out the search in a way that respects the client's dignity to the greatest extent possible; and
  - (b) cause as little inconvenience to the client as is practicable in the circumstances.
- (7) However, the practitioner may carry out the search with the help, and using the minimum force, that is necessary and reasonable in the circumstances.

## **78 Seizure of things**

The senior practitioner or authorised practitioner may seize anything found during the search that the practitioner reasonably suspects is a harmful thing.

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## 79 What happens to thing seized

- (1) If the administrator is reasonably satisfied a thing seized under section 78 is a harmful thing, the administrator must—
  - (a) keep it for the client and give it to the client on the client's release from the forensic disability service; or
  - (b) give it to someone else if the client is able to give, and has given, agreement to do so; or
  - (c) if the administrator is satisfied someone else is entitled to possession of the thing—give or send it to that person; or
  - (d) if the administrator is reasonably satisfied it is of negligible value—dispose of it in the way the administrator considers appropriate.
- (2) However, if the administrator reasonably believes the seized thing is connected with, or is evidence of, the commission or intended commission of an offence against an Act, the administrator must give it to an authorised person under that Act.
- (3) The seizure provisions of the Act mentioned in subsection (2) apply to the thing as if the authorised person had seized it under the provisions of that Act that relate to the offence.
- (4) If the authorised person is not reasonably satisfied the thing is evidence of the commission or intended commission of the offence, the authorised person must return it to the administrator who must deal with it under this section.
- (5) Immediately after making a decision about what happens to a seized thing, the administrator must make a written record of the decision.
- (6) In this section—

*authorised person*, under an Act, means a person who is authorised under that Act to perform inspection and enforcement functions.

*seizure provisions*, of an Act, means the provisions of that Act relating to the access to, and retention, disposal and forfeiture of, a thing after its seizure under that Act.

## **80 Record of search**

- (1) This section applies if a senior practitioner or authorised practitioner—
  - (a) carries out a search under this part; or
  - (b) seizes anything found during a search under this part.
- (2) Immediately after carrying out the search, the practitioner must make a written record of the following details of the search—
  - (a) the reasons for the search;
  - (b) the practitioner's name;
  - (c) how the search was carried out;
  - (d) the results of the search;
  - (e) anything seized.

## **81 Compensation for damage to possessions**

- (1) A forensic disability client may claim from the State the cost of repairing or replacing the client's possessions damaged in the exercise or purported exercise of a power under this part.
- (2) The cost may be claimed and ordered in a proceeding brought in a court of competent jurisdiction for the recovery of the amount claimed.
- (3) A court may order an amount be paid only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) 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.

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## Part 2 Excluding visitors

### 82 Administrator may refuse to allow a person to visit a client

- (1) The administrator may refuse to allow a person to visit a forensic disability client detained in the forensic disability service if the administrator is satisfied the proposed visit will adversely affect the client's care and support.

*Example—*

The administrator may be satisfied the care and support of the client will be adversely affected if, on a previous visit by a person, the client's behaviour deteriorated.

- (2) The administrator must give the person written notice of the decision.
- (3) The notice must state the following—
  - (a) the reasons for the decision;
  - (b) that the person may appeal to the tribunal against the decision within 28 days after the person receives the notice;
  - (c) how the appeal is made.

### 83 Who may appeal

A person who is dissatisfied with a decision of the administrator to refuse to allow the person to visit a forensic disability client in the forensic disability service may appeal to the tribunal against the decision.

### 84 Procedure for appeal

- (1) An appeal is to be started and carried out in the way stated in the Mental Health Act, sections 534 to 537.
- (2) For subsection (1), the Mental Health Act, section 534(2) applies as if a reference to a decision notice were a reference

to the notice of the decision required to be given under section 82(2).

## Chapter 8 Administration

### Part 1 Director of Forensic Disability

#### 85 Appointment

- (1) There is to be a Director of Forensic Disability.
- (2) The director is to be appointed by the Governor in Council under this Act and not under the *Public Service Act 2008*.

*Note—*

Section 160 provides for an initial director.

#### 86 Duration of appointment

The director holds office for the term (which must not be longer than 5 years) stated in the instrument of appointment.

*Note—*

The director may be reappointed—see the *Acts Interpretation Act 1954*, section 25(1)(c).

#### 87 Functions

- (1) The director has the following functions—
  - (a) ensuring the protection of the rights of forensic disability clients under this Act;
  - (b) ensuring the involuntary detention, assessment, care and support and protection of forensic disability clients comply with this Act;

- (c) facilitating the proper and efficient administration of this Act;
  - (d) monitoring and auditing compliance with this Act;
  - (e) promoting community awareness and understanding of the administration of this Act;
  - (f) advising and reporting to the Minister on any matter relating to the administration of this Act—
    - (i) on the director’s own initiative; or
    - (ii) at the request of the Minister if the matter is in the public interest.
- (2) Also, the director has the other functions given under this Act.

## **88 Powers—general**

- (1) The director has the powers given under this Act.
- (2) In addition, the director has power to do all things necessary or convenient to be done in performing the director’s functions.

## **89 Independence of director**

In exercising a power under this Act, the director is not under the control of the Minister.

## **90 Delegation of director’s powers**

- (1) The director may delegate the director’s powers under this Act to an appropriately qualified person.
- (2) However, the director must not delegate a power under section 96, 100 or 102.

## **91 Policies and procedures about detention, care and support of clients**

- (1) The director must issue policies and procedures about the detention, care and support and protection of forensic disability clients.
- (2) Without limiting subsection (1), the director must issue policies and procedures about the following—
  - (a) the review and change of individual development plans as mentioned in section 15(1)(c);
  - (b) the use of regulated behaviour controls;
  - (c) the detention, care and support and protection of forensic disability clients for whom the offence leading to the making of the applicable forensic order is a prescribed offence within the meaning of the Mental Health Act.
- (3) If a policy or procedure is inconsistent with this Act, the policy or procedure is invalid to the extent of the inconsistency.

## **93 Annual report**

- (1) After the end of each financial year, the director must give to the Minister a report on the administration of this Act during that year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after the Minister receives it.

## **94 Acting director**

The Governor in Council may appoint a person to act as the director during any period, or all periods, when—

- (a) there is a vacancy in the office of director; or
- (b) the director is absent from duty or is, for another reason, unable to perform the functions of the office.



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## **Part 2                      Forensic disability service and administrator**

### **95            Declaration of forensic disability service**

A regulation may declare a place to be the forensic disability service.

### **96            Declaration of administrator of forensic disability service**

- (1) The director may, by gazette notice, declare a person to be the administrator of the forensic disability service.
- (2) The declaration may state the administrator by name or reference to the holder of a stated office.

### **97            Delegation of administrator's powers**

The administrator may delegate the administrator's powers under this Act to an appropriately qualified officer or employee of the forensic disability service.

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

The administrator must ensure any policies and procedures issued by the director under section 91 are given effect.

### **100          Acting administrator**

The director may appoint a person to be the administrator of the forensic disability service during any period, or all periods, when—

- (a) there is a vacancy in the office of the administrator; or
- (b) the administrator is absent from duty or is, for another reason, unable to perform the functions of the office.



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

- (3) An appointment made under this section may limit the powers the person has as a senior practitioner under this Act.

### **103 Powers of senior practitioners and authorised practitioners**

- (1) A senior practitioner or authorised practitioner has the powers given under this Act.
- (2) However, a senior practitioner or authorised practitioner has the powers given under chapter 6 only if the practitioner's instrument of appointment states that the practitioner may exercise the powers.

*Note—*

Chapter 6 provides for the regulation of behaviour control.

- (3) Also, subsection (1) has effect subject to any limitation stated in the practitioner's instrument of appointment.

### **104 Appointment of other persons to perform the role of a practitioner**

- (1) The administrator may, by written instrument, appoint a person to perform the role of a practitioner for the forensic disability service.
- (2) However, a person may be appointed to perform the role of a practitioner only if, in the administrator's opinion, the person has the necessary training, qualifications and expertise relevant to providing care and support of persons with an intellectual or cognitive disability.
- (3) Also, in appointing a person under this section, the administrator must have regard to the matters mentioned in section 101(3).
- (4) An appointment made under this section may limit the exercise of the powers the person has in performing the role of a practitioner under this Act.

- (5) A person appointed under this section has the powers given to a practitioner whose role the person is appointed to perform.
- (6) However, the person may not exercise powers given to a senior practitioner or authorised practitioner under chapter 6.
- (7) Also, subsection (5) has effect subject to any limitation stated in the person's instrument of appointment.

## **105 Register of practitioners and other persons**

- (1) The administrator must keep a register of the following—
  - (a) senior practitioners appointed under sections 101 and 102;
  - (b) authorised practitioners appointed under section 101;
  - (c) persons appointed under section 104 to perform the role of a practitioner.
- (2) The register must identify the senior practitioners and authorised practitioners mentioned in subsection (1) whose instrument of appointment states that the practitioner may exercise the powers given under chapter 6.

## **Part 4 Authorised officers**

### **106 Appointment of authorised officers**

- (1) The director or chief executive may appoint a registered health practitioner, speech pathologist, social worker engaged in providing disability services, lawyer or other person to be an authorised officer for this Act.
- (2) However, a person may be appointed to be an authorised officer only if—
  - (a) the person is not a forensic disability service employee; and

- 
- (b) in the director's or chief executive's opinion, the person has the necessary expertise or experience to be an authorised officer.

### **107 Appointment conditions and limit on powers**

- (1) An authorised officer holds office on the conditions stated in the officer's instrument of appointment.
- (2) The instrument of appointment may limit the authorised officer's powers under this Act.

### **108 Approval of identity cards**

- (1) The director must approve identity cards for authorised officers.
- (2) An approved identity card for an authorised officer must contain a recent photo of the officer.

*Note—*

See section 153 for the requirement for an authorised officer to identify himself or herself before exercising a power under this Act.

### **109 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happen—
- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the officer ceases to hold office;
- (c) the officer's resignation under section 110 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised officer holds office.

## **110 Resignation**

(1) An authorised officer may resign by signed notice given to the appointing entity.

(2) In this section—

*appointing entity* means the director or chief executive who appointed the authorised officer under this part.

## **111 Powers**

(1) An authorised officer has the powers given under this Act.

*Note—*

Authorised officers have powers under chapter 9, part 5.

(2) Subsection (1) has effect subject to any limitation stated in the officer's instrument of appointment.

# **Chapter 9 Enforcement, evidence and legal proceedings**

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

### **112 Senior practitioner may require return of client**

(1) A senior practitioner may, by written notice given to a forensic disability client, require the client to return to the forensic disability service on or before a stated time—

(a) to give effect to a change to the client's individual development plan; or

(b) to give effect to a decision or order of the tribunal or Mental Health Court; or

- 
- (c) if the senior practitioner reasonably believes—
    - (i) the client has not complied with the client’s individual development plan; and
    - (ii) it is necessary in the interests of the client’s health or safety or the safety of others.
  - (2) The senior practitioner must—
    - (a) state the reasons for the requirement in the notice; and
    - (b) talk to the client about the requirement.

*Note—*

See section 146 about complying with provisions as soon as practicable, section 147 about complying with provisions to the extent reasonably practicable and section 154 about ensuring the client understands things told or explained to the client.

- (3) However, the senior practitioner need not comply with subsection (2)(b) if the senior practitioner reasonably believes that to do so would not be in the interests of the client’s health or safety or the safety of others.

### **113 Taking client to forensic disability service or authorised mental health service**

- (1) This section applies to—
  - (a) a client required by notice under section 112 to return to the forensic disability service; or
  - (b) a client for whom a temporary absence approval is revoked or the approved period of absence has ended; or
  - (c) a client whose period of limited community treatment has ended; or
  - (d) a client who has absconded from the charge of an authorised person mentioned in section 117(2); or
  - (e) a client who has absconded from detention in the forensic disability service; or
  - (f) a client whose period of detention in an authorised mental health service under section 113A has ended.

- (2) A practitioner may take a client mentioned in any of subsection (1)(a) to (e) to—
- (a) the forensic disability service; or
  - (b) an authorised mental health service if—
    - (i) it is not reasonably practicable to return the client to the forensic disability service; and
    - (ii) the director and the chief psychiatrist agree that the client be taken to the authorised mental health service for temporary detention under section 113A.
- (3) A practitioner may take a client mentioned in subsection (1)(f) to—
- (a) if the client is to be detained in the forensic disability service—the forensic disability service; or
  - (b) if the client is to undertake community treatment—the place where the client is to undertake the community treatment.

*Note for subsections (2) and (3)—*

See section 155 for the use of reasonable force and section 144 for the administration of medication to the client.

- (4) If it is not reasonably practicable for a practitioner to take a client to the forensic disability service, an authorised mental health service or a place for community treatment (each the **relevant place**) under subsection (2) or (3), an authorised person under the Mental Health Act may, if agreed between the director and the chief psychiatrist, take the client to the relevant place.
- (5) For the purpose of taking a client to the relevant place under subsection (4), an authorised person under the Mental Health Act may exercise a power, and has the obligations, under the Mental Health Act in relation to the client as if the client were a forensic patient being taken to an authorised mental health service.



- (6) If asked by a practitioner or an authorised person under the Mental Health Act, a police officer must, as soon as reasonably practicable, ensure reasonable help is given.
- (7) For giving the help, a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act 2000*, section 16(3).

### **113A Temporary admission of client to authorised mental health service**

- (1) This section applies if a client is taken to an authorised mental health service under section 113.
- (2) The director and the chief psychiatrist may agree to transfer responsibility for the client from the forensic disability service to the authorised mental health service for an agreed period.

*Note—*

See the Mental Health Act, section 147 in relation to who is responsible for an adult subject to a forensic order (disability).

- (3) Subject to subsection (4), the agreed period must not be more than 3 days.
- (4) The director and the chief psychiatrist may agree that the client be detained in the authorised mental health service for more than 3 days if—
  - (a) both the director and the chief psychiatrist are satisfied it is in the client's best interests to do so having regard to the client's health and safety; and
  - (b) the director has given the chief psychiatrist written notice detailing the arrangements for returning the responsibility for the client to the forensic disability service, by the end of the longer period.
- (5) The chief psychiatrist must give written notice of an agreement mentioned in subsection (2) or (4) to the administrator of the authorised mental health service.



(3) In this section—

*ill-treat* includes wilfully abuse, neglect or exploit.

## 117 Offences relating to forensic disability clients absconding

(1) This section applies if, under this Act, a person (the *authorised person*) is—

(a) taking a forensic disability client—

(i) to the forensic disability service; or

(ii) to an authorised mental health service; or

(iii) to a place of custody; or

(iv) to appear before a court; or

(b) accompanying a forensic disability client while the client is undertaking limited community treatment; or

(c) caring for a forensic disability client during the client's absence from the forensic disability service under a temporary absence approval.

(2) For this section, while the authorised person is acting as mentioned in subsection (1), the client is in the authorised person's charge.

(3) The authorised person must not wilfully allow the client to abscond from the authorised person's charge.

Maximum penalty—200 penalty units or 2 years imprisonment.

(4) A person must not knowingly help the client to abscond from the authorised person's charge.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **118 Other offences relating to absence of forensic disability clients**

- (1) A person must not—
  - (a) induce, or knowingly help, a forensic disability client detained in the forensic disability service to unlawfully absent himself or herself from the service; or
  - (b) knowingly harbour a forensic disability client who is unlawfully absent from the forensic disability service.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (2) For subsection (1)(a) or (b), 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).
- (3) A forensic disability service employee must not wilfully allow a forensic disability client detained in the forensic disability service to unlawfully absent himself or herself from the service.

Maximum penalty—200 penalty units or 2 years imprisonment.

## **119 Obstruction of official**

- (1) A person must not obstruct an official in the exercise of a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) However, a forensic disability client does not commit an offence against subsection (1) merely because the client resists the exercise of the power in relation to himself or herself.
- (3) In this section—

*official* means a following person—

- (a) the director;

- (b) the administrator;
- (c) a practitioner;
- (d) an authorised officer;
- (e) a person acting under the direction of a person mentioned in any of paragraphs (a) to (d);
- (f) a doctor or registered nurse exercising a power under section 50 or 144.

## **120 False or misleading documents**

- (1) A person must not state anything in a document required or permitted to be made under this Act the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state the statement made was, without specifying which, ‘false or misleading’.

## **Part 4 Confidentiality**

### **121 Confidentiality of information—allied persons**

- (1) This section applies to a person who is, or has been, a forensic disability client’s allied person and in that capacity—
- (a) acquired information about the client’s or another person’s affairs; or
  - (b) has access to, or custody of, a document about the affairs of a forensic disability client or another person.
- (2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—50 penalty units or 6 months imprisonment.

- (3) However, the person may disclose the information or give access to the document to someone else if—
  - (a) the disclosure or giving of access is otherwise required or permitted by law; or
  - (b) the person to whom the information or document relates agrees to the disclosure or giving of access and the person is an adult when the agreement is given.

## **122 Confidentiality of information—other persons**

- (1) This section applies to a person who gains confidential information through the person's involvement in the administration of this Act.
- (2) The person must not disclose the information to anyone, other than under subsection (4).

Maximum penalty—100 penalty units.

- (3) Without limiting subsection (1), a person gains information through involvement in the administration of this Act if the person gains the information because of being, or an opportunity given by being, any of the following—
  - (a) the Minister;
  - (b) the chief executive;
  - (c) the director;
  - (d) the chief psychiatrist;
  - (e) the administrator;
  - (f) a practitioner;
  - (g) a forensic disability service employee not mentioned in paragraph (f);
  - (h) an authorised officer;
  - (i) an employee in the department.
- (4) A person may disclose information to someone else—

- 
- (a) for administering, monitoring or enforcing compliance with this Act; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made under this Act; or
  - (e) if—
    - (i) the person is authorised in writing by the person to whom the information relates; and
    - (ii) the person to whom the information relates is an adult when the authorisation is given; or
  - (f) to protect a forensic disability client from abuse, neglect or exploitation.
- (5) In this section—
- confidential information*** includes information about a person's affairs but does not include—
- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
  - (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

## Part 5 Investigations

### 124 Authorised officer may visit forensic disability service

- (1) An authorised officer may, for the proper and efficient administration of this Act, visit the forensic disability service (whether with or without notice) between the hours of 8a.m. and 6p.m.
- (2) On the visit, the officer may exercise the following powers—
  - (a) inspect any part of the service;

- (b) confer alone with a forensic disability client detained in the service;
  - (c) make inquiries about the admission, assessment, detention or care and support of a forensic disability client in the service;
  - (d) inspect any document, including a medical record, about a forensic disability client who—
    - (i) has been, or is being, assessed in the service; or
    - (ii) has received, or is receiving, care and support in the service;
  - (e) inspect any record or register required to be kept under this Act;
  - (f) require the administrator, or another person employed or engaged in the service, to give to the officer reasonable help for the exercise of any of the powers mentioned in paragraphs (a) to (e).
- (3) When making a requirement under subsection (2)(f), the 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.
- (4) A person required to give reasonable help under subsection (2)(f) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (5) If a person is required under subsection (2)(f) 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.

## **125 Authorised officer may require production of documents etc.**

- (1) For the proper and efficient administration of this Act, an authorised officer may, by written notice, require the administrator—



- (a) to produce to the officer—
    - (i) a stated document (including a medical record), or a copy of a stated document, about a forensic disability client; or
    - (ii) another document relevant to the administration or enforcement of this Act; or
  - (b) to provide stated information to the officer about—
    - (i) a forensic disability client; or
    - (ii) another matter relevant to the administration or enforcement of this Act.
- (2) The notice must state the day on which the document or information is to be produced or provided.
- (3) The day stated under subsection (2) must be a reasonable time after the notice is given.
- (4) The administrator must comply with the notice, unless the administrator has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (5) It is a reasonable excuse if complying with the notice might tend to incriminate the administrator.
- (6) If a document, including a medical record, is produced to the authorised officer, the officer—
  - (a) may inspect it and make copies of, or take extracts from, it if it is relevant to the administration of this Act; and
  - (b) for an original document—must return it to the administrator within a reasonable time after it is produced.



- (d) a stated place is, or was on a stated day or during a stated period, the forensic disability service;
- (e) a stated place is, or was on a stated day or during a stated period, an authorised mental health service;
- (f) on a stated day, a stated person was given a stated order, notice, declaration, direction or decision under this Act or the Mental Health Act;
- (g) a stated document is a copy of a part of a register kept under this Act.

## 127 Proceedings for offences

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the offence is committed; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

## 128 Protection of officials from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—

**official** means a following person—

  - (a) the director;
  - (b) the chief psychiatrist;
  - (c) the administrator;
  - (d) a practitioner;

- (e) an authorised officer;
- (f) a person acting under the direction of a person mentioned in any of paragraphs (a) to (e);
- (g) a doctor or registered nurse exercising a power under section 50 or 144.

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

### **141      Review by director**

- (1) This section applies to a forensic disability client who has been a client for a continuous period of 5 years as worked out under subsection (5).
- (2) The administrator must ensure the director—
  - (a) reviews the benefit to the client from care and support provided by the forensic disability service; and
  - (b) considers whether the benefit is likely to continue if the client continues to be a client.
- (3) The director must give a report on the review to the administrator.
- (4) If the administrator receives a notice under the Mental Health Act, section 439 for the hearing of a review of the forensic order (disability) to which the client is subject, the administrator must give a copy of the report to the tribunal.
- (5) For working out whether a client has been a client for a continuous period of 5 years, the following periods are to be included—
  - (a) any period the client was undertaking limited community treatment;

- (b) any period the client was absent from the service under a temporary absence approval;
- (c) any period for which the administrator of an authorised mental health service was responsible for the client under section 147 of the Mental Health Act.

*Example—*

A forensic disability client has been subject to an applicable forensic order (or successive applicable forensic orders) for 5 years. During the 5 years, the client undertook community treatment for periods totalling 3 months. For subsection (1), the client has been a client for a continuous period of 5 years.

- (6) In this section—

***benefit*** means a benefit by way of individual development and opportunities for quality of life and participation and inclusion in the community.

## Chapter 12 Miscellaneous provisions

### Part 1 Other provisions about administration or use of medication

#### 143 Definition for pt 1

In this part—

***medication*** does not include behaviour control medication.

*Note—*

Chapter 6 provides for the administration and use of behaviour control medication.

## **144 Administration of medication for particular purposes**

- (2) This section applies for taking a forensic disability client to or from the forensic disability service or an authorised mental health service under section 113 (each of which are the *relevant service*).
- (3) Despite the absence or refusal of the client's consent, medication may be administered to the client before or while being taken to the relevant service.
- (4) However, the medication—
  - (a) may be administered to the client only if a doctor is satisfied it is necessary to ensure the safety of the client or others while the client is being taken to the relevant service; and
  - (b) must be administered by a doctor, or registered nurse under the instruction of a doctor.
- (5) The doctor or registered nurse may administer the medication with the help, and using the minimum force, that is necessary and reasonable in the circumstances.
- (6) For subsection (4)(b), the doctor's instruction must include the medication's name and the dose, route and frequency of administration.
- (7) A doctor or registered nurse who administers medication under this section must keep a written record of the matters mentioned in subsection (6).
- (8) This section applies despite the Guardianship and Administration Act, chapter 5, part 2, division 1.

*Note—*

Guardianship and Administration Act, chapter 5, part 2, division 1  
(Health care—no consent)

## **145 Review of client's medication**

- (1) A senior practitioner must ensure a doctor regularly reviews a forensic disability client's need for, and the appropriateness of, medication administered to or used by the client.

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*Note—*

See section 52 for reviewing behaviour control medication.

- (2) The review must be carried out at least every 3 months.
- (3) Also, if requested by the director, a senior practitioner must ensure a doctor carries out an immediate review of a forensic disability client's medication as mentioned in subsection (1).
- (4) The doctor must record details of the review in the client's file.

## **Part 2**                      **Compliance with particular provisions**

### **146 Compliance with provisions as soon as practicable**

- (1) This section applies if, under a provision of this Act—
  - (a) a person is required or permitted—
    - (i) to make, prepare or give a document to someone;  
or
    - (ii) to talk to or tell someone about a matter; and
  - (b) no time is provided or allowed for complying with the provision.
- (2) The provision must be complied with as soon as practicable.

### **147 Compliance with provisions to extent reasonably practicable**

- (1) This section applies if, under a provision of this Act, a person is authorised or required to give notice to or tell someone about a matter.
- (2) The person need only comply with the provision to the extent that is reasonably practicable in the circumstances.
- (3) Without limiting subsection (2), it is not reasonably practicable for the administrator to comply with a provision

relating to a forensic disability client's allied person if, after reasonable enquiries, the administrator can not ascertain the allied person's whereabouts.

**148 Administrator taken to have complied with particular requirements**

- (1) This section applies if, under a provision of this Act—
  - (a) the administrator is required to give notice to or tell a forensic disability client's allied person about a matter; and
  - (b) the administrator purportedly complies with the requirement by giving a notice to or telling a person about the matter in the honest and reasonable belief the person is the client's allied person.
- (2) The administrator is taken to have complied with the requirement.
- (3) Anything done or omitted to be done under this Act in reliance on the administrator's purported compliance with the requirement is taken to be as effective as it would have been had the administrator complied with the requirement.

## **Part 3 Other provisions**

**150 Legal custody of client**

A forensic disability client is in the legal custody of the administrator.

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

- (1) This section applies if a forensic disability client is required for any reason to appear before a court.
- (2) A practitioner may take the client to appear before the court.



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- (3) Subject to any order the court may make, a practitioner may take the client back to the forensic disability service at the end of the proceedings.

*Note—*

See section 155 for the use of reasonable force.

### **153 Official to identify himself or herself before exercising powers**

- (1) Before exercising a power under this Act in relation to another person, an official must, to the extent that it is reasonable and practicable in the circumstances, identify himself or herself, and anyone else helping the official exercise the power, to the other person.
- (2) An official who is an authorised officer complies with subsection (1) if the official—
- (a) first produces his or her approved identity card for the person's inspection; or
  - (b) has his or her approved identity card displayed so that it is clearly visible to the person.
- (3) Failure to comply with subsection (1) does not affect the validity of the exercise of the power.

- (4) In this section—

*approved identity card* means an identity card approved under section 108.

*official* means—

- (a) generally, a practitioner; but
- (b) for chapter 9, part 5, an authorised officer.

### **154 Ensuring client understands things told or explained to the client**

- (1) If a provision of this Act requires a person to tell or explain something to a forensic disability client, the person must do so—

[s 155]

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- (a) in the language or way the client is most likely to understand; and
- (b) in a way that has appropriate regard to the client's age, culture, disability and communication ability.

*Example of way for paragraph (a) or (b)—*  
by using visual or other aids

- (2) 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.

## **155 Use of reasonable force**

- (1) Subsection (2) applies for the exercise of—
  - (a) a practitioner's power under section 113(2) or (3) or 151; or
  - (b) the administrator's power to detain a forensic disability client in the forensic disability service if, under this Act or the applicable forensic order, a forensic disability client is authorised or required to be detained in the forensic disability service.
- (2) The practitioner or administrator, and anyone lawfully helping the practitioner or administrator—
  - (a) may exercise the power with the help, and using the minimum force, that is necessary and reasonable in the circumstances; and
  - (b) is a public official for the *Police Powers and Responsibilities Act 2000*.

*Note—*

For the powers of a police officer while helping a public official, see the *Police Powers and Responsibilities Act 2000*, section 16 (Helping public officials exercise powers under other Acts).

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## 156 Period counted as imprisonment

- (1) The period a person is a forensic disability client for a particular offence is—
  - (a) for the *Penalties and Sentences Act 1992*—taken to be imprisonment already served under the sentence for the offence; or  
*Note—*  
See the *Penalties and Sentences Act 1992*, section 159A (Time held in presentence custody to be deducted).
  - (b) for the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—counted as part of the person’s period of imprisonment or detention for the offence.
- (2) However, subsection (1) does not apply to a period the person is granted bail for the offence.

## 157 Review of Act

- (1) The Minister must review the efficacy and efficiency of this Act as soon as practicable after the end of 3 years after the commencement of this section.
- (2) In conducting the review, if the Minister is not responsible for administering the Mental Health Act, the Minister must consult with the Minister responsible for administering that Act.
- (3) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

## 158 Approved forms

The director may approve forms for use under this Act.

## 159 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.

- (2) A regulation may be made about the records to be kept and returns to be made by persons and the inspection of records.
- (3) A regulation may provide for a maximum penalty of not more than 20 penalty units for a contravention of a regulation.

## Chapter 13 Transitional provisions

### Part 1 Transitional provision for Forensic Disability Act 2011

#### 160 Initial director

- (1) The chief practitioner disability is the initial Director of Forensic Disability (*initial director*) until whichever of the following happens first—
  - (a) a Director of Forensic Disability is appointed under section 85;
  - (b) the period of 5 years starting on the day this section commences ends;
  - (c) the chief practitioner disability resigns from office as the initial director by signed notice given to the Minister;
  - (d) the chief practitioner disability is removed from office as the initial director under subsection (2).

*Note—*

The functions of the initial director are provided for under section 87 (see schedule 2, definition *director*, paragraph (a)).

- (2) The Governor in Council may at any time remove the chief practitioner disability from office as the initial director for any reason or none.



## **164 Application of s 141**

The period mentioned in section 141(5)(c) is taken to include a period for which the forensic disability client was—

- (a) detained temporarily in an authorised mental health service under the repealed *Mental Health Act 2000*, section 309B; or
- (b) absent from the health service while undertaking limited community treatment within the meaning of the repealed *Mental Health Act 2000*, or under an approval given section 186 of that Act.

## **165 Application of transitional provisions to forensic disability clients**

- (1) A provision of the *Mental Health Act 2016*, chapter 20 applies for a forensic disability client to the extent—
  - (a) the provision operates in relation to a previously applied provision; and
  - (b) the context permits.
- (2) This section does not limit the operation of the *Mental Health Act 2016*, chapter 20.
- (3) In this section—

*previously applied provision* means a provision of the repealed *Mental Health Act 2000* that was, immediately before the commencement, an applied provision under this Act.

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# Schedule 1      **Assessing intellectual functioning and adaptive behaviour**

## section 12

### **1      Intellectual functioning**

- (1) For section 12(1)(a), a standardised measurement of intelligence must be used, if practicable, to assess a person's general intellectual functioning.
- (2) If a standardised measurement of intelligence is used—
  - (a) 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; and
  - (b) the person must be taken not 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.
- (3) 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.
- (4) In applying the standardised measurement of intelligence, the test result must be considered within the 95% confidence level as decided by the standard error of measurement of the test.

## **2 Adaptive behaviour**

- (1) For section 12(1)(a), 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.
- (2) 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.



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## Schedule 2      Dictionary

### section 9

***administrator*** means the person declared under section 96 to be the administrator of the forensic disability service.

***advance health directive*** see the *Powers of Attorney Act 1998*, section 35.

***allied person***, of a forensic disability client, see section 23.

***applicable forensic order***, in relation to a forensic disability client, means the forensic order (disability) that is in force for the client.

***appropriately qualified***, for a person to whom a power may be delegated under this Act, includes having the qualifications, experience or standing appropriate to exercise the power.

***approved mechanical appliance*** means a mechanical appliance approved under section 55.

***authorised mental health service*** means an authorised mental health service under the Mental Health Act.

***authorised officer*** means a person appointed to be an authorised officer under section 106.

***authorised practitioner***—

- (a) generally, means a person appointed as an authorised practitioner under section 101; but
- (b) for chapter 6, see section 43.

***behaviour control medication*** see section 44.

***capacity***, for chapter 1, part 3 and chapter 3, part 2 in relation to a forensic disability client, means the client is capable of—

- (a) understanding the nature and effect of decisions about the client's assessment, care and support or choice of an allied person; and

- (b) freely and voluntarily making decisions about the client's assessment, care and support or choice of an allied person; and
- (c) communicating the decisions in some way.

***care and support***, in relation to a forensic disability client, includes the provision of habilitation, rehabilitation, support and other services for the client.

***carer***, of a forensic disability client, means a person who—

- (a) provides domestic services and support to the client; or
- (b) arranges for the client to be provided with domestic services and support.

***chief psychiatrist*** see the Mental Health Act, schedule 3.

***client*** means a forensic disability client.

***cognitive disability*** see section 11.

***community treatment***, for a forensic disability client, means—

- (a) if the category of the applicable forensic order is community under the Mental Health Act—the provision of care and support for the client in the community under the order; or
- (b) if the category of the applicable forensic order is inpatient under the Mental Health Act—limited community treatment for the client.

***director*** means—

- (a) other than for sections 85 and 86—the initial director under section 160; or
- (b) the Director of Forensic Disability appointed under section 85.

***Disability Services Act*** means the *Disability Services Act 2006*.

***forensic disability client*** see section 10.

***forensic disability service*** means the forensic disability service declared under section 95.

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***forensic disability service employee*** means—

- (a) a practitioner employed, or engaged to perform services, at the forensic disability service; or
- (b) a person employed, or engaged, at the forensic disability service to perform administrative functions relating to the assessment or care and support of forensic disability clients.

***forensic order (disability)*** see the Mental Health Act, schedule 3.

***guardian*** means a guardian appointed under the Guardianship and Administration Act.

***Guardianship and Administration Act*** means the *Guardianship and Administration Act 2000*.

***harmful thing*** means anything—

- (a) that may be used to—
  - (i) threaten the security of the forensic disability service; or
  - (ii) threaten a person's health or safety; or
- (b) that, if used by a forensic disability client in the forensic disability service, is likely to adversely affect the client's care and support.

*Examples of a harmful thing—*

a gun or replica of a gun, a dangerous drug, alcohol, medication

***individual development plan*** see section 13.

***informal decision-maker***, for a forensic disability client, means a member of the client's support network, other than a paid carer for the client within the meaning of the Guardianship and Administration Act.

***intellectual disability*** see section 12.

***least restrictive***, for the use of restraint or seclusion in relation to a forensic disability client, means the use of restraint or seclusion that—

- (a) ensures the safety of the client or others; and

- (b) having regard to paragraph (a), imposes the minimum limits on the client's freedom as is practicable in the circumstances.

**limited community treatment**, for a forensic disability client, means the provision of some care and support for the client in the community for up to 7 days.

**medication**, for chapter 12, part 1, see section 143.

**Mental Health Act** means the *Mental Health Act 2016*.

**Mental Health Court** means the Mental Health Court established under the Mental Health Act.

**plan** means an individual development plan.

**practitioner** means—

- (a) a senior practitioner; or
- (b) an authorised practitioner; or
- (c) other than for section 104—a person appointed under that section to perform the role of a practitioner.

**psychiatrist** means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

**registered health practitioner** means a person registered under the Health Practitioner Regulation National Law to practise any of the following professions, other than as a student—

- (a) medical;
- (b) nursing;
- (c) occupational therapy;
- (d) physiotherapy;
- (e) psychology.

**registered nurse** means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the nursing and midwifery profession as a nurse, other than as a student; and
- (b) in the registered nurses division of that profession.

***regulated behaviour control*** see section 42.

***restraint*** see section 45.

***seclusion*** see section 46.

***senior practitioner***—

- (a) generally, means a person appointed to be a senior practitioner under section 101 or 102; but
- (b) for chapter 6, see section 43.

***senior practitioner's authorisation*** means an authorisation given under section 61(1)(b)(i) or 64(3)(b).

***speech pathologist*** means a person who is eligible for practising membership of The Speech Pathology Association of Australia Limited ACN 008 393 440.

***statement of rights*** see section 29(1).

***temporary absence approval*** means an approval given under section 32A.

***tribunal*** means the Mental Health Review Tribunal established under the Mental Health Act.