

WESTERN AUSTRALIA

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

DRAFT BILL FOR PUBLIC COMMENT

The Government proposes to introduce into Parliament a Bill for an Act —

- to provide for the compulsory treatment, stabilisation and support of persons with a severe substance use disorder; and
- to provide for the protection of those persons when they are made subject to interventions under the Act; and
- to make consequential amendments to other Acts.

This draft Bill has been prepared for public comment but it does not necessarily represent the Government's settled position.

All submissions should be forwarded to: compulsory.treatment@mhc.wa.gov.au

For further information please see the Mental Health Commission's website:
<http://www.mhc.wa.gov.au>

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Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Contents

	Part 1 — Preliminary matters	
	Division 1 — Preliminary	
1.	Short title	2
2.	Commencement	2
	Division 2 — Interpretation	
3.	Terms used	2
4.	Meaning of severe substance use disorder	6
	Division 3 — Application of Act	
5.	Act binds Crown	7
6.	Restriction on application of Act in certain cases	7
7.	Relationship between Act and <i>Mental Health Act 2014</i>	7
8.	Relationship between Act and <i>Guardianship and Administration Act 1990</i>	8
9.	Relationship with other Acts	8
10.	Act does not limit criminal investigation or process	9
	Part 2 — Key provisions	
	Division 1 — Objects	
11.	Objects of Act	10
	Division 2 — Principles	
12.	Principles for performing functions under this Act	10
13.	Principles for detention under this Act	11
14.	Principles for communications under this Act	12

Contents

	Division 3 — Criteria	
15.	Criteria for compulsory treatment	12
16.	Applying criteria for compulsory treatment to person proposed to be, or being, assessed	13
	Part 3 — Assessment of persons suspected of suffering from severe substance use disorder	
	Division 1 — General	
17.	Purpose of Part	14
	Division 2 — Applying for assessment	
18.	Application for assessment	14
19.	Application requirements	14
20.	Supporting medical certificate	15
21.	Preliminary screening	16
22.	Conduct of preliminary screening	16
	Division 3 — Deciding application for assessment	
23.	Decision on application	17
24.	Arrangements if application for assessment is not lodged with supporting medical certificate	17
25.	Recommending compulsory treatment order if supporting medical certificate is available	19
26.	Information-gathering	19
	Division 4 — Assessment	
27.	Purpose of assessment	20
28.	Arrangements for assessment	20
29.	Assistance may be sought if refusal to attend assessment	21
30.	Conduct of assessment	21
31.	Decision on completion of assessment	21
32.	Inquiries to be made before making compulsory treatment order	22
	Part 4 — Compulsory treatment order	
	Division 1 — General	
33.	Purpose of Part	24
	Division 2 — Making of compulsory treatment order	
34.	Making of compulsory treatment order	24
35.	Form of compulsory treatment order	25
36.	Compulsory patient must be notified about making of compulsory treatment order	25
	Division 3 — Admission to treatment centre	
37.	Compulsory patient must be admitted to treatment centre as soon as practicable	26

38.	Compulsory treatment order must be confirmed after admission in certain cases	26
39.	Consequences if examination under s. 38 is not conducted on time or criteria for compulsory treatment are not met	27
40.	Treating practitioner must be assigned for each compulsory patient after admission	27
41.	Change of treating practitioner	27
42.	Other actions required after admission	28
43.	Physical examination after admission	28
44.	Requirement to provide information to compulsory patient on admission to treatment centre	29
	Division 4 — Detention	
45.	Duration of detention	29
46.	Extension of compulsory treatment order	29
47.	Leave of absence from treatment centre	31
48.	Absence without leave from treatment centre	31
49.	Power to order apprehension and return of compulsory patient who is absent without leave	31
50.	Effect of apprehension and return order	32
	Division 5 — Treatment	
51.	Treating practitioner must prepare care plan	33
52.	Care plan must be reviewed and may be varied if required	33
53.	Provision of treatment generally	34
54.	Provision of treatment to compulsory patient of Aboriginal or Torres Strait Islander descent	35
	Division 6 — Release	
	Subdivision 1 — General	
55.	Release from treatment centre	35
	Subdivision 2 — Discharge	
56.	Circumstances in which compulsory patient must be discharged	35
57.	Compulsory treatment order must be revoked if criteria for compulsory treatment are not met	35
58.	Discharge plan	36
59.	Discharge plan must be reviewed and may be varied if required	37
	Subdivision 3 — Release in special circumstances	
60.	Release if treatment needed under <i>Mental Health Act 2014</i>	37
61.	Duration and consequences of suspension order	38
	Division 7 — Powers and duties in relation to compulsory treatment order	
	Subdivision 1 — Powers	
62.	Terms used	39
63.	Detention authorised	40

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Contents

64.	Reasonable assistance and force authorised	40
65.	Power to search compulsory patient	40
66.	Power to search visitor to treatment centre	41
67.	Power to seize	41
68.	Disposal of seized items	41
69.	Power to withhold information if in best interests of compulsory patient	42
70.	Power to transfer compulsory patient to another treatment centre	42
71.	Power to arrange transport of compulsory patient	43
72.	Requirements relating to transport order	43
73.	Effect of transport order	44
	Subdivision 2 — Duties	
74.	Duty of compulsory patient to accept treatment	45
75.	Duty of compulsory patient to comply with lawful directions	45
76.	Duty of compulsory patient to remain in treatment centre	45
77.	Manager of treatment centre to keep medical record	45
78.	Staff member of treatment centre not to ill-treat or wilfully neglect compulsory patients	46
79.	Staff member of treatment centre to report certain incidents	46
	Part 5 — Protections for compulsory patients	
	Division 1 — General	
80.	Purpose of Part	47
	Division 2 — Compulsory patients' rights	
81.	Right to nominate support person	47
82.	Right to seek second opinion	48
83.	Right to keep personal belongings for use at treatment centre	48
84.	Right to interview with treating practitioner	49
85.	Right to receive visitors and engage in lawful communication	49
86.	Checking and withholding mail and electronic communications	50
	Division 3 — Access to advocacy services	
	Subdivision 1 — Access to mental health advocate	
87.	Initial visit or contact by mental health advocate	51
88.	Additional visit or contact by mental health advocate may be requested	52
89.	Mental health advocate may visit or contact compulsory patient on own initiative	52

	Subdivision 2 — Specific advocacy roles	
90.	Functions of Chief Mental Health Advocate under this Act	53
91.	Functions of mental health advocate under this Act	53
92.	Powers of mental health advocate under this Act	54
	Subdivision 3 — Other matters relating to advocacy roles	
93.	Issues arising out of inquiries and investigations	55
94.	Conflict of interest	56
95.	Report on general activities of mental health advocates under this Act must be included in annual reports	57
	Division 4 — Complaints	
96.	Complaint about treatment centre	57
	Division 5 — Review of compulsory treatment order by Mental Health Tribunal	
	Subdivision 1 — Tribunal’s jurisdiction and constitution	
97.	Jurisdiction	57
98.	Constitution	58
	Subdivision 2 — Initiation of review	
99.	Initial and periodic reviews	59
100.	Review on Tribunal’s own initiative	59
101.	Application for review	59
	Subdivision 3 — Proceedings	
102.	Parties to proceeding	60
103.	Conduct of proceeding	60
104.	Representation at proceeding	60
105.	Matters to which Tribunal must have regard	61
	Subdivision 4 — Tribunal’s decision on review	
106.	Decision on review of compulsory treatment order	61
107.	Review of Tribunal’s decision by State Administrative Tribunal	62
	Part 6 — Miscellaneous provisions	
	Division 1 — Other offences	
108.	Obstructing or hindering person performing functions	63
109.	Interfering with exercise of powers by mental health advocate	63
	Division 2 — Requirements relating to information	
110.	Terms used	64
111.	Authorised recording, disclosure or use of specified information	65
112.	Confidentiality	66

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Contents

	Division 3 — Administration	
	Subdivision 1 — Designations	
113.	Designation of AOD liaison officers	66
114.	Designation of approved specialists	67
115.	Designation of treatment centres	67
	Subdivision 2 — Guidelines and standards	
116.	CEO may issue guidelines and standards	68
	Subdivision 3 — Other administrative matters	
117.	Delegation by Minister or CEO	68
118.	CEO may approve forms, and manner of lodging certain applications	69
	Division 4 — Protection from liability	
119.	Protection from liability	69
	Division 5 — Regulations	
120.	Regulations	70
	Division 6 — Review of Act	
121.	Review of Act after 3 years	70
	Division 7 — Consequential amendments to other Acts	
	[To come.]	70
	Defined terms	

Western Australia

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

A Bill for

An Act —

- **to provide for the compulsory treatment, stabilisation and support of persons with a severe substance use disorder; and**
- **to provide for the protection of those persons when they are made subject to interventions under this Act; and**
- **to make consequential amendments to other Acts.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

Division 1 — Preliminary

1. Short title

This is the *Compulsory Treatment (Alcohol and Other Drugs) Act 2016*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Division 2 — Interpretation

3. Terms used

(1) In this Act, unless the contrary intention appears —

adult means a person who has reached 18 years of age;

Agency means the Agency as defined in the *Mental Health Act 2014* section 4;

Alcohol and Other Drug liaison officer (AOD liaison officer) means a person designated under section 113 as an alcohol and other drug liaison officer;

application for assessment means an application under section 18;

apprehension and return order means an order made under section 49(1);

approved form means a form approved under section 118;

approved specialist means a specialist designated under section 114 as an approved specialist;

assessed means assessed in accordance with Part 3;

authorised hospital has the meaning given in the *Mental Health Act 2014* section 541;

care plan —

- (a) means a plan prepared under section 51; and
- (b) includes a variation of the plan under section 52;

CEO means the CEO as defined in the *Mental Health Act 2014* section 4;

1 **Chief Mental Health Advocate** means the Chief Mental Health
2 Advocate appointed under the *Mental Health Act 2014*
3 section 349;

4 **compulsory patient** means a person to whom a compulsory
5 treatment order applies;

6 **compulsory treatment** means the compulsory provision of
7 treatment under a compulsory treatment order;

8 **compulsory treatment order** means an order made under
9 section 34;

10 **concerned individual**, in relation to a person —

11 (a) means an adult who —

12 (i) maintains a personal interest in the person's
13 welfare either because of a close personal
14 relationship with the person or because of
15 frequent personal contact with the person; or

16 (ii) acquires a professional interest in the person's
17 welfare as a result of any interaction with the
18 person within a health or social welfare service
19 context;

20 and

21 (b) includes the person's spouse, de facto partner, relative or
22 close friend;

23 **criteria for compulsory treatment** means the criteria specified
24 in section 15;

25 **discharge plan** —

26 (a) means a plan prepared under section 58; and

27 (b) includes a variation of the plan under section 59;

28 **drug** means any of the following —

29 (a) a drug or plant to which the *Misuse of Drugs Act 1981*
30 applies (as specified in section 4 of that Act);

31 (b) a substance as defined in the *Poisons Act 1964* that is
32 included in Schedule 4 of that Act;

33 (c) a material or preparation (other than alcohol) that, when
34 consumed or used by a person, deprives the person
35 (temporarily or permanently) of any of the person's
36 normal mental or physical faculties;

37 **enduring guardian** has the meaning given in the *Guardianship*
38 *and Administration Act 1990* section 3(1);

39 **guardian** has the meaning given in the *Guardianship and*
40 *Administration Act 1990* section 3(1);

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 1 Preliminary matters

Division 2 Interpretation

s. 3

- 1 **health professional** means any of the following —
- 2 (a) a medical practitioner;
- 3 (b) a nurse;
- 4 (c) an occupational therapist;
- 5 (d) a psychologist;
- 6 (e) a social worker;
- 7 **involuntary community patient** has the meaning given in the
- 8 *Mental Health Act 2014* section 4;
- 9 **involuntary patient** has the meaning given in the *Mental Health*
- 10 *Act 2014* section 21(1);
- 11 **involuntary treatment order** has the meaning given in the
- 12 *Mental Health Act 2014* section 21(2);
- 13 **legal practitioner** means an Australian legal practitioner within
- 14 the meaning of that term in the *Legal Profession Act 2008*
- 15 section 3;
- 16 **medical practitioner** means a person registered under the
- 17 *Health Practitioner Regulation National Law (Western*
- 18 *Australia)* in the medical profession;
- 19 **medical record**, in relation to a compulsory patient, means the
- 20 medical record required to be kept under section 77;
- 21 **mental health advocate** has the meaning given in the *Mental*
- 22 *Health Act 2014* section 4;
- 23 **nurse** means a person who is registered under the *Health*
- 24 *Practitioner Regulation National Law (Western Australia)* in
- 25 the nursing and midwifery profession —
- 26 (a) whose name is entered on Division 1 of the Register of
- 27 Nurses kept under that Law as a registered nurse; or
- 28 (b) whose name is entered on Division 2 of the Register of
- 29 Nurses kept under that Law as an enrolled nurse;
- 30 **occupational therapist** means a person who is registered under
- 31 the *Health Practitioner Regulation National Law (Western*
- 32 *Australia)* in the occupational therapy profession;
- 33 **prescribed** means prescribed by regulations made under this
- 34 Act;
- 35 **President**, of the Tribunal, means the person appointed under
- 36 the *Mental Health Act 2014* section 475;
- 37 **psychiatrist** means a medical practitioner who is —
- 38 (a) a Fellow of the Royal Australian and New Zealand
- 39 College of Psychiatrists; or

1 (b) a person, or a person in a class of persons, prescribed by
2 regulations made under the *Mental Health Act 2014*;

3 **psychoactive substance** has the meaning given in the *Misuse of*
4 *Drugs Act 1981* section 8N(1);

5 **psychologist** means a person registered under the *Health*
6 *Practitioner Regulation National Law (Western Australia)* in
7 the psychology profession;

8 **severe substance use disorder** has the meaning given in
9 section 4;

10 **social worker** means a person who is a member, or is eligible
11 for membership, of the Australian Association of Social
12 Workers;

13 **specialist** means a medical practitioner whose name is listed in a
14 register of specialists kept by the Medical Board of Australia
15 under the *Health Practitioner Regulation National Law*
16 *(Western Australia)* section 223;

17 **staff member**, in relation to a treatment centre, means a
18 person —

19 (a) who is employed in the treatment centre under a contract
20 of employment; or

21 (b) who provides services to the treatment centre under a
22 contract for services;

23 **substance** —

24 (a) means any alcohol, drug, psychoactive substance or
25 volatile substance; and

26 (b) includes a prescribed substance or a substance in a
27 prescribed class of substances;

28 **supporting medical certificate** has the meaning given in
29 section 20(2);

30 **support person**, in relation to a compulsory patient at a
31 particular time, means a person nominated under section 81 as
32 the patient's support person at that particular time;

33 **suspension order** has the meaning given in section 60(4);

34 **transfer order** has the meaning given in section 70(1);

35 **transport officer** means a person, or a person in a class of
36 persons, prescribed to carry out a transport order;

37 **transport order** means an order made under section 71(1);

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 1 Preliminary matters

Division 2 Interpretation

s. 4

1 ***treating practitioner***, in relation to a compulsory patient, means
2 a medical practitioner —

3 (a) who is assigned the responsibility for the treatment of
4 the compulsory patient under section 40; or

5 (b) to whom the responsibility for the treatment of the
6 compulsory patient is transferred under section 41;

7 ***treatment***, in relation to a severe substance use disorder —

8 (a) means the application of professional skills to provide
9 medically assisted withdrawal from the substance that
10 underpins the severe substance use disorder; and

11 (b) includes medical care, counselling, rehabilitation and
12 interventions to prevent a relapse and bring about
13 mental, physical and social wellbeing;

14 ***treatment centre*** means any premises, or part of any premises,
15 designated under section 115 as a treatment centre;

16 ***Tribunal*** means the Mental Health Tribunal established by the
17 *Mental Health Act 2014* section 380;

18 ***volatile substance*** means any plastic solvent, adhesive cement,
19 cleaning agent, glue, nail polish remover, lighter fluid, petrol or
20 petroleum-based product, paint thinner, lacquer thinner, aerosol
21 propellant or anaesthetic gas.

22 (2) In this Act, unless the contrary intention appears, a reference to
23 a treating practitioner performing a function is to be read as a
24 reference to the treating practitioner performing the function in
25 relation to a compulsory patient whose treatment is the
26 responsibility of the treating practitioner in accordance with
27 section 40 or 41.

28 **4. Meaning of severe substance use disorder**

29 ***A severe substance use disorder*** means a continuous or
30 intermittent condition of a person that —

31 (a) manifests itself in the compulsive use of a substance and
32 is characterised by at least 2 of the following features —

33 (i) neuro-adaptation to the substance;

34 (ii) craving for the substance;

35 (iii) unsuccessful efforts to control the use of the
36 substance;

37 (iv) use of the substance despite suffering harmful
38 consequences;

39 and

- 1 (b) is of such severity that it —
- 2 (i) poses a serious danger to the health or safety of
- 3 the person or the health or safety of any other
- 4 person; and
- 5 (ii) severely diminishes the person's ability to care
- 6 for the person's self.

7 **Division 3 — Application of Act**

8 **5. Act binds Crown**

9 This Act binds the State and, so far as the legislative power of

10 the State permits, the Crown in all its other capacities.

11 **6. Restriction on application of Act in certain cases**

- 12 (1) This Act does not apply to any of the following —
- 13 (a) a person who is charged with, or convicted of, a
- 14 prescribed offence or an offence of a prescribed class;
- 15 (b) a person who is or has been subject to an offender
- 16 reporting order under the *Community Protection*
- 17 *(Offender Reporting) Act 2004* or who is or has been
- 18 subject to any reporting obligations under Part 3 of that
- 19 Act;
- 20 (c) a person who is or has been subject to a continuing
- 21 detention order or a supervision order under the
- 22 *Dangerous Sexual Offenders Act 2006*;
- 23 (d) an involuntary patient under the *Mental Health*
- 24 *Act 2014*.
- 25 (2) Accordingly, a compulsory treatment order must not be made in
- 26 respect of any of the persons referred to in subsection (1).

27 **7. Relationship between Act and *Mental Health Act 2014***

- 28 (1) A person must be dealt with under the *Mental Health Act 2014*
- 29 if the person meets —
- 30 (a) the criteria for an involuntary treatment order under that
- 31 Act; and
- 32 (b) the criteria for compulsory treatment under this Act.
- 33 (2) For the purposes of subsection (1), the provisions of the *Mental*
- 34 *Health Act 2014* prevail over the provisions of this Act.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 1 Preliminary matters

Division 3 Application of Act

s. 8

1 (3) This Act does not prevent the provision of emergency
2 psychiatric treatment under the *Mental Health Act 2014* Part 14
3 Division 2 to a person —

4 (a) who is proposed to be, or is being, assessed; or

5 (b) who is a compulsory patient.

6 **8. Relationship between Act and *Guardianship and***
7 ***Administration Act 1990***

8 (1) This Act does not affect the operation of the *Guardianship and*
9 *Administration Act 1990*.

10 (2) Without limiting subsection (1), this Act does not prevent the
11 provision of urgent treatment under the *Guardianship and*
12 *Administration Act 1990* Part 9D to a person —

13 (a) who is proposed to be, or is being, assessed; or

14 (b) who is a compulsory patient.

15 (3) Despite subsections (1) and (2), nothing in the *Guardianship*
16 *and Administration Act 1990* authorises an enduring guardian or
17 a guardian of a compulsory patient to override —

18 (a) a compulsory treatment order applying to that patient; or

19 (b) a decision of the compulsory patient's treating
20 practitioner in relation to the patient's treatment.

21 (4) A person performing a function under this Act must ensure that
22 an enduring guardian or a guardian of a compulsory patient is
23 advised or notified of every matter relating to the patient's
24 detention and treatment under a compulsory treatment order
25 that, under this Act, is required to be advised or notified to the
26 patient's support person.

27 **9. Relationship with other Acts**

28 (1) This Act does not affect the operation of any of the following
29 Acts —

30 (a) the *Criminal Law (Mentally Impaired Accused)*
31 *Act 1996*;

32 (b) the *Freedom of Information Act 1992* (particularly in
33 relation to access to personal information);

34 (c) the *Privacy Act 1988* (Commonwealth) (particularly in
35 relation to access to personal information);

36 (d) the *Protective Custody Act 2000*.

- 1 (2) A compulsory treatment order must not be treated as a
2 sentencing option that is available under any of the following
3 Acts —
4 (a) the *Misuse of Drugs Act 1981*;
5 (b) the *Sentencing Act 1995*;
6 (c) the *Young Offenders Act 1994*.

7 **10. Act does not limit criminal investigation or process**

- 8 (1) In this section —
9 ***law enforcement officer*** means —
10 (a) a police officer; or
11 (b) a person, other than a police officer, appointed under a
12 written law to an office on which the common law, a
13 written law or a law of the Commonwealth confers
14 powers to investigate offences.
- 15 (2) This Act does not limit the powers that a law enforcement
16 officer has in relation to the investigation or prosecution of any
17 offence against a person —
18 (a) who is proposed to be, or is being, assessed; or
19 (b) who is a compulsory patient.
- 20 (3) Nor does this Act limit any power that a law enforcement
21 officer has to arrest a person referred to in subsection (2)(a)
22 or (b).

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Part 2 — Key provisions

Division 1 — Objects

11. Objects of Act

- (1) The objects of this Act are —
- (a) to provide for the assessment, detention, treatment and support of persons with a severe substance use disorder in order to protect their lives or prevent serious harm to their health; and
 - (b) to restore the ability of those persons to make informed decisions about their substance use and personal wellbeing by stabilising their health through the compulsory application of treatment of their severe substance use disorder; and
 - (c) to ensure that any intervention authorised under this Act is carried out in a manner that provides those persons with the best possible treatment and that imposes the least possible restriction on their rights and freedoms; and
 - (d) to facilitate the participation of those persons in longer-term voluntary treatment.
- (2) A person performing a function under this Act must have regard to those objects.

Division 2 — Principles

12. Principles for performing functions under this Act

- A person performing a function under this Act must have regard to the following principles —
- (a) voluntary treatment should be provided in preference to compulsory treatment, wherever possible;
 - (b) the best possible treatment applying evidence-based practice should be provided;
 - (c) treatment that would involve the least restriction on a compulsory patient’s freedom of choice and freedom of movement should be provided and compulsory treatment should be regarded as an option of last resort;
 - (d) a compulsory patient should be involved in decision-making to the greatest extent possible and should be provided with sufficient information, advice

- 1 and support for that purpose (including information
2 about the risks and potential side effects of treatment
3 and about alternative options to treatment);
- 4 (e) the diversity in the individual circumstances of
5 compulsory patients should be recognised in a manner
6 that is sensitive and responsive to individual needs
7 (including the recognition of differences because of
8 gender, sexuality, age, family circumstances, lifestyle
9 choices, and cultural and spiritual beliefs and practices);
- 10 (f) if a compulsory patient is also suffering from a medical
11 condition or mental illness, the patient should be
12 comprehensively assessed and referred to the relevant
13 health, mental health, welfare, disability or other
14 services and treatment should be coordinated with the
15 services provided by those other service providers;
- 16 (g) the important role of families and support persons in the
17 treatment and rehabilitation of compulsory patients
18 should be recognised and responded to;
- 19 (h) the responsibilities and commitments of compulsory
20 patients should be acknowledged (particularly in relation
21 to the needs of their children and other dependants).

22 **13. Principles for detention under this Act**

23 A person performing a function under this Act that authorises
24 the detention of a person must have regard to the following
25 principles —

- 26 (a) the person must be detained for the shortest period that
27 is necessary or practicable in the circumstances;
- 28 (b) the degree of any force used to detain the person must
29 be the minimum that is necessary in the circumstances;
- 30 (c) while the person is detained —
- 31 (i) there must be the least possible restriction on the
32 person's freedom of choice and freedom of
33 movement consistent with the person's
34 detention; and
- 35 (ii) the person is entitled to reasonable privacy
36 consistent with the person's detention; and
- 37 (iii) the person must be treated with dignity and
38 respect.

1 **14. Principles for communications under this Act**

- 2 (1) A person performing a function under this Act must
3 communicate with a person in a language and in terms that the
4 other person is likely to understand using —
- 5 (a) any means of communication that is practicable; and
6 (b) an interpreter if necessary and practicable.
- 7 (2) Without limiting subsection (1), if a person cannot communicate
8 adequately in English but can communicate in another language,
9 the relevant AOD liaison officer must arrange for an interpreter
10 to be present when the person —
- 11 (a) is being assessed; or
12 (b) is being provided information about the person's rights
13 as a compulsory patient; or
14 (c) is being provided information about the person's
15 treatment under a compulsory treatment order applying
16 to the person; or
17 (d) is at a proceeding of the Tribunal on a review of the
18 compulsory treatment order applying to the person.

19 **Division 3 — Criteria**

20 **15. Criteria for compulsory treatment**

- 21 A person (whether or not an adult) may be provided with
22 compulsory treatment under this Act only if —
- 23 (a) the person has a severe substance use disorder; and
24 (b) the person is at significant risk of causing serious harm
25 to —
26 (i) the person's life or health; or
27 (ii) any other person's life or health;
28 and
- 29 (c) the person is in need of treatment; and
30 (d) the person is likely to benefit from treatment; and
31 (e) there is no less restrictive means reasonably available
32 for the treatment than through the person's admission
33 and detention in a treatment centre.

- 1 **16. Applying criteria for compulsory treatment to person**
2 **proposed to be, or being, assessed**
- 3 In applying the criteria for compulsory treatment, a person
4 exercising a power under this Act is presumed to have
5 reasonable grounds to believe that a person who is proposed to
6 be, or is being, assessed has a severe substance use disorder
7 even though it has not been shown that the disorder is
8 attributable to —
- 9 (a) a particular substance; or
10 (b) a particular combination of substances.

1 **Part 3 — Assessment of persons suspected of suffering**
2 **from severe substance use disorder**

3 **Division 1 — General**

4 **17. Purpose of Part**

5 The purpose of this Part is to provide for the process of
6 assessing whether a person who is suspected of suffering from a
7 severe substance use disorder should be recommended for a
8 compulsory treatment order.

9 **Division 2 — Applying for assessment**

10 **18. Application for assessment**

- 11 (1) Any of the persons specified in subsection (2) who has
12 reasonable grounds to suspect that another person is suffering
13 from a severe substance use disorder may apply for the
14 assessment of the other person under this Act.
- 15 (2) The persons are —
16 (a) a police officer;
17 (b) a health professional;
18 (c) a concerned individual.
- 19 (3) The application must be made to an AOD liaison officer in
20 accordance with section 19.
- 21 (4) An AOD liaison officer cannot be both an applicant for
22 assessment and a person to whom an application for assessment
23 is made in respect of the same person.

24 **19. Application requirements**

- 25 (1) An application for assessment must be made in the approved
26 form and must —
27 (a) state the applicant's name; and
28 (b) state the capacity in which the applicant is making the
29 application and —
30 (i) if the applicant is a police officer — specify the
31 applicant's rank; or
32 (ii) if the applicant is a health professional — specify
33 the applicant's profession and qualifications; or

- 1 (iii) if the applicant is a concerned individual —
2 confirm that the applicant is an adult and specify
3 the nature of the applicant’s relationship with the
4 person proposed to be assessed;
5 and
6 (c) state that the applicant has personally seen the person
7 proposed to be assessed within 5 days before the date
8 the application is made; and
9 (d) state the reasons why the applicant has reasonable
10 grounds to suspect that the person proposed to be
11 assessed is suffering from a severe substance use
12 disorder; and
13 (e) be signed and dated by the applicant; and
14 (f) be lodged with —
15 (i) a supporting medical certificate indicating that
16 the person proposed to be assessed has been
17 examined by a medical practitioner within 7 days
18 before the date the application is made; or
19 (ii) a statement summarising the attempts that have
20 been made to have that person examined by a
21 medical practitioner within 7 days before the
22 date the application is made.
23 (2) An application for assessment must be lodged in the approved
24 manner.

25 **20. Supporting medical certificate**

- 26 (1) A medical practitioner may examine a person proposed to be
27 assessed —
28 (a) in the medical practitioner’s physical presence; or
29 (b) remotely through an audio visual link.
30 (2) After examining the person proposed to be assessed, the
31 medical practitioner must issue a medical certificate (a
32 ***supporting medical certificate***) if the medical practitioner has
33 reasonable grounds to believe that the person meets the criteria
34 for compulsory treatment.
35 (3) A supporting medical certificate must —
36 (a) certify that the medical practitioner has examined the
37 person proposed to be assessed; and
38 (b) state the date of the examination; and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 3 Assessment of persons suspected of suffering from severe substance use disorder

Division 2 Applying for assessment

s. 21

- 1 (c) state that the medical practitioner has reasonable
2 grounds to believe that the person proposed to be
3 assessed meets the criteria for compulsory treatment;
4 and
5 (d) set out those grounds in detail; and
6 (e) state the medical practitioner's qualifications; and
7 (f) be signed and dated by the medical practitioner.
- 8 (4) A medical practitioner must not issue a supporting medical
9 certificate if the medical practitioner is —
10 (a) the person proposed to be assessed; or
11 (b) a relative of the person proposed to be assessed or of the
12 applicant.
- 13 (5) A medical practitioner may be both an applicant and the person
14 who issues a supporting medical certificate for an application
15 for assessment that relates to the same person.
- 16 (6) However, a medical practitioner who is also an AOD liaison
17 officer cannot be both an applicant and the person to whom an
18 application for assessment is made in respect of the same
19 person.

20 **21. Preliminary screening**

- 21 On receiving an application for assessment, an AOD liaison
22 officer must —
23 (a) verify the identity of the person proposed to be assessed;
24 and
25 (b) consider whether there are reasonable grounds to
26 suspect that the person proposed to be assessed meets
27 the criteria for compulsory treatment.

28 **22. Conduct of preliminary screening**

- 29 In carrying out the steps required by section 21, the AOD
30 liaison officer —
31 (a) must have regard to the application for assessment,
32 including the supporting medical certificate (if any); and
33 (b) may consult with 1 or more of the following persons —
34 (i) the applicant;
35 (ii) the person proposed to be assessed;

- 1 (iii) the medical practitioner who issued the
2 supporting medical certificate in relation to the
3 application for assessment;
- 4 (iv) any approved specialist;
- 5 (v) any other AOD liaison officer.

6 **Division 3 — Deciding application for assessment**

7 **23. Decision on application**

- 8 (1) After complying with sections 21 and 22(a), an AOD liaison
9 officer must decide whether there are reasonable grounds to
10 suspect that the person proposed to be assessed meets the
11 criteria for compulsory treatment.
- 12 (2) If the AOD liaison officer decides that there are not reasonable
13 grounds to suspect that the person proposed to be assessed
14 meets the criteria for compulsory treatment, the officer must —
- 15 (a) make all reasonable endeavours to give a written notice
16 of the decision as soon as practicable to each of the
17 following —
- 18 (i) the applicant;
- 19 (ii) the person proposed to be assessed;
- 20 and
- 21 (b) include with the written notice appropriate advice about
22 alternative options for —
- 23 (i) mitigating the substance use of the person
24 proposed to be assessed; and
- 25 (ii) enhancing the personal wellbeing of that person.
- 26 (3) If the AOD liaison officer decides that there are reasonable
27 grounds to suspect that the person proposed to be assessed
28 meets the criteria for compulsory treatment, the officer must
29 comply with section 24 or 25, whichever is applicable.

30 **24. Arrangements if application for assessment is not lodged**
31 **with supporting medical certificate**

- 32 (1) This section applies if —
- 33 (a) an AOD liaison officer decides that there are reasonable
34 grounds to suspect that a person proposed to be assessed
35 meets the criteria for compulsory treatment; and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 3 Assessment of persons suspected of suffering from severe substance use disorder

Division 3 Deciding application for assessment

s. 24

- 1 (b) the relevant application for assessment is not lodged
2 with a supporting medical certificate.
- 3 (2) The AOD liaison officer must —
- 4 (a) make arrangements, as soon as practicable, for the
5 person proposed to be assessed to be examined by a
6 medical practitioner; and
- 7 (b) request the medical practitioner to provide, on
8 completion of the examination, a supporting medical
9 certificate if appropriate.
- 10 (3) The arrangements required by subsection (2)(a) are —
- 11 (a) if a medical practitioner is available to go to the person
12 proposed to be assessed — take all reasonable steps to
13 ensure that the medical practitioner is able to examine
14 the person; and
- 15 (b) if no medical practitioner is available to go to the person
16 proposed to be assessed — encourage the person to go
17 voluntarily to a medical practitioner.
- 18 (4) If an AOD liaison officer has been unsuccessful in attempts to
19 have a medical practitioner examine a person proposed to be
20 assessed, the officer must prepare a written statement that —
- 21 (a) describes those attempts; and
- 22 (b) explains how those attempts have been unsuccessful;
23 and
- 24 (c) states that the officer has reasonable grounds to suspect
25 that the person proposed to be assessed meets the
26 criteria for compulsory treatment; and
- 27 (d) sets out those grounds in detail; and
- 28 (e) recommends to an approved specialist the making of a
29 compulsory treatment order to apply to the person
30 proposed to be assessed.
- 31 (5) The AOD liaison officer must —
- 32 (a) sign and date the statement under subsection (4); and
- 33 (b) make all reasonable endeavours to provide a copy of the
34 statement as soon as practicable to each of the
35 following —
- 36 (i) the applicant;
- 37 (ii) the person proposed to be assessed.

- 1 **25. Recommending compulsory treatment order if supporting**
2 **medical certificate is available**
- 3 (1) This section applies if —
- 4 (a) an AOD liaison officer decides that there are reasonable
5 grounds to suspect that a person proposed to be assessed
6 meets the criteria for compulsory treatment, and
- 7 (b) the relevant application for assessment is —
- 8 (i) lodged with a supporting medical certificate; or
- 9 (ii) supplemented with a supporting medical
10 certificate that is obtained after an examination
11 arranged by the AOD liaison officer under
12 section 24(2).
- 13 (2) The AOD liaison officer must, as soon as practicable —
- 14 (a) make all reasonable endeavours to give a written notice
15 of the decision to each of the following —
- 16 (i) the applicant;
- 17 (ii) the person proposed to be assessed;
- 18 and
- 19 (b) recommend to an approved specialist the making of a
20 compulsory treatment order to apply to the person
21 proposed to be assessed.
- 22 **26. Information-gathering**
- 23 (1) An AOD liaison officer who, under section 24(4)(e) or 25(2)(b),
24 recommends to an approved specialist the making of a
25 compulsory treatment order to apply to a person proposed to be
26 assessed must —
- 27 (a) collect as much information about the person as may be
28 reasonably available; and
- 29 (b) submit the information to the approved specialist
30 together with the recommendation.
- 31 (2) The information referred to in subsection (1) is all or any of the
32 following information that applies to the person —
- 33 (a) hospital records;
- 34 (b) clinical history;
- 35 (c) substance use treatment history;
- 36 (d) current substance use;

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 3 Assessment of persons suspected of suffering from severe substance use disorder

Division 4 Assessment

s. 27

- 1 (e) criminal history;
- 2 (f) psychosocial history;
- 3 (g) cognitive and developmental history;
- 4 (h) functional assessments such as psychological or
- 5 occupational therapy;
- 6 (i) any other prescribed information.

7 **Division 4 — Assessment**

8 **27. Purpose of assessment**

9 The purpose of an assessment is to ensure that every person
10 proposed to be assessed is examined by an approved specialist
11 to determine whether the person meets the criteria for
12 compulsory treatment.

13 **28. Arrangements for assessment**

- 14 (1) An approved specialist must conduct an assessment of every
15 person proposed to be assessed who is recommended for the
16 assessment under section 24(4)(e) or 25(2)(b).
- 17 (2) However, an approved specialist who receives a
18 recommendation under section 24(4)(e) or 25(2)(b) may —
 - 19 (a) agree to conduct the assessment; or
 - 20 (b) refuse to conduct the assessment if the approved
21 specialist is, or will be, unavailable on reasonable
22 grounds; or
 - 23 (c) agree to conduct the assessment but subsequently refuse
24 to do so if the approved specialist is, or will be,
25 unavailable on reasonable grounds.
- 26 (3) If subsection (2)(b) or (c) applies —
 - 27 (a) the approved specialist must give a written notice of the
28 refusal to the relevant AOD liaison officer; and
 - 29 (b) the AOD liaison officer must arrange for another
30 approved specialist to conduct the assessment.
- 31 (4) An AOD liaison officer who is also an approved specialist must
32 not conduct an assessment of a person who has been
33 recommended for assessment by that AOD liaison officer.

1 **29. Assistance may be sought if refusal to attend assessment**

- 2 (1) If a person proposed to be assessed refuses to attend an
3 assessment, an AOD liaison officer may take all reasonable
4 steps to bring the person to a place where an approved specialist
5 can conduct the assessment.
- 6 (2) For the purposes of subsection (1), reasonable steps include
7 seeking the assistance of a police officer or transport officer if
8 the AOD liaison officer considers that the assistance is
9 reasonably necessary in the particular circumstances.

10 **30. Conduct of assessment**

- 11 (1) An approved specialist may conduct an assessment by
12 examining the person proposed to be assessed —
13 (a) in the specialist’s physical presence; or
14 (b) remotely through an audio visual link.
- 15 (2) If the person proposed to be assessed is a person of Aboriginal
16 or Torres Strait Islander descent, the approved specialist must
17 conduct the assessment in collaboration with significant
18 members of the person’s community to the extent that it is
19 practicable and appropriate to do so in the circumstances.
- 20 (3) In subsection (2), a reference to significant members, in relation
21 to a person’s community, includes (without limitation) elders or
22 traditional healers in that community.

23 **31. Decision on completion of assessment**

- 24 (1) Within 48 hours of conducting an assessment, an approved
25 specialist must decide whether there are reasonable grounds to
26 believe that the assessed person meets the criteria for
27 compulsory treatment.
- 28 (2) In making a decision under subsection (1), the approved
29 specialist may consult with 1 or more of the following
30 persons —
31 (a) the applicant; and
32 (b) if applicable — the medical practitioner who issued the
33 supporting medical certificate in relation to the relevant
34 application for assessment; and
35 (c) any AOD liaison officer;
36 (d) any other approved specialist.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 3 Assessment of persons suspected of suffering from severe substance use disorder

Division 4 Assessment

s. 32

- 1 (3) If an approved specialist decides that there are not reasonable
2 grounds to believe that the assessed person meets the criteria for
3 compulsory treatment, the approved specialist must, as soon as
4 practicable, give a written notice of the decision to the AOD
5 liaison officer who made the recommendation for the
6 compulsory treatment order.
- 7 (4) On receiving the written notice under subsection (3), the AOD
8 liaison officer must —
- 9 (a) make all reasonable endeavours to give a written notice
10 of the approved specialist’s decision as soon as
11 practicable to each of the following —
- 12 (i) the applicant;
13 (ii) the assessed person;
14 and
- 15 (b) include with the written notice appropriate advice about
16 alternative options for —
- 17 (i) mitigating the substance use of the assessed
18 person; and
19 (ii) enhancing the personal wellbeing of that person.
- 20 (5) If an approved specialist decides that there are reasonable
21 grounds to believe that the assessed person meets the criteria for
22 compulsory treatment, the approved specialist must —
- 23 (a) make the inquiries required by section 32; and
24 (b) make a compulsory treatment order in respect of the
25 person under section 34.

26 **32. Inquiries to be made before making compulsory treatment**
27 **order**

- 28 (1) Before making a compulsory treatment order, an approved
29 specialist must inquire about the matters specified in
30 subsection (2) with the manager of the treatment centre to which
31 the assessed person is proposed to be admitted.
- 32 (2) The matters are —
- 33 (a) whether the assessed person can be provided with
34 appropriate treatment and support at the proposed
35 treatment centre; and
- 36 (b) in the case of an assessed person who is under 18 years
37 of age —

- 1 (i) whether the person can be provided with
2 appropriate treatment and support at the
3 proposed treatment centre having regard to the
4 person's age, maturity, gender and cultural or
5 spiritual beliefs; and
- 6 (ii) whether the person can be provided with
7 treatment in a part of the proposed treatment
8 centre that is separate from the part where adults
9 are provided with treatment.

1 **Part 4 — Compulsory treatment order**

2 **Division 1 — General**

3 **33. Purpose of Part**

4 The purpose of this Part is to —

- 5 (a) provide for a compulsory treatment order to be made to
6 apply to persons who meet the criteria for compulsory
7 treatment; and
8 (b) provide for the admission, detention, treatment and
9 release of those persons in or from a treatment centre;
10 and
11 (c) specify the powers and duties in relation to a
12 compulsory treatment order.

13 **Division 2 — Making of compulsory treatment order**

14 **34. Making of compulsory treatment order**

15 (1) This section applies if an approved specialist —

- 16 (a) after assessing a person, decides that there are
17 reasonable grounds to believe that the person meets the
18 criteria for compulsory treatment; and
19 (b) after making the inquiries required by section 32,
20 considers that the treatment centre to which the person is
21 proposed to be admitted can provide the person with
22 appropriate treatment and support.

23 (2) The approved specialist must —

- 24 (a) make a compulsory treatment order to apply to the
25 person; and
26 (b) sign and date the order; and
27 (c) provide a copy of the order to —
28 (i) the AOD liaison officer who made the
29 recommendation for the order; and
30 (ii) the manager of the treatment centre to which the
31 person is proposed to be admitted.

32 (3) A compulsory treatment order comes into force as soon as it is
33 signed and dated.

34 (4) A compulsory treatment order must not continue in force for a
35 period exceeding 56 days.

1 (5) Subsection (4) is subject to section 46.

2 **35. Form of compulsory treatment order**

3 (1) A compulsory treatment order must be made in the approved
4 form and must include the following —

- 5 (a) the name and date of birth of the person to whom the
6 order applies (the *compulsory patient*); and
7 (b) the date on which the order will expire; and
8 (c) a certificate that complies with subsection (2).

9 (2) The certificate referred to in subsection (1)(c) must —

- 10 (a) state the name and qualifications of the approved
11 specialist who is making the order; and
12 (b) certify that the approved specialist has —
13 (i) examined the compulsory patient in an
14 assessment conducted within the past 48 hours
15 and
16 (ii) decided that there are reasonable grounds to
17 believe that the patient meets the criteria for
18 compulsory treatment; and
19 (c) state the grounds for the approved specialist's decision
20 in detail.

21 **36. Compulsory patient must be notified about making of**
22 **compulsory treatment order**

23 (1) On receiving a copy of a compulsory treatment order under
24 section 34(2)(c)(i), the AOD liaison officer must make all
25 reasonable endeavours to give a written notice of the making of
26 the order to each of the following —

- 27 (a) the compulsory patient;
28 (b) the applicant.

29 (2) The written notice under subsection (1) must —

- 30 (a) be accompanied by a copy of the compulsory treatment
31 order; and
32 (b) state that the compulsory patient is required to report at
33 the time and treatment centre specified in the notice; and
34 (c) explain that if the patient fails to report at the time and
35 treatment centre specified in the notice, the patient may
36 be forcibly taken to the place by an AOD liaison officer

1 with the assistance of a transport officer or a police
2 officer.

3 **Division 3 — Admission to treatment centre**

4 **37. Compulsory patient must be admitted to treatment centre as**
5 **soon as practicable**

6 An AOD liaison officer must ensure that a compulsory patient is
7 admitted to a treatment centre as soon as practicable after a
8 compulsory treatment order is made applying to the patient.

9 **38. Compulsory treatment order must be confirmed after**
10 **admission in certain cases**

11 (1) This section applies to a compulsory patient to whom a
12 compulsory treatment order applies that was made in
13 circumstances involving any 1 or more of the following —

- 14 (a) the relevant application for assessment was not lodged
15 with a supporting medical certificate;
- 16 (b) the relevant application for assessment was lodged with
17 a supporting medical certificate, but both the application
18 and the medical certificate were made or issued, as the
19 case may be, by the same person;
- 20 (c) the relevant assessment was conducted remotely through
21 an audio visual link.

22 (2) As soon as practicable after a compulsory patient to whom this
23 section applies is admitted to a treatment centre but not later
24 than 24 hours after the admission, the manager of the treatment
25 centre must arrange for a medical practitioner to examine the
26 patient for the purpose of confirming whether there are
27 reasonable grounds to believe that the patient meets the criteria
28 for compulsory treatment.

29 (3) An examination under subsection (2) must be conducted —

- 30 (a) in the medical practitioner's physical presence; and
31 (b) within 24 hours of the compulsory patient's admission
32 to a treatment centre.

33 (4) After conducting an examination under subsection (2), the
34 medical practitioner must —

- 35 (a) prepare a report on the results of the examination; and
36 (b) provide a copy of the report to the manager of the
37 treatment centre.

1 (5) On receiving a copy of the report referred to in subsection (4),
2 the manager of the treatment centre must ensure that the report
3 is filed with the compulsory patient's medical record.

4 (6) If the medical practitioner who conducts an examination under
5 subsection (2) considers that there are reasonable grounds to
6 believe that the compulsory patient meets the criteria for
7 compulsory treatment, the compulsory treatment order applying
8 to the patient is confirmed and the patient must be detained and
9 provided with treatment in accordance with this Part.

10 **39. Consequences if examination under s. 38 is not conducted on**
11 **time or criteria for compulsory treatment are not met**

12 (1) This section applies if —

13 (a) the medical examination under section 38(2) is not
14 conducted within 24 hours of the patient's admission to
15 a treatment centre; or

16 (b) after conducting the examination under that section, the
17 medical practitioner considers that there are not
18 reasonable grounds to believe that the compulsory
19 patient meets the criteria for compulsory treatment.

20 (2) If this section applies, the relevant approved specialist must
21 revoke the compulsory treatment order applying to the patient.

22 **40. Treating practitioner must be assigned for each compulsory**
23 **patient after admission**

24 (1) As soon as practicable after a compulsory patient is admitted to
25 a treatment centre but not later than 24 hours after the
26 admission, the manager of the treatment centre must assign a
27 treating practitioner for the patient.

28 (2) The treating practitioner assigned under subsection (1) is
29 responsible under this Act for overseeing the treatment of the
30 patient.

31 (3) Subsection (2) is subject to section 41.

32 **41. Change of treating practitioner**

33 (1) A treating practitioner —

34 (a) may, by arrangement, temporarily or permanently
35 transfer that treating practitioner's, or another treating
36 practitioner's, responsibility under section 40(2) to a
37 different treating practitioner; and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 3 Admission to treatment centre

s. 42

- 1 (b) must give a written notice of the transfer of
2 responsibility to —
3 (i) the compulsory patient concerned; and
4 (ii) the treating practitioner to whom and, as the case
5 may be, from whom the responsibility is
6 transferred.

7 **42. Other actions required after admission**

8 Within 24 hours after a compulsory patient is admitted to a
9 treatment centre, the treating practitioner for the patient must
10 ensure that —

- 11 (a) the patient is interviewed by the treating practitioner or
12 another medical practitioner; and
13 (b) the patient is given a physical examination by a medical
14 practitioner for the purpose of assessing the patient's
15 physical condition; and
16 (c) a copy of the compulsory treatment order is provided
17 to —
18 (i) the patient's support person; and
19 (ii) the Chief Mental Health Advocate; and
20 (iii) the Tribunal.

21 **43. Physical examination after admission**

22 (1) A medical practitioner conducting a physical examination under
23 section 42(b) —

- 24 (a) must conduct the physical examination in the medical
25 practitioner's physical presence; and
26 (b) may conduct the physical examination and take the
27 samples referred to in paragraph (c) with or without the
28 patient's consent; and
29 (c) may take any specimen samples of, among other things,
30 the patient's blood, saliva, tissue or excreta.

31 (2) A medical practitioner who conducts a physical examination
32 under section 42(b) must ensure that the following matters are
33 recorded, as soon as practicable, in the compulsory patient's
34 medical record —

- 35 (a) the practitioner's name and qualifications;
36 (b) the date and time of the examination;
37 (c) the results of the examination.

1 **44. Requirement to provide information to compulsory patient**
2 **on admission to treatment centre**

3 (1) As soon as practicable after a compulsory patient is admitted to
4 a treatment centre, the manager of the treatment centre must —

- 5 (a) give the patient an oral explanation and a written
6 statement of the patient's rights under this Act; and
7 (b) inform the patient that the patient may have 1 or more
8 support persons but that only 1 support person may be
9 nominated under section 81 to represent the patient's
10 interests and to act as the primary contact for
11 communications between the treatment centre and the
12 patient; and
13 (c) ask the patient whether the patient wishes to nominate a
14 support person under section 81.

15 (2) If a compulsory patient nominates a support person under
16 section 81, the manager of the treatment centre must, as soon as
17 practicable after the nomination, give the patient's nominated
18 support person an oral explanation and a written statement of
19 the patient's and support person's rights under this Act.

20 **Division 4 — Detention**

21 **45. Duration of detention**

22 A compulsory patient must be detained in a treatment centre
23 until —

- 24 (a) the compulsory treatment order applying to the
25 patient —
26 (i) expires on the date specified in the order or in an
27 extension of the order; or
28 (ii) is revoked in accordance with this Act;
29 or
30 (b) the patient is released in accordance with section 60
31 or 61.

32 **46. Extension of compulsory treatment order**

33 (1) An approved specialist may extend a compulsory treatment
34 order if, after consulting the treating practitioner for the
35 compulsory patient and complying with subsection (2), the
36 approved specialist is satisfied that —

- 37 (a) there are reasonable grounds to believe that the patient
38 continues to meet the criteria for compulsory treatment;
39 and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 4 Detention

s. 47

- 1 (b) additional time is required to achieve the objectives of
2 the patient's care plan.
- 3 (2) Before extending a compulsory treatment order under
4 subsection (1), the approved specialist must examine the
5 compulsory patient in the specialist's physical presence not
6 earlier than 1 week before the relevant compulsory treatment
7 order is due to expire.
- 8 (3) A compulsory treatment order may be extended under
9 subsection (1) for any period that the approved specialist
10 considers necessary as long as the total combined period of
11 detention under the order and the extension does not exceed
12 84 days.
- 13 (4) An extension under subsection (1) must —
- 14 (a) state the name and date of birth of the compulsory
15 patient; and
- 16 (b) specify the date on which the order will expire after the
17 extension; and
- 18 (c) include a certificate that complies with subsection (5);
19 and
- 20 (d) be signed and dated by the approved specialist who is
21 making the extension.
- 22 (5) The certificate referred to in subsection (4)(c) must —
- 23 (a) state the name and qualifications of the approved
24 specialist who is extending the order; and
- 25 (b) certify that the approved specialist has —
- 26 (i) examined the compulsory patient in the
27 specialist's physical presence within the past
28 week; and
- 29 (ii) decided that there are reasonable grounds to
30 believe that the patient continues to meet the
31 criteria for compulsory treatment and additional
32 time is required to achieve the objectives of the
33 patient's care plan;
- 34 and
- 35 (c) state the grounds for the approved specialist's decision
36 in detail.
- 37 (6) An extension under subsection (1) must —
- 38 (a) be made in the approved form; and

- 1 (b) be provided by the approved specialist to the
2 compulsory patient concerned and the patient's support
3 person.

4 **47. Leave of absence from treatment centre**

- 5 (1) An approved specialist or a treating practitioner may grant a
6 compulsory patient leave of absence from a treatment centre if
7 satisfied that, as far as practicable, adequate measures are in
8 place to prevent the patient from causing the patient or any other
9 person harm.

- 10 (2) Leave of absence may be granted —

- 11 (a) for any period, and subject to any conditions, that the
12 approved specialist or treating practitioner thinks fit; and
13 (b) on any grounds that the approved specialist or treating
14 practitioner thinks fit (including, for example,
15 compassionate grounds or on the ground that the
16 compulsory patient requires medical treatment).

17 **48. Absence without leave from treatment centre**

18 A compulsory patient is absent without leave from a treatment
19 centre if the patient —

- 20 (a) is away from the treatment centre without having been
21 granted leave of absence under section 47; or
22 (b) fails to return to the treatment centre after leave of
23 absence granted under section 47 expires or is cancelled;
24 or
25 (c) fails to comply with a condition of leave of absence
26 granted under section 47.

27 **49. Power to order apprehension and return of compulsory
28 patient who is absent without leave**

- 29 (1) An approved specialist or a treating practitioner may make an
30 order (an *apprehension and return order*) to apply to a
31 compulsory patient who is absent without leave from a
32 treatment centre.

- 33 (2) An apprehension and return order —

- 34 (a) must be made in the approved form and must include the
35 following —
36 (i) the name of the compulsory patient to whom the
37 order applies; and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 4 Detention

s. 50

- 1 (ii) the address of the treatment centre to which the
2 compulsory patient is to be returned;
3 and
4 (b) may be addressed to any of the following persons —
5 (i) a transport officer;
6 (ii) a police officer;
7 (iii) a staff member of a treatment centre.

8 **50. Effect of apprehension and return order**

- 9 (1) An apprehension and return order authorises a transport officer
10 or police officer to whom it is addressed to do all or any of the
11 following things —
12 (a) enter the following premises where the compulsory
13 patient to whom the order applies is reasonably
14 suspected to be —
15 (i) in the case of a transport officer — any
16 prescribed premises; or
17 (ii) in the case of a police officer — any premises;
18 (b) apprehend the compulsory patient;
19 (c) transport the compulsory patient to the treatment centre
20 specified in the order;
21 (d) exercise any power of search under section 65 or any
22 power of seizure under section 67;
23 (e) use reasonable force and obtain reasonable assistance in
24 doing any of the things referred to in paragraphs (a)
25 to (d).
26 (2) An apprehension and return order authorises a staff member of a
27 treatment centre to whom it is addressed to do all or any of the
28 following things —
29 (a) apprehend the compulsory patient to whom the order
30 applies;
31 (b) transport the compulsory patient to the treatment centre
32 specified in the order;
33 (c) exercise any power of search under section 65 or any
34 power of seizure under section 67;
35 (d) use reasonable force and obtain reasonable assistance in
36 doing any of the things referred to in paragraphs (a)
37 to (c).

1

Division 5 — Treatment

2

51. Treating practitioner must prepare care plan

3

(1) As soon as practicable after a compulsory patient is admitted to a treatment centre, the treating practitioner for the patient must prepare a care plan in respect of the patient.

4

5

6

(2) Each care plan must be prepared in collaboration with the following persons if, and to the extent, it is practicable and appropriate to do so in the circumstances —

7

8

9

(a) the compulsory patient;

10

(b) the compulsory patient's support person;

11

(c) if the compulsory patient's support person is not the patient's enduring guardian or guardian — the enduring guardian or guardian;

12

13

14

(d) a mental health advocate.

15

(3) In preparing a care plan, a treating practitioner must have regard to all of the following matters —

16

17

(a) the views, wishes and preferences of the compulsory patient to the extent that they can be ascertained;

18

19

(b) the views of the compulsory patient's support person;

20

(c) if the compulsory patient's support person is not the patient's enduring guardian or guardian — the views of the compulsory patient's enduring guardian or guardian;

21

22

23

(d) the views of the mental health advocate;

24

(e) any alternative treatment that may be reasonably available and likely to be beneficial;

25

26

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

27

28

(g) the consequences to the compulsory patient if the proposed treatment is not provided;

29

30

(h) any second opinion relating to the compulsory patient that was sought and provided under section 82.

31

32

(4) A treating practitioner must ensure that a copy of the care plan is provided to each of the persons referred to in subsection (2).

33

52. Care plan must be reviewed and may be varied if required

34

35

(1) The treating practitioner for a compulsory patient must keep a care plan under regular review during the period of the compulsory patient's detention in the treatment centre.

36

37

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 5 Treatment

s. 53

- 1 (2) If, following the review of a care plan, the treating practitioner
2 considers that it is necessary to vary the plan, the treating
3 practitioner may prepare a variation of the plan in collaboration
4 with the following persons if, and to the extent, it is practicable
5 and appropriate to do so in the circumstances —
- 6 (a) the compulsory patient;
7 (b) the compulsory patient’s support person;
8 (c) if the compulsory patient’s support person is not the
9 patient’s enduring guardian or guardian — the enduring
10 guardian or guardian;
11 (d) a mental health advocate.
- 12 (3) In preparing a variation of a care plan under subsection (2), the
13 treating practitioner must have regard to the matters set out in
14 section 51(3).
- 15 (4) A treating practitioner must ensure that a copy of any variation
16 to a care plan is provided to each of the persons referred to in
17 subsection (2).

18 **53. Provision of treatment generally**

- 19 (1) The treating practitioner for a compulsory patient may —
- 20 (a) provide any treatment to the patient that the practitioner
21 considers necessary for the treatment of the patient’s
22 severe substance use disorder; or
23 (b) authorise the provision of any such treatment.
- 24 (2) The treatment —
- 25 (a) may be provided with or without the compulsory
26 patient’s consent; and
27 (b) must be provided in accordance with the compulsory
28 patient’s care plan; and
29 (c) must be provided in a manner that is guided by the
30 principles set out in section 12.
- 31 (3) The treating practitioner for a compulsory patient must ensure
32 that the following matters are recorded in the patient’s medical
33 record —
- 34 (a) each treatment provided to the patient (including,
35 without limitation, any medication or other medical
36 intervention);
37 (b) the treating practitioner’s authorisation for the treatment.

1 **54. Provision of treatment to compulsory patient of Aboriginal**
2 **or Torres Strait Islander descent**

3 (1) In addition to section 53, any treatment for a compulsory patient
4 who is of Aboriginal or Torres Strait Islander descent must be
5 provided in collaboration with significant members of the
6 patient's community if, and to the extent, it is practicable and
7 appropriate to do so in the circumstances.

8 (2) In subsection (1), a reference to significant members, in relation
9 to a compulsory patient's community, includes (without
10 limitation) elders or traditional healers in that community.

11 **Division 6 — Release**

12 **Subdivision 1 —General**

13 **55. Release from treatment centre**

14 A compulsory patient must be released from a treatment centre
15 as soon as practicable if —

- 16 (a) the compulsory treatment order relating to the patient
17 expires or is revoked and the patient is discharged in
18 accordance with Subdivision 2; or
19 (b) any of the special circumstances specified in
20 Subdivision 3 applies to the patient.

21 **Subdivision 2 — Discharge**

22 **56. Circumstances in which compulsory patient must be**
23 **discharged**

24 A compulsory patient must be discharged if the compulsory
25 treatment order applying to the patient is revoked under —

- 26 (a) section 39 (if the medical examination required by that
27 section is not conducted on time, etc.); or
28 (b) section 57 (if the criteria for compulsory treatment are
29 no longer met); or
30 (c) section 106(1)(b) (on the order of the Tribunal).

31 **57. Compulsory treatment order must be revoked if criteria for**
32 **compulsory treatment are not met**

33 (1) An approved specialist or a treating practitioner must revoke a
34 compulsory treatment order if satisfied that there are reasonable
35 grounds to believe that the compulsory patient to whom the

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 6 Release

s. 58

- 1 order applies no longer meets the criteria for compulsory
2 treatment.
- 3 (2) An approved specialist or a treating practitioner may revoke a
4 compulsory treatment order if satisfied that continued detention
5 of the compulsory patient to whom the order relates will not
6 achieve the objectives of the patient's care plan.
- 7 (3) If a compulsory treatment order is revoked under subsection (1)
8 or (2), the approved specialist or treating practitioner, as the
9 case may be, must give a written notice of the revocation to —
- 10 (a) the compulsory patient; and
11 (b) the compulsory patient's support person; and
12 (c) the Chief Mental Health Advocate; and
13 (d) the Tribunal; and
14 (e) if the revocation is made by the approved specialist —
15 the treating practitioner (and vice versa).

16 **58. Discharge plan**

- 17 (1) The treating practitioner for a compulsory patient must prepare
18 a discharge plan in respect of the patient before the patient is
19 discharged from a treatment centre under this Subdivision.
- 20 (2) Each discharge plan must be prepared in collaboration with the
21 following persons if, and to the extent, it is practicable and
22 appropriate to do so in the circumstances —
- 23 (a) the compulsory patient;
24 (b) the compulsory patient's support person;
25 (c) if the compulsory patient's support person is not the
26 patient's enduring guardian or guardian — the enduring
27 guardian or guardian;
28 (d) a mental health advocate.
- 29 (3) In preparing a discharge plan under subsection (1), a treating
30 practitioner must have regard to all of the following matters —
- 31 (a) the views, wishes and preferences of the compulsory
32 patient to the extent that they can be ascertained;
33 (b) the views of the compulsory patient's support person;
34 (c) if the compulsory patient's support person is not the
35 patient's enduring guardian or guardian — the views of
36 the enduring guardian or guardian;
37 (d) the views of the mental health advocate;

- 1 (e) the medical, psychiatric, psychological and psychosocial
2 needs of the compulsory patient, including the patient's
3 needs for welfare, accommodation and disability
4 services;
- 5 (f) any other matters that the treating practitioner considers
6 to be relevant.

- 7 (4) A treating practitioner must ensure that a copy of the discharge
8 plan is provided to the each of the persons referred to in
9 subsection (2).

10 **59. Discharge plan must be reviewed and may be varied if**
11 **required**

- 12 (1) A treating practitioner must keep a discharge plan under regular
13 review during the period of the compulsory patient's detention
14 in the treatment centre.

- 15 (2) If, following the review of a discharge plan, the treating
16 practitioner considers that it is necessary to vary the plan, the
17 treating practitioner may prepare a variation of the plan in
18 collaboration with the following persons if, and to the extent, it
19 is practicable and appropriate to do so in the circumstances —

- 20 (a) the compulsory patient;
- 21 (b) the compulsory patient's support person;
- 22 (c) if the compulsory patient's support person is not the
23 patient's enduring guardian or guardian — the enduring
24 guardian or guardian;
- 25 (d) a mental health advocate.

- 26 (3) In preparing a variation of a discharge plan under
27 subsection (2), the treating practitioner must have regard to the
28 matters set out in section 58(3).

- 29 (4) A treating practitioner must ensure that a copy of any variation
30 to a discharge plan is provided to each of the persons referred to
31 in subsection (2).

32 **Subdivision 3 — Release in special circumstances**

33 **60. Release if treatment needed under *Mental Health Act 2014***

- 34 (1) In this section —
35 ***authorised mental health practitioner*** has the meaning given in
36 the *Mental Health Act 2014* section 4.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 6 Release

s. 61

- 1 (2) A medical practitioner or an authorised mental health
2 practitioner may at any time recommend to an approved
3 specialist or a treating practitioner that a compulsory patient be
4 referred for an examination conducted by a psychiatrist under
5 the *Mental Health Act 2014*.
- 6 (3) On receiving a recommendation under subsection (2), the
7 approved specialist or treating practitioner —
- 8 (a) must arrange for the compulsory patient to be released
9 from the treatment centre and taken to an authorised
10 hospital to enable the examination to be conducted
11 under the *Mental Health Act 2014*; and
- 12 (b) may make a transport order under section 71 for that
13 purpose.
- 14 (4) If an involuntary treatment order is made in respect of the
15 compulsory patient, the approved specialist or treating
16 practitioner must make an order (a **suspension order**)
17 suspending the operation of the compulsory treatment order
18 applying to that patient.
- 19 **61. Duration and consequences of suspension order**
- 20 (1) A suspension order has effect for the period during which an
21 involuntary treatment order applies to a compulsory patient.
- 22 (2) However, if a compulsory treatment order expires while it is
23 suspended under a suspension order, both the compulsory
24 treatment order and the suspension order cease to have effect
25 even though an involuntary treatment order continues to apply
26 to that patient.
- 27 (3) If a compulsory treatment order has effect but is suspended
28 under a suspension order when the compulsory patient to whom
29 it applies is released from an involuntary treatment order —
- 30 (a) the patient must be returned to the treatment centre
31 specified in the compulsory treatment order; and
- 32 (b) the suspension order ceases to have effect; and
- 33 (c) the compulsory treatment order continues to have effect
34 only if an approved specialist or a treating practitioner is
35 satisfied, after conducting an assessment of the patient,
36 that there are reasonable grounds to believe that the
37 patient continues to meet the criteria for compulsory
38 treatment.

- 1 (4) If a compulsory patient continues to meet the criteria for
2 compulsory treatment, the compulsory treatment order
3 continues in force until it —
- 4 (a) expires on the date specified in the order or in an
5 extension of the order; or
- 6 (b) is revoked in accordance with this Act.
- 7 (5) If a compulsory patient no longer meets the criteria for
8 compulsory treatment —
- 9 (a) the compulsory treatment order applying to the patient
10 must be revoked; and
- 11 (b) the patient must be released from the treatment centre.

12 **Division 7 — Powers and duties in relation to compulsory**
13 **treatment order**

14 **Subdivision 1 — Powers**

15 **62. Terms used**

16 In this Subdivision —

17 **authorised person** means any of the following persons —

- 18 (a) a transport officer;
- 19 (b) a police officer;
- 20 (c) a staff member of a treatment centre;

21 **frisk search** means —

- 22 (a) a search conducted of a person by quickly running the
23 hands over the person's outer clothing or by passing an
24 electronic metal detection device over or in close
25 proximity to the person's outer clothing; or
- 26 (b) an examination of any thing worn or carried by a person
27 that is conveniently and voluntarily removed by the
28 person, including an examination conducted by passing
29 an electronic metal detection device over or in close
30 proximity to that thing;

31 **ordinary search** means a search of a person or of articles in the
32 possession of the person that may include —

- 33 (a) requiring the person to remove only the person's
34 overcoat, coat or jacket or similar article of clothing and
35 any gloves, shoes and hat; and
- 36 (b) an examination of those items.

1 **63. Detention authorised**

2 A compulsory treatment order is sufficient legal authority for
3 the detention of a compulsory patient to whom the order applies.

4 **64. Reasonable assistance and force authorised**

5 (1) In this section —

6 *specified power* means any of the following powers —

- 7 (a) any of the powers under an apprehension and return
8 order set out in section 50(1) and (2);
- 9 (b) the power to detain a compulsory patient to whom a
10 compulsory treatment order applies;
- 11 (c) the power to provide compulsory treatment under
12 section 53;
- 13 (d) any power of search under section 65 or any power of
14 seizure under section 67;
- 15 (e) any of the powers under a transport order set out in
16 section 73.

17 (2) An authorised person may use reasonable force in exercising a
18 specified power.

19 (3) An authorised person exercising a specified power —

- 20 (a) may request another person to give the authorised
21 person reasonable assistance in exercising the power;
22 and
- 23 (b) may direct how the other person is to provide the
24 assistance as long as only lawful and reasonable
25 directions are given to that other person.

26 (4) A person assisting an authorised person in accordance with
27 subsection (3) —

- 28 (a) may also use reasonable force in assisting the authorised
29 person; and
- 30 (b) is taken to be performing a function under this Act in
31 giving the assistance.

32 **65. Power to search compulsory patient**

33 (1) An authorised person exercising a power under this Act may
34 carry out a frisk search or an ordinary search of a compulsory
35 patient in any of the following circumstances —

- 36 (a) when the patient is apprehended under a transport order
37 or an apprehension and return order;

- 1 (b) when the patient is being admitted to a treatment centre;
2 (c) at any time when the patient is being provided with
3 treatment at a treatment centre.

- 4 (2) A search of a compulsory patient under subsection (1) —
5 (a) must, if practicable, be carried out by an authorised
6 person of the same gender as the patient being searched;
7 and
8 (b) may be carried out with or without the patient’s consent.

9 **66. Power to search visitor to treatment centre**

- 10 (1) A staff member of a treatment centre may conduct a frisk search
11 or an ordinary search of any visitor to a treatment centre if the
12 visitor consents to the search.
13 (2) If a visitor declines consent to a search under subsection (1), the
14 staff member may —
15 (a) prohibit the visitor from entering the treatment centre; or
16 (b) as the case may be, require the visitor to leave the
17 treatment centre.

18 **67. Power to seize**

- 19 (1) An authorised person may seize any of the items specified in
20 subsection (2) from a compulsory patient or a visitor to a
21 treatment centre whether in the course of a search under
22 section 65 or 66 or otherwise.
23 (2) The items are —
24 (a) any substance; and
25 (b) any article (including a prescription medicine) that may
26 pose a serious risk to the health or safety of a
27 compulsory patient or any other person.

28 **68. Disposal of seized items**

- 29 (1) An item seized from a compulsory patient under section 67
30 must —
31 (a) if the item is illegal — be dealt with according to law; or
32 (b) if the item is a substance but is not illegal — be
33 destroyed or returned to the patient when the patient is
34 released from the treatment centre; or

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 7 Powers and duties in relation to compulsory treatment order

s. 69

- 1 (c) if the item is other than a substance but poses a risk to
2 the patient — be returned to the patient when the patient
3 is released or given to the patient’s support person.
- 4 (2) An item seized from a visitor to a treatment centre under
5 section 67 must —
- 6 (a) if the item is illegal — be dealt with according to law; or
7 (b) if the item seized is a substance but is not illegal — be
8 returned to the visitor when the visitor leaves the
9 treatment centre; or
- 10 (c) if the item is other than a substance but poses a risk to a
11 compulsory patient — be returned to the visitor when
12 the visitor leaves the treatment centre.

13 **69. Power to withhold information if in best interests of**
14 **compulsory patient**

15 Despite any requirement under this Act relating to the provision
16 of information to a compulsory patient, an approved specialist
17 or treating practitioner may refuse to disclose information to a
18 compulsory patient or the patient’s support person on the
19 ground that to do so would be contrary to the best interests of
20 the patient.

21 **70. Power to transfer compulsory patient to another treatment**
22 **centre**

- 23 (1) An approved specialist or a treating practitioner may make an
24 order (a *transfer order*) for the transfer of a compulsory patient
25 to another treatment centre.
- 26 (2) A transfer order —
- 27 (a) must be made in the approved form and must include the
28 following—
- 29 (i) the name and date of birth of the compulsory
30 patient to be transferred;
- 31 (ii) the address of the treatment centre to which the
32 compulsory patient is to be transferred;
- 33 (iii) the reasons for the transfer;
- 34 (iv) the name and qualifications of the approved
35 specialist or treating practitioner making the
36 order; and
- 37 (b) must be signed and dated by that approved specialist or
38 treating practitioner; and

- 1 (c) may be made together with a transport order.
- 2 (3) An approved specialist or a treating practitioner who makes a
3 transfer order must, as soon as practicable, provide a copy of the
4 order to —
- 5 (a) the compulsory patient to be transferred; and
6 (b) the patient’s support person.

7 **71. Power to arrange transport of compulsory patient**

- 8 (1) The following persons may make a transport order for the
9 purposes of this Part —
- 10 (a) an AOD liaison officer;
11 (b) an approved specialist;
12 (c) a treating practitioner.
- 13 (2) An AOD liaison officer or approved specialist may make a
14 transport order to enable a compulsory patient to be admitted to
15 a treatment centre and may do so only if satisfied that there is no
16 less restrictive means of transporting the patient.
- 17 (3) An approved specialist or a treating practitioner may make a
18 transport order to enable a compulsory patient to be —
- 19 (a) transported to an authorised hospital for an examination
20 referred to in section 60(2); or
21 (b) transferred to another treatment centre under a transfer
22 order.

23 **72. Requirements relating to transport order**

- 24 (1) A transport order —
- 25 (a) must be made in the approved form and must include the
26 following —
- 27 (i) the name of the compulsory patient to be
28 transported;
- 29 (ii) the address of the treatment centre or, as the case
30 may be, the authorised hospital to which the
31 compulsory patient is to be transported;
- 32 and
- 33 (b) may be addressed to a transport officer or a police
34 officer.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 7 Powers and duties in relation to compulsory treatment order

s. 73

- 1 (2) A transport order may only be addressed to a police officer if
2 the approved specialist or treating practitioner making the order
3 is satisfied that —
- 4 (a) there is a significant risk of serious harm to the
5 compulsory patient or any other person if the patient is
6 not transferred to the treatment centre or, as the case
7 may be, the authorised hospital; or
- 8 (b) a transport officer is not available within a reasonable
9 period of time to carry out the transport order and any
10 delay in carrying out the order is likely to pose a
11 significant risk of harm to the compulsory patient or any
12 other person.
- 13 (3) A person who makes a transport order —
- 14 (a) must, as soon as practicable, give a copy of the order
15 to —
- 16 (i) the compulsory patient to be transported; and
17 (ii) the transport officer or police officer responsible
18 for carrying out the order;
- 19 and
- 20 (b) may revoke the order if —
- 21 (i) it is no longer required; or
22 (ii) the compulsory treatment order to which it
23 relates is revoked.
- 24 (4) If a transport order is revoked while a compulsory patient is
25 being transported to a treatment centre or an authorised hospital,
26 the transport officer or, as the case may be, the police officer
27 must return the patient to the place where the patient was taken
28 from.

29 **73. Effect of transport order**

30 A transport order authorises a transport officer or police officer
31 to whom it is addressed to do all or any of the following —

- 32 (a) enter any premises where the compulsory patient is
33 reasonably suspected to be;
- 34 (b) apprehend the compulsory patient;
- 35 (c) transport the compulsory patient to the treatment centre
36 specified in the transport order;
- 37 (d) exercise any power of search under section 65 or any
38 power of seizure under section 67;

- 1 (e) use reasonable force and obtain reasonable assistance
2 under section 64 in doing any of the things referred to in
3 paragraphs (a) to (d).

4 **Subdivision 2 — Duties**

5 **74. Duty of compulsory patient to accept treatment**

6 A compulsory patient must accept treatment properly given to
7 the patient under this Act.

8 **75. Duty of compulsory patient to comply with lawful directions**

9 A compulsory patient must comply with every lawful direction
10 given by or on behalf of the patient’s treating practitioner or by
11 or on behalf of the manager of the treatment centre in which the
12 patient is detained.

13 **76. Duty of compulsory patient to remain in treatment centre**

14 A compulsory patient must not leave a treatment centre in
15 which the patient is detained except in accordance with this Act.

16 **77. Manager of treatment centre to keep medical record**

17 (1) The manager of a treatment centre must ensure that a medical
18 record is kept in respect of each compulsory patient who is
19 admitted to the treatment centre.

20 (2) The medical record must be in the approved form and must
21 include the following information —

22 (a) the name, address and date of birth of the compulsory
23 patient;

24 (b) the nature of the severe substance use disorder from
25 which the patient suffers;

26 (c) details of —

27 (i) any treatment provided to the patient by the
28 treatment centre; and

29 (ii) the authorisation provided by the treating
30 practitioner for the patient in respect of the
31 treatment;

32 (d) if the patient dies at the treatment centre — the date of
33 death and, if known, the cause of death;

34 (e) any other prescribed information.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 4 Compulsory treatment order

Division 7 Powers and duties in relation to compulsory treatment order

s. 78

1 **78. Staff member of treatment centre not to ill-treat or wilfully**
2 **neglect compulsory patients**

3 A staff member of a treatment centre must not ill-treat or
4 wilfully neglect a compulsory patient who is being detained in
5 the treatment centre under a compulsory treatment order.

6 Penalty: a fine of \$24 000 and imprisonment for 2 years.

7 **79. Staff member of treatment centre to report certain incidents**

8 (1) A staff member of a treatment centre who reasonably suspects
9 that any of the incidents specified in subsection (2) has occurred
10 in relation to a compulsory patient who is being detained at the
11 treatment centre must report the suspicion to —

12 (a) the manager of the treatment centre; or

13 (b) the CEO.

14 Penalty for this subsection: a fine of \$6 000.

15 (2) The incidents are —

16 (a) the death of a compulsory patient at the treatment centre
17 or while absent with or without leave from the treatment
18 centre; and

19 (b) an error in any medication prescribed, administered or
20 supplied to a compulsory patient that has had, or is
21 likely to have, an adverse effect on the patient; and

22 (c) any other incident connected with the provision of
23 treatment to a compulsory patient at the treatment centre
24 that has had, or is likely to have, an adverse effect on the
25 patient; and

26 (d) any unlawful sexual contact between a compulsory
27 patient and a staff member of the treatment centre or
28 between compulsory patients at the treatment centre;
29 and

30 (e) the unreasonable use of force on a compulsory patient
31 by a staff member of the treatment centre.

1 **Part 5 — Protections for compulsory patients**

2 **Division 1 — General**

3 **80. Purpose of Part**

4 The purpose of this Part is to protect the interests of compulsory
5 patients by —

- 6 (a) specifying their rights under this Act; and
- 7 (b) providing for their access to certain advocacy services;
8 and
- 9 (c) providing for complaints to be made about a treatment
10 centre; and
- 11 (d) providing a mechanism for the regular review of
12 compulsory treatment orders.

13 **Division 2 — Compulsory patients' rights**

14 **81. Right to nominate support person**

15 (1) A compulsory patient may at any time —

- 16 (a) nominate any adult as a support person to protect the
17 patient's interests under this Act; and
- 18 (b) vary or revoke the nomination.

19 (2) If a compulsory patient wishes to make a nomination, or to vary
20 or revoke a nomination, under subsection (1), the patient must
21 notify any of the following persons —

- 22 (a) the AOD liaison officer who made the recommendation
23 for the compulsory treatment order applying to the
24 patient;
- 25 (b) the approved specialist who made the compulsory
26 treatment order applying to the patient;
- 27 (c) the patient's treating practitioner;
- 28 (d) the manager of the treatment centre in which the patient
29 is detained or any other staff member of that centre.

30 (3) The notification required by subsection (2) may be oral or
31 written.

1 **82. Right to seek second opinion**

2 (1) A compulsory patient or the patient's support person may at any
3 time request a second opinion about any matter relating to the
4 patient's care plan from —

5 (a) an approved specialist; or

6 (b) a treating practitioner at the treatment centre in which
7 the patient is detained who is not the patient's treating
8 practitioner.

9 (2) A request under subsection (1) may —

10 (a) be made to any staff member of the treatment centre;
11 and

12 (b) be oral or written.

13 (3) If a request under subsection (1) is made, the manager of the
14 treatment centre must arrange for an approved specialist or a
15 treating practitioner to —

16 (a) personally examine the compulsory patient to whom the
17 request relates; and

18 (b) provide a second opinion on the matter.

19 (4) However, the manager of the treatment centre is not required to
20 comply with subsection (3) if the request for a second opinion is
21 made by a compulsory patient's support person in
22 circumstances where the compulsory patient has indicated to
23 any staff member of the treatment centre that the patient does
24 not want the second opinion.

25 **83. Right to keep personal belongings for use at treatment**
26 **centre**

27 (1) In this section —

28 *personal belongings*, in relation to a patient, means any of the
29 following —

30 (a) articles of clothing, jewellery or footwear;

31 (b) articles for personal use by the patient;

32 (c) aids for daily living, or medical prostheses, that are
33 usually used by the patient as means of assistance or to
34 maintain the patient's dignity.

35 (2) A compulsory patient may —

36 (a) bring any item of personal belongings to the treatment
37 centre in which the patient is detained for the patient's
38 own use; and

1 (b) keep the item at the centre for that purpose during the
2 period of the patient's detention.

3 (3) However, subsection (2) does not apply if the manager of the
4 treatment centre considers that the item —

5 (a) may pose a risk of harm to the patient or any other
6 person; or

7 (b) is not an appropriate item to keep at the treatment
8 centre.

9 **84. Right to interview with treating practitioner**

10 (1) A compulsory patient or the patient's support person may at any
11 time request an interview with the patient's treating practitioner.

12 (2) A request under subsection (1) may —

13 (a) be made to any staff member of the treatment centre in
14 which the compulsory patient is detained; and

15 (b) be oral or written.

16 (3) If a request under subsection (1) is made, the manager of the
17 treatment centre must arrange for the interview to take place as
18 soon as reasonably practicable.

19 (4) A treating practitioner may refuse a request under subsection (1)
20 if —

21 (a) the compulsory patient or the patient's support person
22 has a history of making repeated requests under that
23 subsection; or

24 (b) the treating practitioner is satisfied that the patient or the
25 patient's support person is acting unreasonably in
26 making the request.

27 **85. Right to receive visitors and engage in lawful
28 communication**

29 (1) A compulsory patient is entitled, at reasonable times and at
30 reasonable intervals, to do any of the following with a
31 reasonable degree of privacy at the treatment centre in which
32 the patient is detained —

33 (a) receive visitors;

34 (b) make and receive telephone calls;

35 (c) send and receive mail or electronic communications.

36 (2) However, subsection (3) applies if a compulsory patient's
37 treating practitioner has reasonable grounds to believe that

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 2 Compulsory patients' rights

s. 86

- 1 doing any of the things referred to in subsection (1) could be
2 detrimental to —
- 3 (a) the interests and treatment of the patient; or
4 (b) the interests and treatment of any other person who is in
5 the treatment centre; or
6 (c) the interests of any other person who is not in the
7 treatment centre.
- 8 (3) The treating practitioner may —
9 (a) restrict the compulsory patient from doing all or any of
10 the things referred to in subsection (1); or
11 (b) impose conditions that that the patient must comply with
12 in doing all or any of those things.
- 13 (4) This section is subject to section 86.
- 14 **86. Checking and withholding mail and electronic**
15 **communications**
- 16 (1) In deciding whether to exercise the power under section 85(3) in
17 relation to a compulsory patient's mail or electronic
18 communications, a treating practitioner may direct that the
19 patient's mail or electronic communications be checked.
- 20 (2) For the purpose of checking electronic communications, the
21 treating practitioner may also direct that any computer or device
22 in the compulsory patient's possession be taken from the
23 patient.
- 24 (3) Before giving a direction under subsection (1) or (2), the
25 treating practitioner must obtain —
26 (a) the CEO's approval; and
27 (b) confirmation of the CEO's approval every 7 days while
28 the checks on the compulsory patient's mail or
29 electronic communications are occurring.
- 30 (4) Subsection (5) applies if mail or electronic communications are
31 checked and the treating practitioner considers that mail or
32 electronic communications could be detrimental to —
33 (a) the interests and treatment of the compulsory patient; or
34 (b) the interests and treatment of any other person who is in
35 the treatment centre; or
36 (c) the interests of any other person who is not in the
37 treatment centre.

-
- 1 (5) The treating practitioner may —
- 2 (a) restrict the patient from sending or receiving mail or
- 3 electronic communications; or
- 4 (b) restrict the patient from sending or receiving mail or
- 5 electronic communications of a particular class; or
- 6 (c) impose conditions in relation to the patient sending or
- 7 receiving mail or electronic.
- 8 (6) A computer or device taken from a compulsory patient under
- 9 subsection (2) must be returned to the patient when —
- 10 (a) any restrictions or conditions under subsection (5) in
- 11 relation to the patient sending or receiving electronic
- 12 communications cease to have effect; or
- 13 (b) the patient is released from the treatment centre.
- 14 (7) This section does not apply to mail or electronic
- 15 communications between the compulsory patient and the
- 16 patient’s legal practitioner.

17 **Division 3 — Access to advocacy services**

18 **Subdivision 1 — Access to mental health advocate**

19 **87. Initial visit or contact by mental health advocate**

- 20 (1) A mental health advocate must either visit or contact a
- 21 compulsory patient at the treatment centre in which the patient
- 22 is detained within —
- 23 (a) 24 hours of the patient’s admission — if the patient is
- 24 under 18 years of age; or
- 25 (b) 7 days of the patient’s admission — if the patient is an
- 26 adult.
- 27 (2) For the purposes of subsection (1), a mental health advocate
- 28 may contact a compulsory patient by either of the following
- 29 means —
- 30 (a) by telephone;
- 31 (b) if available, by audio visual link.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 3 Access to advocacy services

s. 88

- 1 **88. Additional visit or contact by mental health advocate may**
2 **be requested**
- 3 (1) A mental health advocate must visit or contact a compulsory
4 patient at the treatment centre in which the patient is detained if
5 requested to do so —
- 6 (a) by the patient; or
7 (b) on behalf of the patient, by the patient’s support person.
- 8 (2) A request under subsection (1) may —
- 9 (a) be made to the Chief Mental Health Advocate or any
10 staff member of the treatment centre; and
11 (b) be oral or written.
- 12 (3) If a request under subsection (1) is made to a staff member of a
13 treatment centre, the staff member must ensure that the Chief
14 Mental Health Advocate is notified of the request within
15 24 hours after the request is made.
- 16 (4) If a request under subsection (1) is made, a mental health
17 advocate —
- 18 (a) must visit or contact the compulsory patient within
19 3 days after the request is made; and
20 (b) for the purposes of paragraph (a), may contact the
21 compulsory patient by either of the means specified in
22 section 87(2).
- 23 **89. Mental health advocate may visit or contact compulsory**
24 **patient on own initiative**
- 25 (1) In addition to any requirement under section 87 or 88, a mental
26 health advocate may at any time, on the mental health
27 advocate’s own initiative, visit or contact a compulsory patient
28 at the treatment centre in which the patient is detained.
- 29 (2) For the purposes of subsection (1), a mental health advocate
30 may contact a compulsory patient by either of the means
31 specified in section 87(2).

1

Subdivision 2 — Specific advocacy roles

2

90. Functions of Chief Mental Health Advocate under this Act

3

In addition to the functions of the Chief Mental Health Advocate under the *Mental Health Act 2014*, the Chief Mental Health Advocate has the following functions under this Act —

4

5

6

(a) ensuring that compulsory patients are visited or otherwise contacted in accordance with Subdivision 1;

7

8

(b) developing standards and protocols for the performance by mental health advocates of their functions under this Act;

9

10

11

(c) ensuring that mental health advocates receive adequate training and development in relation to the performance of their functions under this Act;

12

13

14

(d) providing advice, assistance, control and giving direction to mental health advocates in relation to the performance of their functions under this Act;

15

16

17

(e) ensuring compliance with any directions given by the Chief Mental Health Advocate under paragraph (d).

18

19

91. Functions of mental health advocate under this Act

20

In addition to the functions of a mental health advocate under the *Mental Health Act 2014*, a mental health advocate has the following functions under this Act —

21

22

23

(a) visiting or otherwise contacting compulsory patients in accordance with Subdivision 1;

24

25

(b) inquiring into or investigating any matter relating to the condition of a treatment centre that is adversely affecting, or is likely to adversely affect, the health, safety and wellbeing of compulsory patients;

26

27

28

29

(c) inquiring into or investigating the extent to which compulsory patients have been informed by treatment centres of their rights under this Act and the extent to which those rights have been observed;

30

31

32

33

(d) inquiring into and seeking to resolve complaints made to mental health advocates about —

34

35

(i) the detention of compulsory patients at treatment centres; or

36

37

(ii) the treatment that is being provided by treatment centres;

38

38

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 3 Access to advocacy services

s. 92

- 1 (e) referring any issues arising out of the performance of a
2 function under paragraph (b), (c) or (d) to the
3 appropriate persons or bodies to deal with those issues,
4 including to the Chief Mental Health Advocate;
- 5 (f) assisting compulsory patients to access legal services;
- 6 (g) in consultation with the medical practitioners and other
7 health professionals responsible for the treatment of
8 compulsory patients, advocating for and facilitating
9 access by compulsory patients to other services.
- 10 **92. Powers of mental health advocate under this Act**
- 11 (1) A mental health advocate has the following powers under this
12 Act —
- 13 (a) visiting, at any time and for as long as the mental health
14 advocate considers appropriate, a treatment centre at
15 which 1 or more compulsory patients are being detained
16 or that is providing treatment to 1 or more compulsory
17 patients;
- 18 (b) inspecting any part of a treatment centre that the mental
19 health advocate visits;
- 20 (c) seeing and speaking with a compulsory patient unless
21 the compulsory patient objects to the mental health
22 advocate doing so;
- 23 (d) making inquiries about —
- 24 (i) the admission or detention of compulsory
25 patients at a treatment centre; or;
- 26 (ii) the provision of treatment to compulsory patients
27 by a treatment centre;
- 28 (e) requiring a staff member of a treatment centre to do any
29 of the following —
- 30 (i) answer any questions or provide information in
31 response to any inquiry made about a matter
32 referred to in paragraph (d);
- 33 (ii) make available any document that the mental
34 health advocate may inspect, or take a copy of,
35 under paragraph (f) or (g);
- 36 (iii) give reasonable assistance to the mental health
37 advocate in the exercise of a power under this
38 section;
- 39 (f) inspecting and taking a copy of the whole or any part of
40 the medical record of, or any other document about, a

- 1 compulsory patient that is held by the treatment centre
2 unless the compulsory patient objects to the mental
3 health advocate doing so;
- 4 (g) inspecting and taking a copy of the whole or any part of
5 any prescribed document, or any document in a
6 prescribed class of documents, that is held by the
7 treatment centre.
- 8 (2) The Chief Mental Health Advocate may direct a mental health
9 advocate in the exercise of any power under subsection (1).

10 **Subdivision 3 — Other matters relating to advocacy roles**

11 **93. Issues arising out of inquiries and investigations**

- 12 (1) In this section —
- 13 **CEO of the Health Department** means the chief executive
14 officer of the agency (as defined in the *Public Sector*
15 *Management Act 1994* section 3(1)) principally assisting in the
16 administration of the *Health Legislation Administration*
17 *Act 1984*.
- 18 (2) A mental health advocate may attempt to resolve any issue that
19 arises in the course of an inquiry into or investigation of a
20 matter under section 91(b), (c) or (d) by dealing directly with
21 the relevant staff members of the treatment centre concerned.
- 22 (3) A mental health advocate must refer an issue to the Chief
23 Mental Health Advocate if the mental health advocate cannot
24 resolve the issue or considers it appropriate to do so.
- 25 (4) The Chief Mental Health Advocate may provide a report about
26 an issue referred to the Chief Mental Health Advocate under
27 subsection (3) to the manager of the treatment centre concerned.
- 28 (5) The Chief Mental Health Advocate may also provide a copy of
29 any report provided to the manager of a treatment centre under
30 subsection (4) to 1 or more of the following —
- 31 (a) the Minister;
- 32 (b) the CEO;
- 33 (c) the CEO of the Health Department.
- 34 (6) A person to whom a copy of a report about an issue is provided
35 under subsection (5) must advise the Chief Mental Health
36 Advocate —
- 37 (a) whether or not the person considers further inquiry into
38 or investigation of the issue is warranted; and

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 3 Access to advocacy services

s. 94

1 (b) if it is warranted — the outcome of the further inquiry or
2 investigation, including any recommendations made,
3 directions given or other action taken under this Act or
4 another written law.

5 (7) This section does not limit the powers that a mental health
6 advocate has for dealing with any issue that arises in the course
7 of an inquiry into or investigation of a matter under
8 section 91(b), (c) or (d).

9 **94. Conflict of interest**

10 (1) A mental health advocate may be employed by, or have a
11 disqualifying interest under subsection (3) in, a body or
12 organisation that provides treatment for compulsory patients.

13 (2) However, the mental health advocate cannot perform any
14 functions under this Act as a mental health advocate in relation
15 to a compulsory patient who is being provided treatment by the
16 body or organisation.

17 (3) For the purposes of subsection (1), a mental health advocate has
18 a disqualifying interest in a body or organisation if the mental
19 health advocate or another person with whom the mental health
20 advocate is closely associated has a financial interest in the
21 body or organisation other than a prescribed financial interest.

22 (4) A person is closely associated with a mental health advocate if
23 the person —

24 (a) is the spouse, de facto partner or child of the mental
25 health advocate; or

26 (b) is in partnership with the mental health advocate; or

27 (c) is an employer of the mental health advocate; or

28 (d) is a beneficiary under a trust, or an object of a
29 discretionary trust, of which the mental health advocate
30 is a trustee; or

31 (e) is a body corporate of which the mental health advocate
32 is an officer; or

33 (f) is a body corporate in which the mental health advocate
34 holds shares that have a total nominal value
35 exceeding —

36 (i) the prescribed amount; or

37 (ii) the prescribed percentage of the total nominal
38 value of the issued share capital of the body
39 corporate;

- 1 or
2 (g) has a relationship specified in paragraphs (a) to (f) with
3 the mental health advocate's spouse or de facto partner.

4 **95. Report on general activities of mental health advocates**
5 **under this Act must be included in annual reports**

6 The Chief Mental Health Advocate must include a report on the
7 general activities of mental health advocates under this Act in
8 each annual report required under the *Mental Health Act 2014*
9 section 377.

10 **Division 4 — Complaints**

11 **96. Complaint about treatment centre**

12 (1) A compulsory patient or the patient's support person may make
13 a complaint about the treatment centre in which the patient is
14 detained to —

- 15 (a) the manager of the treatment centre; or
16 (b) the Health and Disability Services Complaints Office
17 continued under the *Health and Disability Services*
18 *(Complaints) Act 1995*.

19 (2) A complaint under subsection (1)(a) may be oral or written.

20 (3) A complaint under subsection (1)(b) must —

- 21 (a) be written; and
22 (b) be made in accordance with the *Health and Disability*
23 *Services (Complaints) Act 1995*.

24 **Division 5 — Review of compulsory treatment order by Mental**
25 **Health Tribunal**

26 **Subdivision 1 — Tribunal's jurisdiction and constitution**

27 **97. Jurisdiction**

28 (1) The Tribunal has exclusive jurisdiction to review every
29 compulsory treatment order for the purpose of determining —

- 30 (a) the validity of the order or any extension of the order;
31 and
32 (b) whether the order is still required having regard to the
33 criteria for compulsory treatment.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 5 Review of compulsory treatment order by Mental Health Tribunal

s. 98

- 1 (2) The Tribunal may exercise its jurisdiction under this Act even if
2 the Tribunal is —
- 3 (a) differently constituted under the *Mental Health*
4 *Act 2014*; and
- 5 (b) exercising its jurisdiction under that Act at the same
6 time.

7 **98. Constitution**

- 8 (1) When exercising its jurisdiction under this Act, the Tribunal
9 must be constituted by the members appointed by the Governor
10 under the *Mental Health Act 2014* section 476.
- 11 (2) For the purposes of subsection (1), the Tribunal must be
12 constituted by the members specified by the President as
13 follows —
- 14 (a) at least 1 lawyer;
- 15 (b) at least 1 approved specialist with qualifications,
16 training or experience in the treatment of persons with a
17 severe substance use disorder;
- 18 (c) at least 1 person who is not —
- 19 (i) a lawyer; or
20 (ii) a medical practitioner; or
21 (iii) a staff member of a treatment centre;
- 22 (d) if the compulsory patient is under 18 years of age — an
23 additional person with qualifications, training or
24 experience in the treatment of children with a severe
25 substance use disorder.
- 26 (3) The member of the Tribunal who is a lawyer is the presiding
27 member of the Tribunal for the purposes of subsection (1).
- 28 (4) The provisions of the *Mental Health Act 2014* Part 21,
29 Division 14 apply to the members of the Tribunal exercising its
30 jurisdiction under this Act.

1 **Subdivision 2 — Initiation of review**

2 **99. Initial and periodic reviews**

3 (1) After a compulsory treatment order is made, the Tribunal must
4 review the order —

5 (a) if the compulsory patient to whom the order applies is
6 an adult —

7 (i) within 10 days after the day on which the patient
8 is admitted to a treatment centre; and

9 (ii) every 21 days after the date of the decision on
10 the last review of the order;

11 or

12 (b) if the compulsory patient to whom the order applies is
13 under 18 years of age —

14 (i) within 7 days after the day of which the patient is
15 admitted to a treatment centre; and

16 (ii) every 14 days after the date of the decision on
17 the last review of the order.

18 (2) The Tribunal must review every compulsory treatment order in
19 accordance with this section.

20 **100. Review on Tribunal's own initiative**

21 The Tribunal may at any time, on its own initiative, review a
22 compulsory treatment order.

23 **101. Application for review**

24 (1) Any of the persons specified in subsection (2) may apply to the
25 Tribunal for a review of a compulsory treatment order or a
26 decision to extend a compulsory treatment order.

27 (2) The persons are —

28 (a) the compulsory patient to whom the order applies;

29 (b) the compulsory patient's support person;

30 (c) if the compulsory patient's support person is not the
31 patient's enduring guardian or guardian — the enduring
32 guardian or guardian;

33 (d) the compulsory patient's legal practitioner;

34 (e) a concerned individual in relation to the compulsory
35 patient;

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 5 Review of compulsory treatment order by Mental Health Tribunal

s. 102

1 (f) a mental health advocate.

2 (3) Within 7 days of receiving an application for review of a
3 compulsory treatment order, the Tribunal must proceed with the
4 application unless conducting the review would coincide, or
5 overlap, with the review of the order under section 99 or 100.

6 **Subdivision 3 — Proceedings**

7 **102. Parties to proceeding**

8 The parties to a proceeding under this Part are —

- 9 (a) the applicant; and
10 (b) if the applicant for review is not the compulsory
11 patient — the compulsory patient; and
12 (c) the treating practitioner for the compulsory patient; and
13 (d) any other person who, in the Tribunal’s opinion, has a
14 sufficient interest in the matter.

15 **103. Conduct of proceeding**

16 (1) In a proceeding under this Division, the Tribunal —

- 17 (a) is not bound by technicalities, legal forms or rules of
18 evidence; and
19 (b) may inform itself of any matter relevant to its decision
20 in any way it thinks appropriate; and
21 (c) must consider all submissions made in relation to the
22 matter for decision and all information and opinions
23 presented or expressed at any hearing in relation to the
24 matter.

25 (2) However, the Tribunal is bound by —

- 26 (a) the rules of natural justice; and
27 (b) the practice and procedure of the Tribunal as provided
28 for in the rules made under the *Mental Health Act 2014*
29 section 472 or, if no provision is made in those rules, as
30 determined by the Tribunal.

31 **104. Representation at proceeding**

32 (1) A compulsory patient —

- 33 (a) may be represented by a legal practitioner at a
34 proceeding under this Division; and

1 (b) must not be presumed to lack the capacity to engage or
2 give instructions to a legal practitioner for the purposes
3 of that representation merely because of the fact that a
4 compulsory treatment order applies to the patient.

5 (2) The Tribunal may make arrangements for a party to be
6 represented in a proceeding if the party wishes the Tribunal to
7 make the arrangements on the party's behalf.

8 **105. Matters to which Tribunal must have regard**

9 In making a decision on a review of a compulsory treatment
10 order or a decision to extend a compulsory treatment order, the
11 Tribunal must have regard to the following matters —

- 12 (a) the views of the treating practitioner;
13 (b) the views of the compulsory patient;
14 (c) the views of the compulsory patient's support person;
15 (d) any other matters that the Tribunal considers relevant to
16 making the decision.

17 **Subdivision 4 — Tribunal's decision on review**

18 **106. Decision on review of compulsory treatment order**

19 (1) On completing a review under this Division, the Tribunal
20 may —

- 21 (a) confirm the compulsory treatment order, or as the case
22 may be, the extension of the compulsory treatment
23 order; or
24 (b) revoke the compulsory treatment order.

25 (2) The Tribunal may, if it confirms the compulsory treatment order
26 applying to a compulsory patient, make any recommendations it
27 considers appropriate in relation to the patient's care plan.

28 (3) The Tribunal may, if it revokes the compulsory treatment order
29 applying to a compulsory patient, make any recommendations it
30 considers appropriate in relation to the patient's discharge plan.

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 5 Protections for compulsory patients

Division 5 Review of compulsory treatment order by Mental Health Tribunal

s. 107

- 1 **107. Review of Tribunal’s decision by State Administrative**
2 **Tribunal**
- 3 Subject to any necessary modifications, the *Mental Health*
4 *Act 2014* Part 22 applies to a decision of the Tribunal under this
5 Act as if —
- 6 (a) the decision were a decision of the Tribunal under the
7 *Mental Health Act 2014*; and
- 8 (b) references to a person having a mental illness were
9 references to a person having a severe substance use
10 disorder.

Part 6 — Miscellaneous provisions

Division 1 — Other offences

108. Obstructing or hindering person performing functions

- (1) A person must not, without reasonable excuse, obstruct or hinder a person —
- (a) performing a function under this Act; or
 - (b) assisting another person in performing a function under this Act.

Penalty for this subsection: a fine of \$6 000.

- (2) The burden of proving that a person had a reasonable excuse lies on that person.

109. Interfering with exercise of powers by mental health advocate

- (1) A person must not —
- (a) without reasonable excuse, decline to answer a question or provide information when required under section 92(1)(e)(i); or
 - (b) in purporting to comply with a requirement under section 92(1)(e)(i), give an answer or provide information that the person knows is false or misleading in a material particular; or
 - (c) in purporting to comply with a requirement under section 92(1)(e)(ii), make available a document that the person knows is false or misleading in a material particular —
 - (i) without indicating that the document is false or misleading and, to the extent the person can, how the document is false or misleading; and
 - (ii) if the person has or can reasonably obtain the correct information, without providing the correct information;
- or
- (d) without reasonable excuse, decline to give reasonable assistance when required under section 92(1)(e)(iii); or
 - (e) without reasonable excuse, obstruct or hinder —
 - (i) a mental health advocate in the exercise of a power under section 92(1); or

Compulsory Treatment (Alcohol and Other Drugs) Bill 2016

Part 6 Miscellaneous provisions

Division 2 Requirements relating to information

s. 110

- 1 (ii) a person assisting a mental health advocate under
2 section 92(1)(e)(iii).
- 3 Penalty for this subsection: a fine of \$6 000.
- 4 (2) The burden of proving that a person had a reasonable excuse
5 lies on that person.
- 6 (3) It is enough for a prosecution notice lodged against a person for
7 an offence under subsection (1) alleged to have been committed
8 in the circumstances referred to in subsection (1)(b) or (c) to
9 state that the answer, information or document was false or
10 misleading to the person's knowledge without stating which.

11 **Division 2 — Requirements relating to information**

12 **110. Terms used**

13 In this Division —

14 ***alcohol or other drug service*** means any of the following —

- 15 (a) a hospital (but only to the extent that the hospital
16 provides treatment to persons with a severe substance
17 use disorder);
- 18 (b) a community alcohol or other drug service;
- 19 (c) any prescribed service or any service in a prescribed
20 class of service;

21 ***corresponding overseas authority*** means a person in another
22 country who has functions corresponding to the CEO's
23 functions under this Act;

24 ***interstate authority*** means —

- 25 (a) a department of the Public Service of the
26 Commonwealth, another State or a Territory; or
- 27 (b) an agency or instrumentality of the Commonwealth,
28 another State or a Territory; or
- 29 (c) a body (whether corporate or unincorporate), or the
30 holder of an office, post or position, established or
31 continued in existence for a public purpose under a law
32 of the Commonwealth, another State or a Territory;

33 ***mental health service*** has the meaning given in the *Mental*
34 *Health Act 2014* section 4;

35 ***specified information*** means information (including personal
36 information) that is or is likely to relate to any of the
37 following —

- 38 (a) the assessment of a person under this Act;

- 1 (b) the treatment of a compulsory patient;
2 (c) the health, safety or wellbeing of a compulsory patient;
3 (d) the safety of another person with respect to which there
4 is a serious risk because of a person who has a severe
5 substance use disorder;
6 (e) the administration or enforcement of this Act;
7 (f) the implementation and evaluation of programmes
8 managed by the Agency for the purpose of coordinating
9 the care and support of persons with a severe substance
10 use disorder;
11 (g) the planning for, and evaluation of, services for persons
12 with alcohol and other drug problems;
13 (h) epidemiological analysis, and research, of alcohol or
14 other drug problems;

15 **State authority** means any of the following persons or bodies —

- 16 (a) the Minister;
17 (b) a department of the Public Service;
18 (c) a State agency or instrumentality;
19 (d) a local government or regional government;
20 (e) a body (whether corporate or unincorporate), or the
21 holder of an office, post or position, established or
22 continued in existence for a public purpose under a
23 written law.

24 **111. Authorised recording, disclosure or use of specified**
25 **information**

26 For the purposes of this Act, the recording, disclosure or use of
27 any specified information is authorised if the information is
28 recorded, disclosed or used in good faith for any of the
29 following purposes —

- 30 (a) to enable AOD liaison officers and approved specialists
31 to notify and liaise with any person proposed to be
32 assessed;
33 (b) to enable consultation between AOD liaison officers and
34 approved specialists in relation to compulsory patients;
35 (c) to enable the transfer of a compulsory patient between a
36 treatment centre and a mental health service;
37 (d) to enable a staff member of a treatment centre to
38 disclose the information to a compulsory patient's
39 support person;

- 1 (e) to enable a staff member of a treatment centre to
2 disclose the information about a compulsory patient to a
3 third party if the patient would like the information to be
4 shared with that third party;
- 5 (f) to enable the CEO to disclose the information to or
6 request the information from any of the following —
- 7 (i) a State authority;
- 8 (ii) an interstate authority;
- 9 (iii) a corresponding overseas authority;
- 10 (iv) a mental health service;
- 11 (v) an alcohol or other drug service.

12 **112. Confidentiality**

13 (1) A person must not (whether directly or indirectly) record,
14 disclose or use any information obtained by the person because
15 of —

- 16 (a) the person's office, position, employment or
17 engagement under or for the purposes of this Act; or
- 18 (b) any disclosure made to the person under this Act,
19 including in response to a requirement made under
20 section 92(1)(e).

21 Penalty for this subsection: a fine of \$5 000.

22 (2) Subsection (1) does not apply in relation to the recording,
23 disclosure or use of statistical or other information that is not
24 personal information.

25 (3) A person does not commit an offence under subsection (1) if the
26 recording, disclosure or use of the information is authorised
27 under section 111.

28 **Division 3 — Administration**

29 **Subdivision 1 — Designations**

30 **113. Designation of AOD liaison officers**

31 (1) The CEO must designate sufficient health professionals as AOD
32 liaison officers for the purposes of this Act.

33 (2) The CEO may designate a health professional under this section
34 only if satisfied that the health professional —

- 35 (a) has at least 3 years' experience in the provision of
36 treatment to persons with a severe substance use
37 disorder; and

- 1 (b) has undergone a prescribed course of training.
- 2 (3) Every designation under this section must be by notice
3 published in the *Gazette*.
- 4 (4) A designation under this section may —
- 5 (a) be subject to any conditions that the CEO considers
6 necessary or desirable for the purposes of this Act; and
- 7 (b) be surrendered, suspended or revoked in accordance
8 with the regulations.
- 9 (5) A person who is designated as an AOD liaison officer may also
10 be designated as an approved specialist under section 114.

11 **114. Designation of approved specialists**

- 12 (1) The CEO must designate sufficient medical practitioners as
13 approved specialists for the purposes of this Act.
- 14 (2) The CEO may designate a medical practitioner under this
15 section only if satisfied that the medical practitioner —
- 16 (a) has significant experience in the treatment of persons
17 with a severe substance use disorder; and
- 18 (b) is suitably qualified to conduct assessments under this
19 Act; and
- 20 (c) has undergone a prescribed course of training.
- 21 (3) Every designation under this section must be by notice
22 published in the *Gazette*.
- 23 (4) A designation under this section may —
- 24 (a) be subject to any conditions that the CEO considers
25 necessary or desirable for the purposes of this Act; and
- 26 (b) be surrendered, suspended or revoked in accordance
27 with the regulations.
- 28 (5) A person who is designated as an approved specialist may also
29 be designated as an AOD liaison officer under section 113.

30 **115. Designation of treatment centres**

- 31 (1) The CEO must designate sufficient treatment centres for the
32 purposes of this Act.
- 33 (2) Every designation under this section must be by notice
34 published in the *Gazette*.

- 1 (3) A designation under this section may apply only to the
2 following premises —
- 3 (a) premises that belong to or are under the control of the
4 State or an authority of the State or a person acting on
5 behalf of the State or an authority of the State;
- 6 (b) a facility that provides treatment for alcohol or other
7 drug problems;
- 8 (c) premises that the owner or person who has control of the
9 premises has agreed, by an instrument in writing given
10 to the CEO, to being premises to which a designation
11 under this section may apply.
- 12 (4) A designation under this section may —
- 13 (a) be subject to any conditions that the CEO considers
14 necessary or desirable for the purposes of this Act; and
- 15 (b) be surrendered, suspended or revoked in accordance
16 with the regulations.

17 **Subdivision 2 — Guidelines and standards**

18 **116. CEO may issue guidelines and standards**

19 The CEO may issue —

- 20 (a) guidelines for the purposes of this Act; and
- 21 (b) standards of care and treatment of compulsory patients;
22 and
- 23 (c) guidelines about prescribing medication for compulsory
24 patients.

25 **Subdivision 3 — Other administrative matters**

26 **117. Delegation by Minister or CEO**

- 27 (1) The Minister may delegate to the CEO any power or duty of the
28 Minister under this Act.
- 29 (2) The CEO may delegate to a public service officer who is
30 employed in, or seconded to, the Agency any power or duty of
31 the CEO under this Act.
- 32 (3) A delegation under this section must be written and signed by
33 the Minister or the CEO, as the case requires.
- 34 (4) A person to whom a power or duty is delegated under this
35 section cannot delegate that power or duty.

1 (5) A person exercising a power or performing a duty that has been
2 delegated under this section must be taken to do so in
3 accordance with the terms of the delegation unless the contrary
4 is shown.

5 (6) This section does not limit the ability of the Minister or the
6 CEO to perform a function through an officer or agent.

7 **118. CEO may approve forms, and manner of lodging certain**
8 **applications**

9 (1) The CEO may approve —

- 10 (a) forms for use under this Act; and
11 (b) the manner in which applications under this Act (except
12 applications under Part 5 Division 5) must be lodged.

13 (2) The CEO must publish all approved forms on the Agency's
14 website.

15 (3) The CEO must make available an approved form on request,
16 free of charge, from the Agency's office or at any place that the
17 CEO considers necessary or desirable for the purposes of this
18 Act.

19 **Division 4 — Protection from liability**

20 **119. Protection from liability**

21 (1) No action or claim for damages lies against a person for
22 anything that the person has, in good faith, done in the
23 performance or purported performance of a function under this
24 Act.

25 (2) Despite subsection (1), the State is not relieved of any liability
26 that it might otherwise have had for another person having done
27 anything described in that subsection.

28 (3) The protection given by this section applies even though the
29 thing done as described in subsection (1) may have been
30 capable of being done whether or not this Act had been enacted.

31 (4) In this section, a reference to the doing of anything includes a
32 reference to an omission to do anything.

1

Division 5 — Regulations

2

120. Regulations

3

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

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Division 6 — Review of Act

8

121. Review of Act after 3 years

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(1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 3 years after the commencement of this section.

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11

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(2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

13

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Division 7 — Consequential amendments to other Acts

16

[To come.]

17

18



Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
adult	3(1)
Agency	3(1)
Alcohol and Other Drug liaison officer	3(1)
alcohol or other drug service.....	110
AOD liaison officer	3(1)
application for assessment	3(1)
apprehension and return order	3(1), 49(1)
approved form.....	3(1)
approved specialist.....	3(1)
assessed.....	3(1)
authorised hospital	3(1)
authorised mental health practitioner	60(1)
authorised person	62
care plan.....	3(1)
CEO	3(1)
CEO of the Health Department.....	93(1)
Chief Mental Health Advocate	3(1)
compulsory patient.....	3(1), 35(1)
compulsory treatment	3(1)
compulsory treatment order	3(1)
concerned individual.....	3(1)
corresponding overseas authority.....	110
criteria for compulsory treatment.....	3(1)
discharge plan	3(1)
drug.....	3(1)
enduring guardian	3(1)
frisk search.....	62
guardian	3(1)
health professional	3(1)
interstate authority	110
involuntary community patient.....	3(1)
involuntary patient.....	3(1)
involuntary treatment order.....	3(1)
law enforcement officer	10(1)
legal practitioner	3(1)
medical practitioner	3(1)
medical record.....	3(1)
mental health advocate.....	3(1)
mental health service	110
nurse.....	3(1)

Defined terms

occupational therapist	3(1)
ordinary search.....	62
personal belongings	83(1)
prescribed.....	3(1)
President	3(1)
psychiatrist.....	3(1)
psychoactive substance	3(1)
psychologist	3(1)
severe substance use disorder	3(1), 4
social worker.....	3(1)
specialist	3(1)
specified information	110
specified power	64(1)
staff member	3(1)
State authority	110
substance.....	3(1)
support person.....	3(1)
supporting medical certificate	3(1), 20(2)
suspension order	3(1), 60(4)
transfer order.....	3(1), 70(1)
transport officer.....	3(1)
transport order.....	3(1)
treating practitioner.....	3(1)
treatment	3(1)
treatment centre	3(1)
Tribunal.....	3(1)
volatile substance.....	3(1)