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## 1. Commonwealth

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.	<b>No Relevant Legislation Found</b>			

## 2. New South Wales

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<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>New South Wales</b>			
	<p><b>Children and Young Persons (Care and Protection) Act 1998</b></p>	<p>NSW</p>	<p>23</p>	<p>This section defines '<b>at risk of significant harm</b>' to include a range of factors, many of which affect physical or mental health. This definition feeds into the following sections, which allow a child to be taken into care.</p> <p>Child or young person at risk of significant harm</p> <p>(1) For the purposes of this Part and Part 3, a child or young person is '<b>at risk of significant harm</b>' if current concerns exist for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances:</p> <p>(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,</p> <p>(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,</p> <p>(b1) in the case of a child or young person who is required to attend school in accordance with the <i>Education Act 1990</i> - the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,</p> <p>(c) the child or young person has been, or is at risk of being,</p>

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				<p>physically or sexually abused or ill-treated,</p> <p>(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,</p> <p>(e) a parent or other caregiver has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,</p> <p>(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.</p> <p>Physical or sexual abuse may include an assault and can exist despite the fact that consent has been given.</p> <p>(2) Any such circumstances may relate to a single act or omission or to a series of acts or omissions. See also sections 154 (2) (a) and 156A (3) for other circumstances in which a child or young person is taken to be at risk of significant harm.</p>
			34	<p>This section permits the Director-General to take action when a young person is in need of care and protection. This can include the development of a care plan.</p> <p>Taking of action by Director-General</p> <p>(1) If the Director-General forms the opinion, on reasonable grounds, that a child or young person is in need of care and</p>

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				<p>protection, the Director-General is to take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child or young person.</p> <p>(2) Without limiting subsection (1), the action that the Director-General might take in response to a report includes the following:</p> <p>(a) providing, or arranging for the provision of, support services for the child or young person and his or her family; or</p> <p>(b) development, in consultation with the parents (jointly or separately), of a care plan to meet the needs of the child or young person and his or her family that:</p> <p>(i) does not involve taking the matter before the Children's Court; or</p> <p>(ii) may be registered with the Children's Court; or</p> <p>(iii) is the basis for consent orders made by the Children's Court; and</p> <p>(b1) development, in consultation with one or more primary care-givers for a child or young person, of a parent responsibility contract instead of taking a matter concerning the child's or young person's need for care and protection before the Children's Court (except in the event of a breach of the contract); or</p> <p>(c) ensuring the protection of the child or young person by exercising the Director-General's emergency protection powers as referred to in Part 1 of Chapter 5; or</p>

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				<p>(d) seeking appropriate orders from the Children's Court.</p> <p>In considering what action to take under this section, the Director-General is to have regard to the grounds under section 71 on which the Children's Court may make a care order.</p>
			38	<p>This section provides for the development and enforcement of care plans, which may allocate parental responsibility for children or young people in need of care and protect to persons other than the parents of the child or young person.</p> <p>Development and enforcement of care plans</p> <p>(1) A care plan, developed by agreement in the course of alternative dispute resolution, may be registered with the Children's Court and may be used as evidence of an attempt to resolve the matter without bringing a care application in accordance with Part 2 of Chapter 5. Section 38F provides that a care plan or parent responsibility contract is taken to be registered with the Children's Court when it is filed with the registry of the Court without the need for any order or other further action by the Court.</p> <p>(2) A care plan that allocates parental responsibility, or aspects of parental responsibility, to any person other than the parents of the child or young person, takes effect only if the Children's Court makes an order by consent to give effect to the proposed changes in parental responsibility.</p> <p>(2A) Any such order may be made by the Children's Court without the need for a care application under Part 2 of Chapter 5 and without the need to be satisfied of the existence of any of the</p>

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				<p>grounds under section 71 if the Court is satisfied that:</p> <p>(a) the proposed order will not contravene the principles of this Act; and</p> <p>(b) the parties to the care plan understand its provisions and have freely entered into it; and</p> <p>(c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions to which the proposed order will give effect.</p> <p>(3) The Children's Court may make such other orders by consent for the purpose of giving effect to a care plan (being orders of the same kind as it could make in a care application that is duly made under Part 2 of Chapter 5) without the need for a care application under that Part and without the need to be satisfied of the existence of any of the grounds under section 71 if the Court is satisfied that:</p> <p>(a) the proposed order will not contravene the principles of this Act; and</p> <p>(b) the parties to the care plan understand its provisions and have freely entered into it; and</p> <p>(c) in the case of a party other than the Director-General, the party has received independent advice concerning the provisions to which the proposed order will give effect.</p>
			43	This section provides for the removal of children and young people where there is an immediate risk of serious harm. The section is broad, but the Director-General must be satisfied, in

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				<p>each case, that an apprehended violence order will not be sufficient to protect the child or young person.</p> <p>Removal of children and young persons without warrant</p> <p>(1) If the Director-General or a police officer is satisfied, on reasonable grounds:</p> <p>(a) that a child or young person is at immediate risk of serious harm; and</p> <p>(b) that the making of an apprehended violence order would not be sufficient to protect the child or young person from that risk, the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the child or young person from the place of risk in accordance with this section.</p> <p>(2) If the Director-General or a police officer suspects a person is a child and suspects on reasonable grounds:</p> <p>(a) that the person is in need of care and protection; and</p> <p>(b) that the person is not subject to the supervision or control of a responsible adult; and</p> <p>(c) that the person is living in or habitually frequenting a public place, the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the person from any public place.</p> <p>(3) If the Director-General or a police officer suspects a person</p>

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				<p>is a child or young person and suspects on reasonable grounds:</p> <p>(a) that the person is in need of care and protection; and</p> <p>(b) that the person:</p> <p>(i) is or has recently been on any premises where prostitution or acts of child prostitution take place or where persons are used for the production of child abuse material; or</p> <p>(ii) is or has recently been participating in an act of child prostitution in any place or is being or has recently been used for the production of child abuse material in any place, the Director-General or police officer may (without the need for any authority other than that conferred by this subsection) remove the person from the premises or place or any such adjacent place.</p> <p>(4) For the purposes of this section, the Director-General or a police officer may (without the need for any authority other than that conferred by this subsection):</p> <p>(a) enter any premises or place in which the Director-General or police officer suspects the child or young person (or the person suspected on reasonable grounds of being a child or young person) may be; and</p> <p>(b) enter the premises or place (and any adjacent place, if the Director-General or police officer suspects on reasonable grounds that the person, having just left the premises or place, is in the adjacent place); and</p> <p>(c) search for the person in the premises or place and in any</p>



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				<p>such adjacent place.</p> <p>(5) Until a person removed under this section is placed in the care responsibility of the Director-General, the person must be kept separately from any persons who are detained for committing offences, who are on remand or who are subject to an order under section 33 (1) (g) of the <i>Children (Criminal Proceedings) Act 1987</i>.</p> <p>(6) A person authorised to exercise powers by a subsection of this section may exercise any or all of the powers, as appropriate in the circumstances.</p> <p>(7) In this section: '<b>act of child prostitution</b>' has the same meaning as in section 91C of the <i>Crimes Act 1900</i>. '<b>child abuse material</b>' has the same meaning as it has in Division 15A of Part 3 of the <i>Crimes Act 1900</i>. '<b>place</b>' means any place, whether or not a public place, and whether or not on premises.</p> <p>Part 3 of Chapter 15 (Removal of persons and entry of premises and places) confers various ancillary powers on persons who exercise functions under this section.</p>
			44	<p>This provision extends the powers of the Director-General to assume care of a child or young person who is already in hospital (or other premises).</p> <p>Director-General may assume care responsibility of child or young person in hospital or other premises</p> <p>(1) If the Director-General:</p> <p>(a) suspects on reasonable grounds that a child or young person</p>

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				<p>is at risk of serious harm; and</p> <p>(b) is satisfied that it is not in the best interests of the child or young person that the child or young person be removed from the premises in which he or she is currently located, the Director-General may, instead of removing the child or young person from the premises under a power of removal conferred by or under this Act, assume the care responsibility of the child or young person by means of an order in writing, signed by the Director-General and served on the person (whether or not a parent of the child or young person) who appears to the Director-General to be in charge of the premises.</p> <p>(2) An order under this section does not cease to have effect merely because the child or young person to whom it relates is transferred to different premises.</p>
			50	<p>This section requires the Director-General to review the care of the child or young person, and consider a number of factors (see (3) below) in deciding whether or not to discharge the child or young person from the care of the Director-General.</p> <p>Discharge of child or young person from Director-General's care responsibility</p> <p>(1) The Director-General may, at any time, discharge a child or young person from the Director-General's care responsibility with or without any undertakings being given by the child or young person or by a parent of the child or young person.</p> <p>(2) An undertaking, if given, is to be in writing and signed by the person giving it.</p>

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				<p>(3) In determining whether or not to exercise the power under subsection (1), the Director-General is to have regard to the following:</p> <p>(a) any views expressed by the child or young person as to whether he or she wishes that power to be exercised; and</p> <p>(b) any views expressed by the child or young person as to whether he or she intends to return to the care and protection of a parent; and</p> <p>(c) whether the exercise by the Director-General of that power is likely to protect the safety, welfare and well-being of the child or young person; and</p> <p>(d) whether the failure by the Director-General to exercise that power is likely to endanger the safety, welfare and well-being of any other person.</p> <p>(4) If the Director-General discharges the child or young person from the Director-General's care responsibility following an order of the Children's Court, the Director-General must explain to the Children's Court at the next sitting day of the Court why the Director-General's care responsibility was no longer needed.</p>
			52	<p>Definition of '<b>assessment order</b>'</p> <p>In this Division:</p> <p>(a) an order made under section 53 is referred to as '<b>an assessment order</b>'; and</p> <p>(b) a reference to '<b>assessment</b>' includes, in the case of an order</p>

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			53	<p>for the physical, psychological, psychiatric or other medical examination of a child or young person, a reference to such examination.</p> <p>This section allows the Children’s Court to make assessment orders. Note that (4) allows the child or young person to refuse to submit to examinations.</p> <p><b>Making of assessment orders</b></p> <p>(1) The Children's Court may make an order for:</p> <p>(a) the physical, psychological, psychiatric or other medical examination of a child or young person; or</p> <p>(b) the assessment of a child or young person, or both.</p> <p>(2) An assessment order authorises a person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.</p> <p>(3) The carrying out of a medical examination under such an order is not limited to an examination made only by use of the senses but includes the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.</p> <p>(4) Despite subsections (2) and (3), if a child or young person is of sufficient understanding to make an informed decision, the child or young person may refuse to submit to a physical, psychological, psychiatric or other medical examination or an assessment.</p>

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			56	<p>This section sets out the matters to be considered by the Children’s Court when deciding whether or not to make an assessment order.</p> <p>Matters for consideration in making an assessment order</p> <p>(1) In considering whether to make an assessment order, the Children's Court is to have regard to the following:</p> <p>(a) whether the proposed assessment is likely to provide relevant information that is unlikely to be obtained elsewhere; and</p> <p>(b) whether any distress the assessment is likely to cause the child or young person will be outweighed by the value of the information that might be obtained; and</p> <p>(c) any distress already caused to the child or young person by any previous assessment undertaken for the same or another purpose; and</p> <p>(d) any other matter the Children's Court considers relevant.</p> <p>(2) In making an assessment order, the Children's Court must ensure that a child or young person is not subjected to unnecessary assessment.</p>
			60	<p>Definitions</p> <p>In this Act:</p> <p><b>'care application'</b> means an application for a care order.</p>

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				<p><b>'care order'</b> means an order under this Chapter for or with respect to the care and protection of a child or young person, and includes a contact order under section 86.</p> <p><b>'care proceedings'</b> means proceedings under this Chapter.</p>
			61	<p>This section sets out the conditions applying to the application for a care order.</p> <p>Applications for care orders</p> <p>(1) A care order may be made only on the application of the Director-General, except as provided by this Chapter.</p> <p>(2) A care application must:</p> <p>(a) specify the particular care order sought and the grounds on which it is sought; and</p> <p>(b) without limiting paragraph (a), be accompanied by a written report specifying such information as may be prescribed for the purposes of this section by the rules made under the <i>Children's Court Act 1987</i>.</p> <p>(3) The order sought may be varied:</p> <p>(a) without the leave of the Children's Court at any time before a determination is made under section 72 in relation to the care application concerned; and</p> <p>(b) after such a determination is made - only with the leave of the Children's Court.</p>

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				<p>Section 34 requires the Director-General to consider a variety of alternative means to provide for the safety, welfare and well-being of the child or young person before commencing proceedings in the Children's Court.</p> <p>Section 71 sets out the various grounds that enable the making of a care order.</p>
			71	<p>This sections sets out the grounds for the provision of a care order. Note in particular (c) and (e).</p> <p>Grounds for care orders</p> <p>(1) The Children's Court may make a care order in relation to a child or young person if it is satisfied that the child or young person is in need of care and protection for any reason including, without limitation, any of the following:</p> <p>(a) there is no parent available to care for the child or young person as a result of death or incapacity or for any other reason; or</p> <p>(b) the parents acknowledge that they have serious difficulties in caring for the child or young person and, as a consequence, the child or young person is in need of care and protection; or</p> <p>(c) the child or young person has been, or is likely to be, physically or sexually abused or ill-treated; or</p> <p>(d) subject to subsection (2), the child's or young person's basic physical, psychological or educational needs are not being met, or are likely not to be met, by his or her parents or primary care-</p>

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				<p>givers; or</p> <p>(e) the child or young person is suffering or is likely to suffer serious developmental impairment or serious psychological harm as a consequence of the domestic environment in which he or she is living; or</p> <p>(f) in the case of a child who is under the age of 14 years, the child has exhibited sexually abusive behaviours and an order of the Children's Court is necessary to ensure his or her access to, or attendance at, an appropriate therapeutic service; or</p> <p>(g) the child or young person is subject to a care and protection order of another State or Territory that is not being complied with; or</p> <p>(h) section 171 (1) applies in respect of the child or young person; or</p> <p>(i) in the case where the application for the order is made by filing a contract breach notice - any presumption arising from the operation of section 38E (4) that the child or young person is in need of care and protection has not been rebutted.</p> <p>(1A) If the Children's Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.</p> <p>(2) The Children's Court cannot conclude that the basic needs of a child or young person are likely not to be met only because of:</p> <p>(a) a parent's or primary care-giver's disability; or</p>



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				<p>(b) poverty.</p> <p>(3) (Repealed)</p> <p>The Children's Court cannot make a care order in circumstances to which section 75 (2) applies.</p>
			90	<p>This section sets out what must be considered before granting leave to rescind or vary the care order.</p> <p>Rescission and variation of care orders</p> <p>(1) An application for the rescission or variation of a care order may be made with the leave of the Children's Court.</p> <p>(1A) The Children's Court may order a person who makes an application under this section to notify those persons whom the Children's Court specifies of the making of the application. Section 256A sets out the circumstances in which the Children's Court may dispense with service.</p> <p>(2) The Children's Court may grant leave if it appears that there has been a significant change in any relevant circumstances since the care order was made or last varied.</p> <p>(2A) Before granting leave to vary or rescind the care order, the Children's Court must take the following matters into consideration:</p> <p>(a) the nature of the application; and</p> <p>(b) the age of the child or young person; and</p>

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				<p>(c) the length of time for which the child or young person has been in the care of the present carer; and</p> <p>(d) the plans for the child; and</p> <p>(e) whether the applicant has an arguable case; and</p> <p>(f) matters concerning the care and protection of the child or young person that are identified in:</p> <p>(i) a report under section 82; or</p> <p>(ii) a report that has been prepared in relation to a review directed by the Children's Guardian under section 85A or in accordance with section 150.</p> <p>(3) An application may be made by:</p> <p>(a) the Director-General; or</p> <p>(b) (Repealed):</p> <p>(b1) the child or young person; or</p> <p>(c) a person having parental responsibility for the child or young person; or</p> <p>(d) a person from whom parental responsibility for the child or young person has been removed; or</p> <p>(e) any person who considers himself or herself to have a sufficient interest in the welfare of the child or young person.</p>

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				<p>(3A) If:</p> <p>(a) an application is made to the Children's Court by a person or persons (other than the Director-General) for the rescission or variation of a care order (other than a contact order) in relation to a child or young person; and</p> <p>(b) the application seeks to change the parental responsibility for the child or young person, or those aspects of parental responsibility involved in having care responsibility for the child or young person; and</p> <p>(c) the Director-General is not a party to the proceedings, the applicant must notify the Director-General of the application, and the Director-General is entitled to be a party to the application.</p> <p>(4) The Children's Court is not required to hear or determine an application made to it with respect to a child or young person by a person referred to in subsection (3) (e) unless it considers the person to have a sufficient interest in the welfare of the child or young person.</p> <p>(5) If:</p> <p>(a) an application for variation of a care order is made or opposed by the Director-General; and</p> <p>(b) a ground on which the application is made or opposed is a ground that has not previously been considered by the Children's Court, the ground must be proved as if it were a ground of a fresh application, or of opposition to a fresh application, for a</p>

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				<p>care order.</p> <p>(6) Before making an order to rescind or vary a care order that places a child or young person under the parental responsibility of the Minister, or that allocates specific aspects of parental responsibility from the Minister to another person, the Children's Court must take the following matters into consideration:</p> <p>(a) the age of the child or young person; and</p> <p>(b) the wishes of the child or young person and the weight to be given to those wishes and</p> <p>(c) the length of time the child or young person has been in the care of the present caregivers; and</p> <p>(d) the strength of the child's or young person's attachments to the birth parents and the present caregivers; and</p> <p>(e) the capacity of the birth parents to provide an adequate standard of care for the child or young person; and</p> <p>(f) the risk to the child or young person of psychological harm if present care arrangements are varied or rescinded.</p> <p>(7) If the Children's Court is satisfied, on an application made to it with respect to a child or young person, that it is appropriate to do so:</p> <p>(a) it may, by order, vary or rescind an order for the care and protection of the child or young person; and</p> <p>(b) if it rescinds such an order - it may, in accordance with this</p>

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				<p>Chapter, make any one of the orders that it could have made in relation to the child or young person had an application been made to it with respect to the child or young person.</p> <p>(8) On the making of an order under subsection (7), the Children's Court must cause notice of the order to be served on the Director-General.</p>
			173	<p>A child in need of care and protection may be medically examined.</p> <p>Medical examination of children in need of care and protection</p> <p>(1) If the Director-General or a police officer believes on reasonable grounds (which may consist wholly or partly of information received by that person) that a child is in need of care and protection, the Director-General or the police officer, as the case may be, may serve a notice, in such form as may be prescribed by the regulations:</p> <p>(a) naming or describing the child; and</p> <p>(b) requiring the child to be forthwith presented to a medical practitioner specified or described in the notice at a hospital or some other place so specified for the purpose of the child being medically examined, on the person (whether or not a parent of the child) who appears to the Director-General or the police officer to have the care of the child for the time being.</p> <p>(2) A person who fails to comply with the requirement contained in a notice served on the person under subsection (1) is guilty of an offence unless it is proved that the person did not have the care of the child at the time the notice was served.</p>

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				<p>Maximum penalty: 200 penalty units.</p> <p>(3) If a person fails to comply with the requirement contained in a notice served on the person under subsection (1), the Director-General or a police officer may present the child in respect of whom the notice was served, or cause the child to be presented, to a medical practitioner at a hospital or elsewhere for the purpose of the child being medically examined.</p> <p>(4) When a child is presented to a medical practitioner under subsection (1) or (3):</p> <p>(a) the medical practitioner may carry out or cause to be carried out such medical examination of the child as the medical practitioner thinks fit, including examination at a hospital or place that is not the hospital or place specified in the notice referred to in subsection (1) in respect of the child; or</p> <p>(b) the Director-General is taken, from the time at which the child is presented to the medical practitioner until the expiration of:</p> <p>(i) such period of time as is reasonably necessary for the child to be examined in accordance with paragraph (a); or</p> <p>(ii) 72 hours, whichever period first expires, to be the parent of the child for the purpose only of enabling the examination to be carried out; and</p> <p>(c) the medical practitioner or other person by whom any such medical examination has been carried out must prepare a written report of the examination for transmission to the Director-</p>

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				<p>General.</p> <p>(5) The carrying out of a medical examination under this section is not limited to an examination made only by use of the senses but includes the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.</p> <p>(6) No proceedings lie against the Director-General, medical practitioner, police officer or person employed at any hospital or other place at which a child is examined for or on account of any act, matter or thing done or ordered to be done by that person, and purporting to be done for the purpose of carrying out or assisting in carrying out the provisions of this section, if that person has acted in good faith and with reasonable care.</p> <p>(7) If a medical practitioner or other person transmits a report to the Director-General pursuant to subsection (4) (c):</p> <p>(a) the transmission of the report must not, in any proceedings before a court, tribunal or committee, be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct; and</p> <p>(b) no liability for defamation is incurred because of the making of the report.</p>
	<b>Children's Court Act 1987</b>	NSW	15B	This section does not relate directly to children who have been placed in care for the purposes of protection or treatment of their health, but does establish a clinic administered by the Children's Court, which can review the physical and mental health of children, and submit reports to the Court.

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				<p>(1) The Minister for Health is to establish and maintain, in accordance with the rules, a Children's Court Clinic.</p> <p>(2) The Children's Court Clinic has the following functions:</p> <p>(a) making clinical assessments of children; or</p> <p>(b) submitting reports to courts; or</p> <p>(c) such other functions as may be prescribed by the rules.</p>
	Mental Health Act 2007	NSW	4	'parent', of a child, means any person having parental responsibility (within the meaning of the <i>Children and Young Persons (Care and Protection) Act 1998</i> ) for the child.
6			<p>The conditions for voluntary admission of children vary with the age of the child.</p> <p>Voluntary admission of children</p> <p>(1) An authorised medical officer must, as soon as practicable after admitting a person under the age of 16 years as a voluntary patient, take all reasonably practicable steps to notify a parent of the person of the admission.</p> <p>(2) An authorised medical officer must discharge a person of 14 or 15 years of age who has been admitted as a voluntary patient if a parent of the person objects to the admission to the officer, unless the person elects to continue as a voluntary patient.</p> <p>(3) A person under the age of 14 years must not be admitted as a voluntary patient if a parent of the person objects to the</p>	



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				<p>admission to an authorised medical officer.</p> <p>(4) An authorised medical officer must discharge a person under the age of 14 years who has been admitted as a voluntary patient if a parent of the person requests that the person be discharged.</p>
			7	<p>This section is relevant to children under guardianship.</p> <p>Voluntary admission of persons under guardianship</p> <p>(1) A person under guardianship may be admitted to a mental health facility as a voluntary patient if the guardian of the person makes a request to an authorised medical officer.</p> <p>(2) A person under guardianship must not be admitted as a voluntary patient if the person’s guardian objects to the admission to the authorised medical officer.</p> <p>(3) An authorised medical officer must discharge a person under guardianship who has been admitted as a voluntary patient if the person’s guardian requests that the person be discharged.</p>
			8	<p>This section applies to children who are admitted as voluntary patients under section 6 (see above).</p> <p>Discharge of voluntary patients</p> <p>(1) An authorised medical officer may discharge a voluntary patient at any time if the officer is of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient.</p> <p>(2) A voluntary patient may discharge himself or herself from or</p>

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				<p>leave a mental health facility at any time.</p> <p>(3) An authorised medical officer must give notice of the discharge of a voluntary patient who is a person under guardianship to the person’s guardian.</p>
			9	<p>This section sets out the procedure for the Tribunal’s review of voluntary patients, including children.</p> <p>Review of voluntary patients</p> <p>(1) The Tribunal must review, at least once every 12 months, the case of each voluntary patient who has been receiving care or treatment, or both, as a voluntary patient in a mental health facility for a continuous period of more than 12 months.</p> <p>(2) In addition to any other matters it considers on a review, the Tribunal is to consider whether the patient consents to continue as a voluntary patient.</p> <p>(3) The Tribunal may on a review order the discharge of the patient from the mental health facility.</p> <p>(4) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.</p> <p>(5) The medical superintendent of a mental health facility must notify the Tribunal of the name of any voluntary patient whose case the Tribunal is required to review.</p>
			18(1)	<p>Note (g) in particular, in relation to the primary carer for a</p>

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				<p>patient, including a child.</p> <p>When a person may be detained in mental health facility</p> <p>(1) A person may be detained in a declared mental health facility in the following circumstances:</p> <p>(a) on a mental health certificate given by a medical practitioner or accredited person (see section 19); or</p> <p>(b) after being brought to the facility by an ambulance officer (see section 20); or</p> <p>(c) after being apprehended by a police officer (see section 22); or</p> <p>(d) after an order for an examination and an examination or observation by a medical practitioner or accredited person (see section 23); or</p> <p>(e) on the order of a Magistrate or bail officer (see section 24); or</p> <p>(f) after a transfer from another health facility (see section 25); or</p> <p>(g) on a written request made to the authorised medical officer by a primary carer, relative or friend of the person (see section 26).</p>
			26	<p>Relevant to 18(1)(g) above. Section 26(2) sets out the conditions for such detention. A person may be detained at the request of a primary carer, provided that the detention cannot be achieved on</p>

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				<p>the basis of a mental health certificate.</p> <p>Detention on request of primary carer, relative or friend</p> <p>(1) A person may be detained in a declared mental health facility on a written request made to the authorised medical officer by the primary carer or a relative or friend of the person.</p> <p>(2) An authorised medical officer must not detain any such person unless the officer is satisfied that, because of the distance required in order for the person to be examined and the urgency of the circumstances, it is not reasonably practicable to have the person detained on the basis of a mental health certificate.</p>
			27	<p>This section relates to the review of both detention and treatment, and sets out the procedure which must be followed in relation to ongoing medical examinations.</p> <p>Steps for medical examination requirements for ongoing detention in mental health facility</p> <p>The following steps must be taken in relation to a person who is detained in a mental health facility under this Division:</p> <p>(a) <b>Step 1 Initial examination by authorised medical officer</b></p> <p>An authorised medical officer must examine the person as soon as practicable (but not later than 12 hours) after the person arrives at the facility or after the person is detained after being a voluntary patient.</p> <p>The person must not be detained after the examination unless the officer certifies that, in the officer’s opinion, the person is a</p>

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				<p>mentally ill person or a mentally disordered person.</p> <p><b>(b) Step 2 Examination by second medical practitioner</b></p> <p>The authorised medical officer must cause the person to be examined by another medical practitioner as soon as possible after giving the certificate in step 1. The second examiner must be a psychiatrist if the authorised medical officer is not a psychiatrist.</p> <p>The second examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person or if not able to form such an opinion.</p> <p><b>(c) Step 3 Examination by third medical practitioner if second examiner does not find person to be mentally ill or mentally disordered</b></p> <p>If the second examiner is not of the opinion that the person is a mentally ill person or a mentally disordered person, the authorised medical officer must cause the person to be examined by a medical practitioner who is a psychiatrist, as soon as practicable after being notified of that opinion.</p> <p>The third examiner must notify the authorised medical officer in the form prescribed by the regulations if of the opinion that the person is a mentally ill person or a mentally disordered person.</p> <p><b>(d) Step 4 Mental health inquiry or discharge</b></p> <p>An authorised medical officer must notify the Tribunal and bring</p>

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				<p>the person before the Tribunal for a mental health inquiry if:</p> <p>(i) the person is found to be a mentally ill person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person or a mentally disordered person on examination in step 2 or step 3; or</p> <p>(ii) the person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and to be a mentally ill person on examination in step 2 or step 3.</p> <p>The person must be brought before the Tribunal as soon as practicable after admission (subject to meeting the requirements set out above).</p> <p>If the third examiner does not find that the person is a mentally ill person or a mentally disordered person, the person must not be detained after the third examination.</p> <p><b>(e) Step 5 Mentally disordered persons</b></p> <p>If a person is found to be a mentally disordered person by an authorised medical officer on initial examination in step 1, and is found to be a mentally disordered person on examination in step 2 or step 3, the person may be detained in the mental health facility as a mentally disordered person.</p>
			30	<p>This section provides that assessable persons may be reclassified as voluntary patients at any time before a mental health inquiry is held. This review of classification can result in the patient being able to act in accordance with the provisions for voluntary patients.</p>

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				<p>Note that the definition of '<b>assessable person</b>' is as follows: '<b>assessable person</b>' means a person detained in a declared mental health facility for whom a mental health inquiry is required to be held under this Part.</p> <p>Assessable persons may be reclassified as voluntary patients.</p> <p>An authorised medical officer may classify an assessable person as a voluntary patient at any time before a mental health inquiry is held about the person, but only if:</p> <p>(a) the authorised medical officer is of the opinion that the person is likely to benefit from care or treatment as a voluntary patient; and</p> <p>(b) the patient agrees to be so classified or, if the person is a person under guardianship or is under the age of 14 years, the person is admitted in accordance with the procedures under this Act applicable to admitting any such person as a voluntary patient.</p>
			34	<p>This section provides that mental health inquiries are to be held by the tribunal, to ensure that the care and treatment of patients is reviewed in accordance with the Act.</p> <p>Mental health inquiries to be held</p> <p>(1) The Tribunal must hold an inquiry about an assessable person under</p> <p>step 4 in section 27 (d).</p> <p><b>Note:</b> Section 27 sets out the events that result in a mental</p>

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				<p>health inquiry.</p> <p>Notice of the inquiry is to be given to the person concerned, and all reasonably practicable steps are to be taken to notify primary carers in accordance with section 76.</p> <p>(2) An authorised medical officer of the mental health facility in which an assessable person is detained:</p> <p>(a) must ensure that, as far as practicable, the person is brought before the Tribunal dressed in street clothes; and</p> <p>(b) must make all necessary arrangements to ensure that all appropriate medical witnesses appear before the Tribunal and other relevant medical evidence concerning the person is placed before the Tribunal at or before the inquiry; and</p> <p>(c) as soon as practicable after notifying the Tribunal under section 27 (d), and at or before the inquiry, must provide the Tribunal with all relevant medical reports of the examinations in step 1 or step 2, as referred to in section 27 (d), and any additional information required by the Tribunal for the purposes of the inquiry.</p> <p>An assessable person, or any other person, may, with the approval of the Tribunal and subject to the regulations (if any), be brought or appear before the Tribunal by way of audio visual link. The primary carer of an assessable person may, with the approval of the Tribunal, appear at an inquiry.</p> <p><b>Note:</b> The Tribunal must be constituted by at least one member who is the President or a Deputy President for the purposes of a mental health inquiry (see section 150 (2A)). Other provisions</p>



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				relating to the Tribunal's procedures generally, that apply to mental health inquiries and other proceedings, are set out in Part 2 of Chapter 6.
			35	<p>Purpose and findings of mental health inquiries</p> <p>(1) The Tribunal when holding a mental health inquiry is to determine whether or not, on the balance of probabilities, the assessable person is a mentally ill person.</p> <p>(2) For that purpose, the Tribunal is to do the following:</p> <p>(a) consider the reports and recommendations of the authorised medical officer and other medical practitioners who examined the person under section 27 after the person's detention; or</p> <p>(b) consider any other information before the Tribunal; or</p> <p>(c) inquire about the administration of any medication to the person and take account of its effect on the person's ability to communicate; or</p> <p>(d) have due regard to any cultural factors relating to the person that may be relevant to the determination; or</p> <p>(e) have due regard to any evidence given at the inquiry by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.</p> <p>(2A) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ask the assessable person whether the person:</p>

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				<p>(a) has been given a written statement, in the prescribed form, of the person's legal rights and other entitlements, as required by section 74; and</p> <p>(b) has been informed of the duty imposed under section 76 on the authorised medical officer relating to the giving of the notice specified in that section.</p> <p>(2B) As soon as practicable after the beginning of a mental health inquiry, the Tribunal must ascertain from the authorised medical officer whether the written statement and notice referred to in subsection (2A) have been given or all such things as are reasonably practicable have been done to give that statement or notice, as the case requires.</p> <p>(3) If the Tribunal is not satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal must order that the person be discharged from the mental health facility.</p> <p>(4) The Tribunal may defer the operation of an order for the discharge of a person for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the person to do so.</p> <p>(5) If the Tribunal is satisfied, on the balance of probabilities, that an assessable person is a mentally ill person, the Tribunal may make any of the following orders:</p> <p>(a) an order that the person be discharged into the care of the person's primary carer; or</p> <p>(b) a community treatment order; or</p>

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				<p>(c) an order that the person be detained in or admitted to and detained in a specified mental health facility for further observation or treatment, or both, as an involuntary patient, for a specified period of up to 3 months, if the Tribunal is of the opinion that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available or that for any other reason it is not appropriate to make any other order under this subsection.</p>
			37	<p>This section sets out the circumstances of review for involuntary patients, ensuring that the case of each involuntary patient is reviewed at least once every 3 months (for the first 12 months) and 6 months thereafter.</p> <p>Reviews of involuntary patients by Tribunal</p> <p>(1) The Tribunal must review the case of each involuntary patient as follows:</p> <p>(a) at the end of the patient’s initial period of detention as a result of a mental health inquiry; or</p> <p>(b) at least once every 3 months for the first 12 months the person is an involuntary patient; or</p> <p>(c) at least once every 6 months while the person is an involuntary patient after the first 12 months of detention.</p> <p>(1A) The Tribunal may review the case of an involuntary patient at such other times as it sees fit.</p> <p>(2) An authorised medical officer must cause an involuntary</p>

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				<p>patient to be brought before the Tribunal:</p> <p>(a) as soon as practicable before the end of the initial period of detention, if it appears to the officer that the person should continue to be detained; and</p> <p>(b) at such other times as may be required by the Tribunal for the purposes of any review under this section.</p> <p>(3) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.</p> <p>(4) Despite subsection (1) (c), the Tribunal may review the case of an involuntary patient at intervals of up to 12 months if it is of the opinion that it is appropriate to do so.</p>
			38	<p>Following on from section 37, section 38 states the purpose and findings, and consequences of those findings, of the Tribunal.</p> <p>Purpose and findings of reviews of involuntary patients</p> <p>(1) The Tribunal is, on a review of an involuntary patient, to determine whether the patient is a mentally ill person for whom no other care (other than care in a mental health facility) is appropriate and reasonably available.</p> <p>(2) For that purpose, the Tribunal is to do the following:</p> <p>(a) consider any information before it; or</p> <p>(b) inquire about the administration of any medication to the patient and take account of its effect on the patient's ability to</p>

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				<p>communicate.</p> <p>(3) If the Tribunal determines that the patient is not a mentally ill person, the patient must be discharged from the mental health facility in which the patient is detained.</p> <p>(4) If the Tribunal determines that the patient is a mentally ill person and that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient, the Tribunal must make an order that the patient continue to be detained as an involuntary patient in a mental health facility for further observation or treatment, or both.</p> <p>(5) In any other case that the Tribunal determines that a patient is a mentally ill person, it must make an order that the patient be discharged from the mental health facility in which the patient is detained and may make a community treatment order.</p> <p>(6) The Tribunal may defer the operation of an order for the discharge of a patient for a period of up to 14 days, if the Tribunal thinks it is in the best interests of the patient to do so.</p> <p>(7) An order made by the Tribunal under this section is to be in the form approved by the President.</p>
			39	<p>This section provides for the medical examination of involuntary patients at least once every 3 months.</p> <p>Medical examination of involuntary patients</p> <p>(1) An authorised medical officer must medically examine each involuntary patient of the mental health facility, or cause each</p>

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				<p>involuntary patient to be medically examined, to determine whether the patient’s continued detention in the facility is necessary.</p> <p>(2) The medical examinations are to be carried out at intervals of not more than 3 months.</p>
			43	<p>This section is relevant to section 44 below.</p> <p>Discharge of involuntary patients on application of primary carer</p> <p>(1) The primary carer of an involuntary patient or another person detained in a mental health facility may, at any time, apply to an authorised medical officer of the mental health facility for the discharge of the patient or person.</p> <p>(2) The authorised medical officer may discharge the patient or person if:</p> <p>(a) the applicant gives the authorised medical officer a written undertaking that the patient or person will be properly taken care of, and</p> <p>(b) the authorised medical officer is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient or person from causing harm to himself or herself or others.</p>
			44	<p>See section 43 above. If a discharge application is refused, the applicant may appeal – this facilitates another level of review of the patient’s case.</p>

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				<p>Appeals against discharge refusals</p> <p>(1) An involuntary patient or person detained at a mental health facility (the '<b>applicant</b>') who applies to be discharged, or a person who applies for the discharge of the applicant, or a person appointed by the applicant, may appeal to the Tribunal if:</p> <p>(a) the authorised medical officer refuses the application; or</p> <p>(b) the authorised medical officer fails to determine the application within 3 working days after it is made.</p> <p>(2) An appeal may be made orally or in writing and is to be made in accordance with the regulations.</p> <p>(3) The authorised medical officer must provide the Tribunal with a report about the applicant, including the officer's reasons for refusing to discharge the applicant or failing to determine the application.</p> <p>(4) For the purpose of determining an appeal, the Tribunal has and may exercise the functions of the authorised medical officer with respect to the discharge application and may make an order accordingly.</p> <p>(5) In addition, the Tribunal may determine that no further right of appeal may be exercised under this section before the date on which the person is next reviewed by the Tribunal under this Act, if it thinks it appropriate to do so, having regard to the following:</p> <p>(a) the interval between the last determination under this Act that the applicant was a mentally ill person and the date of the</p>

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				<p>appeal; and</p> <p>(b) the frequency of appeals under this section made by or on behalf of the applicant; and</p> <p>(c) the last report about the applicant by the authorised medical officer under this section; and</p> <p>(d) any other matter the Tribunal considers relevant.</p>
			51	<p>Section 51 sets out the requirements for community treatment orders. Such orders may be made by the Tribunal as part of its review. Regardless, an application for a community treatment order facilitates another review of the patient’s treatment and care.</p> <p>Community treatment orders</p> <p>(1) A community treatment order authorising the compulsory treatment in the community of a person may be made by the Tribunal.</p> <p><b>Note:</b> Section 56 sets out the matters to be included in community treatment orders.</p> <p>(2) The following persons may apply for a community treatment order for the treatment of a person:</p> <p>(a) the authorised medical officer of a mental health facility in which the affected person is detained or is a patient under this Act; and</p> <p>(b) a medical practitioner who is familiar with the clinical</p>



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				<p>history of the affected person; and</p> <p>(c) any other person prescribed by the regulations.</p> <p>(3) An application may be made about a person who is detained in or a patient in a mental health facility or a person who is not in a mental health facility.</p> <p>(4) An application may be made about a person who is subject to a current community treatment order.</p> <p>(5) A community treatment order may be made in the following circumstances and may replace an existing order:</p> <p>(a) following a mental health inquiry; and</p> <p>(b) on a review of a patient by the Tribunal; and</p> <p>(c) on an application otherwise being made to the Tribunal.</p>
			53	<p>This section sets out the factors that must be considered in relation to applications for community treatment orders.</p> <p>Determination of applications for community treatment orders</p> <p>(1) The Tribunal is, on an application for a community treatment order, to determine whether the affected person is a person who should be subject to the order.</p> <p>(2) For that purpose, the Tribunal is to consider the following:</p> <p>(a) a treatment plan for the affected person proposed by the declared mental health facility that is to implement the proposed</p>

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				<p>order; and</p> <p>(b) if the affected person is subject to an existing community treatment order, a report by the psychiatric case manager of the person as to the efficacy of that order; and</p> <p>(c) a report as to the efficacy of any previous community treatment order for the affected person; and</p> <p>(d) any other information placed before the Tribunal.</p> <p>(3) The Tribunal may make a community treatment order for an affected person if the Tribunal determines that:</p> <p>(a) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care; and</p> <p>(b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it; and</p> <p>(c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.</p> <p>(3A) If the affected person has within the last 12 months been a forensic patient or the subject of a community treatment order, the Tribunal is not required to make a determination under subsection (3) (c) but must be satisfied that the person is likely to continue in or to relapse into an active phase of mental illness</p>

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				<p>if the order is not granted.</p> <p>(4) The Tribunal may not make a community treatment order at a mental health inquiry unless the Tribunal is of the opinion that the person is a mentally ill person.</p> <p>(5) For the purposes of this section, a person has a <b>previous history of refusing to accept appropriate treatment</b> if the following are satisfied:</p> <p>(a) the affected person has previously refused to accept appropriate treatment; and</p> <p>(b) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness; and</p> <p>(c) the relapse has been followed by mental or physical deterioration justifying involuntary admission to a mental health facility (whether or not there has been such an admission); and</p> <p>(d) care and treatment following involuntary admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.</p> <p>(6) The Tribunal must not specify a period longer than 12 months as the period for which a community treatment order is in force.</p> <p>(7) In determining the duration of a community treatment order, the Tribunal must take into account the estimated time required:</p>

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				<p>(a) to stabilise the condition of the affected person, and</p> <p>(b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.</p>
			61	<p>This section provides for the timely review of a patient in the event that there is a breach order in place.</p> <p>Review of affected person at mental health facility after breach order</p> <p>(1) This section applies to an affected person who is taken to or is at a declared mental health facility after refusing treatment at a mental health facility consequent on a breach order.</p> <p>(2) An authorised medical officer must, not later than 12 hours after the person is taken to the declared mental health facility, review the affected person's mental condition and determine whether the person is a mentally ill person or a mentally disordered person.</p> <p>(3) The authorised medical officer may cause the person to be given treatment in accordance with the community treatment order.</p> <p>(4) If the authorised medical officer determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate or reasonably available, the person is to be detained in the declared mental health facility for further observation or treatment, or both.</p>

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				<p>(5) The affected person may be detained until one of the following events occurs:</p> <p>(a) in the case of a mentally ill person, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act, (b) in the case of a mentally disordered person, the maximum period for which a person may be held as such a person under Part 2 ends, the term of the community treatment order ends or the person is discharged from the declared mental health facility under this Act.</p>
			63	<p>This section applies if a community treatment order is breached, and provides for review of the patient within 3 months.</p> <p>Review by Tribunal of detained affected persons</p> <p>(1) An authorised medical officer must cause a person detained in a declared mental health facility under this Division to be brought before the Tribunal not later than 3 months after the person is detained, and at least every 3 months while the person is detained.</p> <p>(2) The authorised medical officer must ensure that, as far as practicable, a person brought before the Tribunal is dressed in street clothes.</p> <p>(3) This section does not apply if the affected person's community treatment order will end less than 3 months after the person is detained under this Division.</p>
			65	Orders may be varied or revoked by the Tribunal. The variation or revocation may be applied for by the affected person (or

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				<p>others acting for the affected person), or the Tribunal can vary or revoke the order at any time on its own motion.</p> <p>Variation or revocation of orders by Tribunal</p> <p>(1) The Tribunal may vary or revoke a community treatment order, on application being made under this section or at any time on its own motion.</p> <p>(2) An application may be made by any of the following:</p> <p>(a) the affected person; or</p> <p>(b) the psychiatric case manager of the affected person; or</p> <p>(c) any person who could have applied for the order.</p> <p>(3) An application may be made only if:</p> <p>(a) there has been a substantial or material change in the circumstances surrounding the making of the order; or</p> <p>(b) relevant information that was not available when the order was made has become available.</p> <p>(4) An order may be varied only if the order, as varied, could be made in relation to the affected person.</p> <p>(5) The regulations may make provision for or with respect to applications under this section and the orders that may be made by the Tribunal.</p>
			71(1)	Definition of ' <b>primary carer</b> '.

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(1) The '<b>primary carer</b>' of a person (the '<b>patient</b>') for the purposes of this Act is:</p> <p>(a) the guardian of the patient; or</p> <p>(b) the parent of a patient who is a child (subject to any nomination by a patient referred to in paragraph (c)); or</p> <p>(c) if the patient is over the age of 14 years and is not a person under guardianship, the person nominated by the patient as the primary carer under this Part under a nomination that is in force; or</p> <p>(d) if the patient is not a patient referred to in paragraph (a) or (b) or there is no nomination in force as referred to in paragraph (c):</p> <p>(i) the spouse of the patient, if any, if the relationship between the patient and the spouse is close and continuing; or</p> <p>(ii) any person who is primarily responsible for providing support or care to the patient (other than wholly or substantially on a commercial basis); or</p> <p>(iii) a close friend or relative of the patient.</p>
			72	<p>This section restricts the right of a person over 14 years and under 18 years from excluding their parent as their primary carer.</p> <p>Nomination of primary carer</p> <p>(1) A person may nominate a person to be the person's primary</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>carer for the purposes of this Act.</p> <p>(2) A person may nominate persons who are excluded from being given notice or information about the person under this Act and may revoke or vary any such nomination.</p> <p>(3) A person who is over the age of 14 years and under the age of 18 years may not exclude the person's parent by a nomination under subsection (2).</p> <p>(4) A nomination, variation or revocation is to be made in writing and may be given to an authorised medical officer at a mental health facility or a director of community treatment.</p> <p>(5) A nomination remains in force for the period prescribed by the regulations or until it is revoked in writing.</p> <p>(6) An authorised medical officer or a director of community treatment is, in carrying out his or her functions under this Act or the regulations, to give effect to a nomination or a variation or revocation of a nomination, if notified of the nomination, variation or revocation.</p> <p>(7) An authorised medical officer or a director of community treatment is not required to give effect to a nomination, or a variation or revocation of a nomination, if the officer or director reasonably believes:</p> <p>(a) that to do so may put the patient or nominated person or any other person at risk of serious harm; or</p> <p>(b) that the person who made the nomination, variation or revocation was incapable of making the nomination, variation or</p>



CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				revocation.

### 3. Victoria

#### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>Victoria</b>			
	<b>Mental Health Act 1986</b>	VIC	3	<p>Definition of '<b>primary carer</b>'.</p> <p><b>'primary carer'</b> means any person who is primarily responsible for providing support or care to a person other than wholly or substantially on a commercial basis;</p>
			12AB	<p>This section allows a patient to be treated on an interim and immediate basis, prior to an assessment being carried out under section 12AC (see below).</p> <p>Interim treatment under involuntary treatment order</p> <p>(1) This section applies to a person who is subject to an involuntary treatment order at any time before he or she is examined by the authorised psychiatrist under section 12AC.</p> <p>(2) If a registered medical practitioner employed by the approved mental health service considers that:</p> <p>(a) the person requires any treatment immediately; and</p> <p>(b) the person is unable to consent to that treatment; and</p> <p>(c) the treatment required is of such a nature that it would not be in the best interests of the person to await examination by the authorised psychiatrist under section 12AC:</p>

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				<p>the practitioner may on behalf of the person consent to the treatment being carried out until the authorised psychiatrist examines the person under section 12AC.</p>
			12AC	<p>This section requires a patient to be reviewed within 24 hours.</p> <p>Examination by authorised psychiatrist</p> <p>(1) If an involuntary treatment order is made for a person, the authorised psychiatrist must examine the person:</p> <p>(a) if section 12(5) or 12AA(6) applies - as soon as practicable after the order is made, but in any case within 24 hours after the order is made; or</p> <p>(b) otherwise - within 24 hours after the order is made.</p> <p>(2) On examining the person under subsection (1):</p> <p>(a) if the authorised psychiatrist considers that the criteria in section 8(1) do not apply to the person - the authorised psychiatrist must discharge the person from the order; and</p> <p>(b) if the authorised psychiatrist is satisfied that the criteria in section 8(1) apply to the person - the authorised psychiatrist must confirm the order.</p> <p>(3) If the authorised psychiatrist confirms an involuntary treatment order under subsection (2)(b), he or she may make a community treatment order under section 14 for the person.</p> <p>(4) If the authorised psychiatrist confirms the involuntary treatment order under subsection (2)(b) but does not make a</p>

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				<p>community treatment order under subsection (3):</p> <p>(a) the person is to be detained in the approved mental health service; and</p> <p>(b) if the person is not currently in the approved mental health service, the authorised psychiatrist may take the person, or arrange for the person to be taken, to the approved mental health service.</p> <p>(5) The authorised psychiatrist may confirm an involuntary treatment order without making a community treatment order only if he or she is satisfied that the treatment required for the person cannot be obtained through the making of a community treatment order.</p> <p>(6) A registered medical practitioner who has made a recommendation under section 9 in respect of a person must not examine the person under this section.</p>
			14A	<p>This section requires monitoring at '<b>regular intervals</b>'. What constitutes a '<b>regular interval</b>' is not specified.</p> <p>Monitoring persons on community treatment orders</p> <p>(1) The supervising medical practitioner of a person subject to a community treatment order must assess the person at regular intervals.</p> <p>(2) In assessing the person, the supervising medical practitioner must consider whether:</p>

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				<p>(a) the criteria in section 8(1) still apply to the person; and</p> <p>(b) the treatment required for the person can still be obtained under the order.</p> <p>(3) If the supervising medical practitioner does not consider that:</p> <p>(a) the criteria in section 8(1) still apply to the person; or</p> <p>(b) the treatment required for the person can still be obtained under the order</p> <p>the supervising medical practitioner must notify the monitoring psychiatrist as soon as practicable.</p> <p>(4) If the supervising medical practitioner notifies the monitoring psychiatrist under subsection (3), the monitoring psychiatrist must examine the person subject to the order as soon as practicable.</p> <p>(5) In this section:</p> <p><b>'monitoring psychiatrist'</b> of a person subject to a community treatment order, means the monitoring psychiatrist specified in the person's treatment plan; and</p> <p><b>'supervising medical practitioner'</b> of a person subject to a community treatment order, means the supervising medical practitioner specified in the person's treatment plan.</p>
			14B	An extension of a community treatment order may be granted,

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				<p>but it requires a further review by the authorised psychiatrist.</p> <p>Extension of community treatment orders</p> <p>(1) The authorised psychiatrist may extend a community treatment order for a period not exceeding 12 months if the authorised psychiatrist:</p> <p>(a) examines the person subject to the order; and</p> <p>(b) is satisfied that:</p> <p>(i) the criteria in section 8(1) still apply to the person; and</p> <p>(ii) the treatment required for the person can be obtained through the extension of the order.</p> <p>(2) The extension takes effect from the time the authorised psychiatrist makes the extension.</p> <p>(3) There is no limit to the number of times a community treatment order may be extended under subsection (1).</p> <p>(4) For the avoidance of doubt, a community treatment order cannot be extended after it has expired.</p> <p>(5) If an authorised psychiatrist extends a person's community treatment order, the authorised psychiatrist must:</p> <p>(a) inform the person that the order has been extended; and</p> <p>(b) give the person a copy of the extension; and</p> <p>(c) inform the person of the grounds on which the authorised</p>

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				psychiatrist decided to extend the order.
			15AB	<p>As in section 14A, this section requires monitoring '<b>at regular intervals</b>'. What constitutes a '<b>regular interval</b>' is not specified.</p> <p>Monitoring persons on restricted community treatment orders</p> <p>(1) The monitoring psychiatrist of a person subject to a restricted community treatment order must assess the person at regular intervals.</p> <p>(2) In assessing the person, the monitoring psychiatrist must consider whether:</p> <p>(a) the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> still apply to the person; and</p> <p>(b) the treatment required for the person can still be obtained under the order.</p> <p>(3) If the monitoring psychiatrist does not consider that:</p> <p>(a) the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> still apply to the person; or</p> <p>(b) the treatment required for the person can still be obtained under the order:</p> <p>the monitoring psychiatrist must notify the chief psychiatrist as soon as practicable.</p> <p>(4) If the monitoring psychiatrist notifies the chief psychiatrist under subsection (3), the chief psychiatrist must examine the</p>

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				<p>person subject to the order as soon as practicable.</p> <p>(5) In this section:</p> <p><b>'monitoring psychiatrist'</b> of a person subject to a restricted community treatment order, means the monitoring psychiatrist specified in the person's treatment plan.</p>
			19A	<p>A treatment plan must be prepared for each patient. These plans are to be reviewed <b>'on a regular basis'</b>. The Act does not specify how often this must occur.</p> <p>Treatment plans</p> <p>(1) The authorised psychiatrist must prepare, review on a regular basis and revise as required, a treatment plan for each patient.</p> <p>(2) In preparing, reviewing and revising a treatment plan for a patient, the authorised psychiatrist must take into account:</p> <p>(a) the wishes of the patient, as far as they can be ascertained; and</p> <p>(b) unless the patient objects, the wishes of any guardian, family member or primary carer who is involved in providing ongoing care or support to the patient; and</p> <p>(c) whether the treatment to be carried out is only to promote and maintain the patient's health or well-being; and</p> <p>(d) any beneficial alternative treatments available; and</p>



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				<p>(e) the nature and degree of any significant risks associated with the treatment or any alternative treatment; and</p> <p>(f) any prescribed matters.</p> <p>(3) The treatment plan for a patient who is detained in an approved mental health service must contain an outline of the treatment the patient is to receive.</p> <p>(4) The treatment plan for a patient who is subject to a community treatment order or restricted community treatment order must contain or specify:</p> <p>(a) an outline of the treatment the patient is to receive; and</p> <p>(b) the authorised psychiatrist or delegate of the authorised psychiatrist who is to monitor the patient's treatment ('<b>monitoring psychiatrist</b>'); and</p> <p>(c) the registered medical practitioner who is to supervise the patient's treatment ('<b>supervising medical practitioner</b>'); and</p> <p>(d) the patient's case manager; and</p> <p>(e) the place at which the patient is to receive treatment; and</p> <p>(f) the times at which the patient is required to attend to receive treatment; and</p> <p>(g) the intervals at which the supervising medical practitioner must submit a written report concerning the patient's treatment to the monitoring psychiatrist.</p>

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				<p>(5) A treatment plan may contain anything else the authorised psychiatrist thinks appropriate.</p> <p>(6) The authorised psychiatrist must ensure that:</p> <p>(a) the patient is given a copy of his or her treatment plan and any revisions to it; and</p> <p>(b) the treatment plan is discussed with the patient by a registered medical practitioner, the patient's case manager or any member of a prescribed class of person.</p>
			21	<p>This section establishes the Mental Health Review Board.</p> <p>The Mental Health Review Board</p> <p>(1) There is established a Board to be known as the Mental Health Review Board.</p> <p>(2) The Board is to be constituted by:</p> <p>(a) a President; and</p> <p>(b) such other members as are necessary from time to time for the proper functioning of the Board.</p> <p>(3) Schedule 1 has effect with respect to members of the Board.</p>
			22	<p>This section sets out the functions of the Board. See, in particular, (b) and (2).</p> <p>Functions of the Board</p>

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				<p>(1) The functions of the Board are as follows:</p> <p>(a) to hear appeals by or on behalf of involuntary patients and security patients;</p> <p>(b) to review periodically the orders made for involuntary patients and security patients and their treatment plans;</p> <p>(c) to hear appeals against the refusal of the chief psychiatrist to grant special leave to security patients;</p> <p>(ca) to hear appeals against the transfer of involuntary patients and security patients;</p> <p>(d) to review orders for the transfer of involuntary patients to interstate mental health facilities;</p> <p>(g) such other functions as are specified in this Act.</p> <p>(2) The Board must in determining any review or appeal have regard primarily to the patient's current mental condition and consider the patient's medical and psychiatric history and social circumstances.</p> <p>(3) In the case of a review or an appeal of a restricted involuntary treatment order or restricted community treatment order, the Board must, in addition to the matters in subsection (2), consider the patient's forensic history.</p>
			24	<p>Procedure of the Board</p> <p>(1) The Board:</p>

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				<p>(a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and</p> <p>(b) is bound by the rules of natural justice; and</p> <p>(c) is not required to conduct any proceedings in a formal manner.</p> <p>(2) Schedule 2 has effect with respect to the procedure of the Board.</p> <p>(3) The Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.</p> <p>(4) Evidence before the Board:</p> <p>(a) may be given orally or in writing or partly orally and partly in writing; and</p> <p>(b) may be given:</p> <p>(i) on oath or affirmation; or</p> <p>(ii) by declaration instead of an oath where permitted by law.</p> <p>(5) A member of the Board may administer an oath or take an affirmation or declaration for the purposes of this Act.</p> <p>(6) Evidence given before the Board cannot be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.</p>

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				<p>(7) The Board may of its own motion or on the application of any party to the proceedings before it direct the executive officer to serve upon any person a summons to appear before the Board to give evidence or to produce such documents as are specified in the summons.</p> <p>(8) The Board may make an order for the manner of service, including substituted service, of a summons under subsection (7).</p> <p>(9) A person who without lawful excuse disobeys a summons of the Board is guilty of an offence.</p> <p>5 penalty units.</p>
			27	<p>The Board must, if requested, provide a statement of reasons within 14 days of the request.</p> <p>Statement of reasons</p> <p>(1) A party to the proceedings may, by notice in writing given to the Board within 28 days after the making of a determination, request the Board to give to that person a statement in writing of reasons for the determination.</p> <p>(2) The Board must as soon as practicable but in any case within 14 days after receiving a request under subsection (1) prepare and give a statement of reasons to that person.</p>
			29	<p>Appeals may be made at any time in prescribed circumstances. The appeal process facilitates an additional review.</p>

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				<p>Appeals</p> <p>(1) An appeal may be made to the Board at any time:</p> <p>(a) by an involuntary patient:</p> <p>(i) against his or her involuntary treatment order, community treatment order, restricted involuntary treatment order, restricted community treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order; or</p> <p>(ii) against his or her continued detention under section 12A(4) or 12C;</p> <p>(b) by a security patient against his or her hospital security order or restricted hospital transfer order.</p> <p>(1A) An appeal to the Board may also be made at any time on behalf of an involuntary patient or security patient by a community visitor or any other person who satisfies the Board of a genuine concern for the involuntary patient or security patient.</p> <p>(2) An involuntary patient or security patient may initiate the appeal by writing to:</p> <p>(a) the executive officer; or</p> <p>(b) the chief psychiatrist; or</p> <p>(c) an authorized psychiatrist; or</p> <p>(d) a community visitor; or</p>

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				<p>(e) the Ombudsman; or</p> <p>(f) the Health Services Commissioner.</p> <p>(3) If the chief psychiatrist, an authorized psychiatrist, a community visitor, the Ombudsman or the Health Services Commissioner receives an application for an appeal he or she must immediately forward it to the executive officer.</p> <p>(4) The Board must commence the hearing of an appeal without delay.</p>
			30	<p>An initial review must be conducted within 8 weeks of the order.</p> <p>A review of an order made under section 12C must be conducted within 15 days.</p> <p>Periodic reviews must be conducted at intervals not exceeding 12 months.</p> <p>Reviews</p> <p>(1) The Board must conduct an initial review of:</p> <p>(a) an involuntary treatment order, restricted involuntary treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject; and</p> <p>(b) a hospital security order or restricted hospital transfer order to which a security patient is subject:</p>

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				<p>within 8 weeks after the order is made.</p> <p>(2) The Board must conduct an initial review of the continued detention of an involuntary patient under section 12C within 14 days after the day on which the committee consented under section 12B to the continued detention.</p> <p>(3) The Board must conduct a periodic review of:</p> <p>(a) an involuntary treatment order, restricted involuntary treatment order, assessment order, diagnosis, assessment and treatment order or hospital transfer order to which an involuntary patient is subject; and</p> <p>(b) a hospital security order or restricted hospital transfer order to which a security patient is subject; and</p> <p>(c) the continued detention of an involuntary patient under section 12C - at intervals not exceeding 12 months following the initial review.</p> <p>(4) The Board must conduct a review of the extension of a community treatment order within 8 weeks after the order is extended.</p> <p>(5) If a restricted community treatment order has been in force for at least 12 months, the Board must conduct a review of the order within 8 weeks after the end of that 12 month period.</p>
			35A	Appeals and reviews require the Board to review the patient's treatment plan.



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				<p>Review of treatment plans</p> <p>(1) On each appeal and review under this Division, the Board must review the patient's treatment plan to determine whether:</p> <p>(a) the authorised psychiatrist has complied with section 19A in making, reviewing or revising the plan (as the case may be); and</p> <p>(b) the plan is capable of being implemented by the approved mental health service.</p> <p>(2) The Board may order the authorised psychiatrist to revise the treatment plan, if the Board is satisfied that:</p> <p>(a) the authorised psychiatrist has not complied with section 19A in making, reviewing or revising the plan; or</p> <p>(b) the plan is not capable of being implemented by the approved mental health service.</p>
			36	<p>This section sets out the functions of the Board upon appeal or review of an involuntary treatment order for patients who are detained.</p> <p>Power of Board on appeal or review of involuntary treatment orders - patients who are detained</p> <p>(1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under an involuntary treatment order.</p> <p>(2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>discharged from the involuntary treatment order.</p> <p>(3) If the Board is satisfied that the criteria in section 8(1) apply to the patient, the Board must confirm the involuntary treatment order.</p> <p>(4) If the Board confirms the involuntary treatment order, the Board may order the authorised psychiatrist to make a community treatment order for the patient within a reasonable period specified by the Board, if the Board considers that the treatment required for the person can be obtained through the making of a community treatment order.</p> <p>(5) The authorised psychiatrist may apply to the Board, at any time during the period specified under subsection (4), for the Board to reconsider an order made under that subsection.</p> <p>(6) Sections 31 to 35 and this section apply to an application under subsection (5) as if it were a review.</p> <p><b>Note:</b> The Board must take various factors into consideration in deciding what to do on the appeal or review, including the patient's social circumstances - see section 22(2).</p>
			36A	<p>This section sets out the functions of the Board upon appeal or review of a hospital transfer order.</p> <p>Power of Board on appeal or review of hospital transfer orders</p> <p>(1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under a hospital transfer order.</p>

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				<p>(2) If the Board considers that the continued detention of the patient as an involuntary patient is unnecessary, the Board must order that the patient be discharged from the hospital transfer order and be returned to a prison or other place of confinement (within the meaning of section 16).</p> <p>(3) If the Board considers that the continued detention of the patient as an involuntary patient is necessary, the Board must confirm the hospital transfer order.</p> <p>(4) The Board must have regard to the criteria in section 16(2)(a) and (4) in making a decision on the appeal or review.</p>
			36B	<p>This section sets out the functions of the Board upon appeal or review of a restricted involuntary treatment order.</p> <p>Power of Board on appeal or review of restricted involuntary treatment orders - patients who are detained</p> <p>(1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under a restricted involuntary treatment order.</p> <p>(2) If the Board considers that the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> do not apply to the patient, the Board must order that the patient be discharged from the restricted involuntary treatment order.</p> <p>(3) If the Board is satisfied that the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> apply to the patient, the Board must confirm the restricted involuntary treatment order.</p> <p>(4) If the Board confirms the restricted involuntary treatment</p>

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				<p>order, the Board may order the authorised psychiatrist to make a restricted community treatment order for the patient within a reasonable period specified by the Board, if the Board considers that the treatment required for the person can be obtained through the making of a restricted community treatment order.</p> <p>(5) The authorised psychiatrist may apply to the Board, at any time during the period specified under subsection (4), for the Board to reconsider an order made under that subsection.</p> <p>(6) Sections 31 to 35 and this section apply to an application under subsection (5) as if it were a review.</p> <p><b>Note:</b> The Board must take various factors into consideration in deciding what to do on the appeal or review, including the patient's social circumstances - see section 22(2) and (3).</p>
			36BA	<p>This section sets out the functions of the Board upon appeal or review of an assessment order or diagnosis, assessment and treatment order.</p> <p>Power of Board on appeal or review of assessment orders or diagnosis, assessment and treatment orders</p> <p>(1) This section applies on an appeal or review for a patient who is detained in an approved mental health service under an assessment order or a diagnosis, assessment and treatment order.</p> <p>(2) If the Board considers that the continued detention of the patient as an involuntary patient is unnecessary, the Board must order that the patient be discharged from the order.</p> <p>(3) If the Board considers that the continued detention of the</p>

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				<p>patient as an involuntary patient is necessary, the Board must confirm the order.</p> <p>(4) The Board must have regard to the criteria in section 90(1)(b) or 91(1)(b) of the <i>Sentencing Act 1991</i> (as the case requires) in making a decision on the appeal or review.</p>
			36C	<p>This section sets out the functions of the Board upon appeal or review of a community treatment order.</p> <p>Power of Board on appeal or review for patients on community treatment orders</p> <p>(1) This section applies on an appeal or review for a patient who is subject to a community treatment order.</p> <p>(2) If the Board considers that the criteria in section 8(1) do not apply to the patient, the Board must order that the patient be discharged from the community treatment order.</p> <p><b>Note:</b> See section 14(5) for the effect of the discharge from a community treatment order on the patient's involuntary treatment order.</p> <p>(3) If the Board is satisfied that the criteria in section 8(1) apply to the patient - the Board may:</p> <p>(a) confirm or vary the community treatment order; or</p> <p>(b) revoke the community treatment order if satisfied on reasonable grounds that the treatment required for the patient cannot be obtained under the order.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(4) The Board may also revoke a community treatment order if:</p> <p>(a) the Board is satisfied on reasonable grounds that the patient has not complied with the order or the patient's treatment plan; and</p> <p>(b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and</p> <p>(c) the Board is satisfied on reasonable grounds that there is a significant risk of deterioration in the patient's mental or physical condition because of the non-compliance.</p> <p>(5) If the Board revokes a community treatment order:</p> <p>(a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and</p> <p>(b) the patient remains an involuntary patient under his or her involuntary treatment order and is taken to be absent without leave from an approved mental health service.</p> <p><b>Note:</b> Section 43 provides for the apprehension of involuntary patients absent without leave.</p> <p>(6) If the Board varies a community treatment order, the Board must:</p> <p>(a) inform the person that the order has been varied; and</p> <p>(b) give the person written details of the variation; and</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(c) inform the person of the grounds on which the Board decided to vary the order.</p> <p>(7) If the Board varies a community treatment order, the authorised psychiatrist must give the person subject to the order a copy of the order as varied within a reasonable period.</p>
			36D	<p>This section sets out the functions of the Board upon appeal or review for patients on restricted community treatment orders.</p> <p>Power of Board on appeal or review for patients on restricted community treatment orders</p> <p>(1) This section applies on an appeal or review for a patient who is subject to a restricted community treatment order.</p> <p>(2) If the Board considers that the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> do not apply to the patient, the Board must order that the patient be discharged from the restricted community treatment order.</p> <p>(3) If the Board is satisfied that the criteria in section 93(1)(a) of the <i>Sentencing Act 1991</i> apply to the patient, the Board may:</p> <p>(a) confirm or vary the restricted community treatment order; or</p> <p>(b) revoke the restricted community treatment order if satisfied on reasonable grounds that the treatment required for the patient cannot be obtained under the order.</p> <p>(4) The Board may also revoke a restricted community treatment order if:</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(a) the Board is satisfied on reasonable grounds that the patient has not complied with the order or the patient's treatment plan; and</p> <p>(b) reasonable steps have been taken, without success, to obtain compliance with the order or plan; and</p> <p>(c) the Board is satisfied on reasonable grounds that there is a significant risk of deterioration in the patient's mental or physical condition because of the non-compliance.</p> <p>(5) If the Board revokes a restricted community treatment order:</p> <p>(a) the Board must make reasonable efforts to inform the patient that the order has been revoked and that the patient must go to an approved mental health service; and</p> <p>(b) the patient remains an involuntary patient under his or her restricted involuntary treatment order and is taken to be absent without leave from an approved mental health service.</p> <p>(6) If the Board varies a restricted community treatment order, the Board must:</p> <p>(a) inform the person that the order has been varied; and</p> <p>(b) give the person written details of the variation; and</p> <p>(c) inform the person of the grounds on which the Board decided to vary the order.</p> <p>(7) If the Board varies a restricted community treatment order, the authorised psychiatrist must give the person subject to the</p>



CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>order a copy of the order as varied within a reasonable period.</p> <p>(8) On the discharge of a patient from a restricted community treatment order under subsection (2), the patient is taken to be discharged from his or her restricted involuntary treatment order and, consequently, he or she ceases to be an involuntary patient.</p>
			36E	<p>This section sets out the functions of the Board upon appeal or review in relation to continued detention.</p> <p>Power of Board on appeal or review - continued detention under section 12A(4) or 12C</p> <p>(1) This section applies on an appeal or review for a patient whose detention has been continued under section 12A(4) or 12C.</p> <p>(2) If the Board is not satisfied that the continued detention of the patient is necessary, the Board must order that the patient be discharged as an involuntary patient.</p> <p>(3) The Board must have regard to the criteria in section 12A(2) in making a decision on the appeal or review.</p>
			71	<p>This section only applies to patients upon whom psychosurgery has been performed. The patient must be reviewed (unless they object) at '<b>regular intervals</b>'. The Act does not specify what constitutes a '<b>regular interval</b>'.</p> <p>Review of psychosurgery</p> <p>(1) The Psychosurgery Review Board must ensure that at regular intervals there is a review of the case of any person on</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>whom psychosurgery has been performed.</p> <p>(2) For the purposes of subsection (1) the Psychosurgery Review Board may:</p> <p>(a) make or cause to be made observations of any person on whom psychosurgery has been performed; and</p> <p>(b) make such arrangements for the gathering and recording of information as it considers appropriate.</p> <p>(3) The Psychosurgery Review Board cannot review the case of a person who has objected to being reviewed.</p>
			87	<p>This section provides for an overarching review of every patient once every year.</p> <p>Annual examination of patients</p> <p>(1) Every patient must at least once every year be examined as to the patient's mental and general health.</p> <p>(2) The authorized psychiatrist must submit a report of the examination made under subsection (1) to the chief psychiatrist.</p>

## 4. Queensland

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>Queensland</b>			
	<b>Mental Health Act 2000</b>	QLD	46	<p>An involuntary inpatient must be assessed as soon as practicable.</p> <p>Initial assessment</p> <p>(1) As soon as practicable after the person becomes an involuntary patient, an authorised doctor for the authorised mental health service must make an assessment of the patient to decide whether the treatment criteria apply to the patient.</p> <p><b>Note:</b> If, on the assessment, the authorised doctor is satisfied the treatment criteria apply to the person, the doctor may make an involuntary treatment order for the patient, see section 108.</p> <p>(2) The assessment may be carried out using audio-visual link facilities.</p>
			73	<p>This section is in relation to '<b>classified patients</b>', and provides that they must be assessed regularly. The Act does not specify what constitutes '<b>regularly</b>' (see section 124 in this respect).</p> <p>Regular assessments of patient</p> <p>(1) The administrator of the authorised mental health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(2) The authorised psychiatrist carrying out an assessment of the patient must record details of it in the patient’s clinical file.</p> <p>(3) In carrying out an assessment, the psychiatrist must decide whether the treatment criteria continue to apply to the patient.</p> <p>(4) If, on an assessment, the psychiatrist decides the person has a mental illness, the psychiatrist must also decide whether the patient needs to continue to be detained in the health service as a classified patient for treatment for the illness.</p> <p>(5) The psychiatrist may, under subsection (4), decide the patient needs to continue to be detained in the health service even if limited community treatment has been authorised for the patient or the psychiatrist reasonably believes limited community treatment may be authorised for the patient.</p> <p><b>Editor’s note:</b> See section 129 (Authorising limited community treatment).</p> <p>(6) Subsection (4) applies regardless of whether the patient consents to treatment for the illness.</p>
			112	<p>This section provides for a second assessment of a patient under an involuntary treatment order, within 72 hours in certain circumstances.</p> <p>Second examination in particular cases</p> <p>(1) This section applies if the involuntary treatment order for the patient was made:</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(a) by an authorised doctor who is not a psychiatrist; or</p> <p>(b) solely on an assessment carried out using audio-visual link facilities.</p> <p>(2) Within 72 hours after the order is made, the patient must be examined by an authorised psychiatrist.</p> <p>(3) The psychiatrist's examination may be carried out using audio-visual link facilities only if the involuntary treatment order was made on an assessment carried out in person.</p> <p>(4) If the order was made by a psychiatrist as mentioned in subsection (1)(b), the same psychiatrist may carry out the examination.</p> <p>(5) If the psychiatrist is not satisfied the treatment criteria apply to the patient, the psychiatrist must revoke the order.</p> <p>(6) If the psychiatrist is satisfied the treatment criteria apply to the patient, the psychiatrist must confirm the order.</p> <p>(7) A revocation or confirmation must be endorsed on the order.</p> <p>(8) If the order is not revoked or confirmed at the end of the 72 hours after it is made:</p> <p>(a) the patient ceases to be an involuntary patient; and</p> <p>(b) an authorised doctor must tell the patient that the patient is no longer an involuntary patient.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			116	<p>This section provides that patients must be assessed regularly. The Act does not specify the frequency of the assessments (see section 124 in this respect).</p> <p>Regular assessments of patient</p> <p>(1) The administrator of the treating health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient’s treatment plan.</p> <p>(2) The authorised psychiatrist carrying out an assessment of the patient must record details of it in the patient’s clinical file.</p> <p>(3) In carrying out an assessment, the psychiatrist must consider whether the treatment criteria continue to apply to the patient.</p>
			124	<p>See, in particular, (1)(c), which sets out that the treatment plan must include the intervals for the patient’s regular assessment.</p> <p>Preparing treatment plan</p> <p>(1) A patient’s treatment plan must state:</p> <p>(a) in general terms, an outline of the proposed treatment or care to be provided in relation to the patient; and</p> <p>(b) in specific terms, the method by which, the frequency with which, the place where, the duration of and the persons by whom, the treatment or care is to be provided; and</p> <p>(c) the intervals for the patient’s regular assessment.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p><b>Editor's note:</b> See section 116 (Regular assessments of patient).</p> <p>(1A) Also, for a forensic patient, the patient's treatment plan must include a risk management plan for the patient. [s 125]</p> <p><i>Mental Health Act 2000</i></p> <p>Chapter 4 Treatment and care of patients</p> <p>Part 2 Treatment plans</p> <p>Reprint 4E effective 1 October 2011 Page 95</p> <p>(2) Also, for a patient under the community category of an involuntary treatment order, the treatment plan for the patient must:</p> <p>(a) if the patient is to be treated at a health service other than an authorised mental health service - state the health service; and</p> <p>(b) if the patient is to be treated by a health practitioner who is not an employee of a public sector mental health service - state the name of the practitioner.</p> <p>(3) However, the treatment plan may only state a health practitioner under subsection (2)(b) with the practitioner's agreement.</p> <p>(4) The treatment plan must take into account the following:</p> <p>(a) any existing plan of treatment, or advance health directive under the <i>Powers of Attorney Act 1998</i>, for the patient; or</p>

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				<p>(b) for a patient transferred from the forensic disability service to an authorised mental health service - any individual development plan under <i>the Forensic Disability Act</i> applying to the patient immediately before the transfer.</p> <p>(5) The treatment plan must be prepared having regard to any relevant policies and practice guidelines about the treatment and care of patients issued by the director under this Act.</p>
			187	<p>The tribunal must conduct a review of involuntary treatment orders within 6 weeks of the order being made, and then at intervals of not less than 6 months. Otherwise, a review must be conducted on application (see section 188).</p> <p>When reviews are conducted</p> <p>(1) The tribunal must review the application of the treatment criteria to a patient for whom an involuntary treatment order is in force:</p> <p>(a) within 6 weeks after the order is made and afterwards at intervals of not more than 6 months; and</p> <p>(b) on application for the review made under section 188.</p> <p>(2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.</p> <p>(3) The tribunal may, on its own initiative, carry out a review of the application of the treatment criteria to the patient.</p> <p>(4) The tribunal may carry out a review on an application for a</p>



CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>review at the same time as another review for the patient but must carry out a review on the application:</p> <p>(a) if it is made within the 6 week period mentioned in subsection (1)(a) - within 7 days after the application is made; or</p> <p>(b) if paragraph (a) does not apply - within a reasonable time after it is made.</p> <p>(5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following:</p> <p>(a) the period until the next periodic review under subsection (1)(a) is required to be carried out;</p> <p>(b) whether it is in the patient's best interests to do so.</p> <p>(6) The tribunal must conduct a hearing for reviewing the application of the treatment criteria to an involuntary patient under this part.</p>
			188	<p>This section sets out the procedure for applying for a review.</p> <p>Application for review</p> <p>(1) The application for a review must:</p> <p>(a) be made in writing by:</p> <p>(i) the patient; or</p> <p>(ii) a person on behalf of the patient; or</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(iii) the director; and</p> <p>(b) be given to the tribunal.</p> <p>(2) The application may be made at any time.</p> <p>(3) However, for an involuntary treatment order mentioned in section 112(1), application may be made for a review only after the order is confirmed under section 112.</p>
			190	<p>This section sets out the matters to be considered for reviews. In particular, long term involuntary treatment orders are to be considered.</p> <p>Matters to be considered on particular reviews</p> <p>If the involuntary treatment order for the patient has been in force for more than 6 months, the tribunal must consider whether an examination and report should be obtained from a psychiatrist other than the psychiatrist responsible for the patient's treatment.</p> <p><b>Editor's note:</b> See section 457 (Tribunal may order examination) which provides that the tribunal may order the person the subject of a proceeding to submit to an examination by a stated psychiatrist, doctor or other health practitioner.</p>
			194	<p>This section sets out when reviews for young people in high security units. Reviews must be conducted within 7 days of detention, and be repeated at intervals of 3 months or less.</p> <p>When reviews are conducted</p> <p>(1) The tribunal must review the detention of a young patient in</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>a high security unit for treatment or care:</p> <p>(a) within 7 days after the detention starts and afterwards at intervals of not more than 3 months; and</p> <p><b>Editor's note:</b> For director's approval or order for detention of a young patient in a high security unit, see sections 53 and 167.</p> <p>(b) on application for the review made under section 195.</p> <p>(2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.</p> <p>(3) The tribunal may, on its own initiative, carry out a review of the detention of a young patient in a high security unit for treatment or care.</p> <p>(4) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.</p> <p>(5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following:</p> <p>(a) the period until the next periodic review under subsection (1)(a) is required to be carried out;</p> <p>(b) whether it is in the patient's best interests to do so.</p> <p>(6) The tribunal must conduct a hearing for reviewing the</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				detention of a young patient under this part.
			195	<p>This section sets out the procedure for applying for a review.</p> <p>Application for review</p> <p>(1) The application for a review must:</p> <p>(a) be made in writing by:</p> <p>(i) the patient; or</p> <p>(ii) a person on behalf of the patient; and</p> <p>(b) be given to the tribunal.</p> <p>(2) The application may be made at any time.</p>
			200	<p>This section sets out when reviews for forensic patients. Reviews must be conducted within 6 months of the forensic order being made of, and be repeated at intervals of 6 months or less.</p> <p>When reviews are conducted</p> <p>(1) The tribunal must review a forensic patient's mental condition:</p> <p>(a) within 6 months after the forensic order is made for the patient and afterwards at intervals of not more than 6 months; and</p> <p>(b) on application for the review made under section 201.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(2) However, the tribunal may dismiss an application for a review if the tribunal is satisfied the application is frivolous or vexatious.</p> <p>(3) The tribunal may, on its own initiative, review a forensic patient's mental condition.</p> <p>(4) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.</p> <p>(5) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following:</p> <p>(a) the period until the next periodic review under subsection (1)(a) is required to be carried out; and</p> <p>(b) whether it is in the patient's best interests to do so.</p> <p>(6) The tribunal must conduct a hearing for reviewing the patient's mental condition under this part.</p> <p>(7) If a forensic order is made for a person who is already a forensic patient, reviews under subsection (1)(a) must be heard together.</p>
			201	<p>This section sets out the application requirements and procedure.</p> <p>Application for review</p> <p>(1) An application for a review must:</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(a) be made in writing by:</p> <p>(i) the patient; or</p> <p>(ii) a person on behalf of the patient; or</p> <p>(iii) the director; and</p> <p>(b) be given to the tribunal.</p> <p>(2) The application may be made at any time.</p> <p>(3) An application is taken to be an application for a review of the patient's mental condition relating to all forensic orders for the patient.</p>
			203A	<p>Section 203A allows the Tribunal, if the patient is a special notification forensic patient, to order that the patient submit to an examination.</p> <p>Tribunal may order examination etc.</p> <p>(1) This section applies if the patient is a special notification forensic patient.</p> <p>(2) If the patient is not subject to a forensic order (Mental Health Court - Disability), the tribunal may order the patient to submit to an examination by a stated psychiatrist (the <i>examining person</i>) who is not an authorised psychiatrist for the patient's treating health service.</p> <p>(3) If the patient is subject to a forensic order (Mental Health Court - Disability), the tribunal may order the patient to submit</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>to an examination by a stated person (the <i>examining person</i>) who:</p> <p>(a) has expertise in the aetiology and behaviour of persons with an intellectual disability; and</p> <p>(b) is not a health practitioner engaged in providing health services at the patient's treating health service.</p> <p>(4) If the patient is subject to 2 or more forensic orders:</p> <p>(a) the tribunal may make only 1 order under this section; and</p> <p>(b) the order made must be an order the tribunal may make in relation to the most recent forensic order.</p> <p>(5) The order must state the matters on which the examining person must report on to the tribunal.</p> <p>(6) The examining person must give a written report on the examination to the tribunal.</p> <p>(7) The tribunal must not revoke the forensic order for the patient unless the tribunal has obtained a report mentioned in subsection (6) in relation to the patient.</p>
			209	<p>This section provides that reviews are to be conducted once every 3 months for the first year (after the court decision) and then at intervals of not more than 6 months.</p> <p>When reviews are conducted</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(1) The tribunal must review the person's mental condition:</p> <p>(a) at least once every 3 months for the year starting on the day of the court's decision or jury's finding; and</p> <p>(b) afterwards at intervals of not more than 6 months.</p> <p>(2) Also, the tribunal must review the person's mental condition on application for the review made under section 210.</p> <p>(3) However, the tribunal may dismiss the application if the tribunal is satisfied the application is frivolous or vexatious.</p> <p>(4) The tribunal may, on its own initiative, review the person's mental condition.</p> <p>(5) The tribunal may carry out a review on an application for a review at the same time as another review for the patient but must carry out a review on the application within a reasonable time after it is made.</p> <p>(6) In deciding whether to carry out reviews for the patient at the same time, the tribunal must have regard to the following:</p> <p>(a) the period until the next periodic review under subsection (1)(b) is required to be carried out;</p> <p>(b) whether it is in the patient's best interests to do so.</p> <p>(7) The tribunal must conduct a hearing for reviewing the person's mental condition under this part.</p>



CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
			210	<p>This section sets out the application procedure and requirements.</p> <p>Application for review</p> <p>(1) The application for a review must:</p> <p>(a) be made in writing by:</p> <p>(i) the person; or</p> <p>(ii) someone else on behalf of the person; or</p> <p>(iii) the director; and</p> <p>(b) be given to the tribunal.</p> <p>(2) The application may be made at any time.</p>
			309	<p>Regular assessments must be carried out.</p> <p>Regular assessments of patient</p> <p>(1) The administrator of the treating health service must ensure an authorised psychiatrist for the health service carries out regular assessments of the patient as required under the patient's treatment plan.</p> <p>(2) The authorised psychiatrist carrying out an assessment of the patient must record details of it in the patient's clinical file.</p>
			437	<p>Section 437 sets out the jurisdiction of the tribunal to review patients.</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>Jurisdiction</p> <p>The tribunal has the following jurisdiction:</p> <ul style="list-style-type: none"> <li>(a) reviewing the application of treatment criteria for patients; and</li> <li>(b) reviewing the detention of young patients in high security units; and</li> <li>(c) reviewing the mental condition of forensic patients and forensic disability clients; and</li> <li>(d) reviewing the fitness for trial of: <ul style="list-style-type: none"> <li>(i) persons found by the Mental Health Court to be unfit for trial and the unfitness for trial is not of a permanent nature; and</li> <li>(ii) persons for whom a jury has made a section 613 or 645 finding; and</li> </ul> </li> <li>(e) deciding applications for forensic information orders; and</li> <li>(f) deciding treatment applications; and</li> <li>(g) deciding applications for approval for particular patients to move out of Queensland; and</li> <li>(h) deciding appeals against decisions of administrators of authorised mental health services to refuse to allow persons to visit involuntary patients in health services; and</li> <li>(i) deciding applications for orders for the transfer of persons from an authorised mental health service to the forensic</li> </ul>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>disability service, or from the forensic disability service to an authorised mental health service; and</p> <p><b>Note:</b> See section 169A and the <i>Forensic Disability Act</i>, sections 33 and 34.</p> <p>(j) deciding appeals against decisions of the administrator under the <i>Forensic Disability Act</i> to refuse to allow persons to visit forensic disability clients in the forensic disability service.</p>
			Dictionary	<p><b>'young patient'</b> means an involuntary patient who is under 17 years.</p>

## 5. South Australia

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>South Australia</b>			
	<p><b>Mental Health Act 2009</b></p>	<p>SA</p>	<p>4</p>	<p>Application of Act to children</p> <p>(1) This Act applies to children in the same way as to persons of full age, subject to the following:</p> <p>(a) a right conferred on a person under this Act may, if the person is a child under 16 years of age, be exercised by a parent or guardian of the child on behalf of the child;</p> <p>(b) an obligation under this Act to give a document to a person is, if the person is a child under 16 years of age, to be treated as an obligation to give the document to a parent or guardian of the child, and operates to the exclusion of any further obligation under this Act to send or give the document to a guardian, medical agent, relative, carer or friend.</p> <p>(2) Subsection (1) does not affect the operation of a provision of this Act that expressly relates to a child or children.</p>
			<p>10(5)</p>	<p>Patients under a level 1 community treatment order must be examined within 24 hours of the order being made, to either confirm or revoke the order.</p> <p>If a level 1 community treatment order has been made by a person other than a psychiatrist or authorised medical practitioner, the following provisions apply:</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>(a) a psychiatrist or authorised medical practitioner must examine the patient within 24 hours of the making of the order;</p> <p>(b) if it is not practicable to examine the patient within that period, a psychiatrist or authorised medical practitioner must examine the patient as soon as practicable thereafter; and</p> <p>(c) after completing the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 community treatment order if satisfied that the grounds referred to in subsection (1) exist for the making of a level 1 community treatment order, but otherwise must revoke the order.</p>
			14	<p>Compliance with level 1 community treatment orders is to be monitored on an ongoing basis.</p> <p>Chief Psychiatrist to ensure monitoring of compliance with level 1 orders</p> <p>The Chief Psychiatrist must, after receiving notice of the making of a level 1 community treatment order, ensure that there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.</p>
			15	<p>The Board must review level 1 community treatment orders soon after the making of the order and prior to its expiration.</p> <p>Board to review level 1 orders</p> <p>(1) The Board must review a level 1 community treatment order as soon as practicable after receiving notice of the order and</p>

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				<p>before the order expires.</p> <p>(2) The Board may conduct a review under this section in any manner that it considers appropriate.</p> <p>(3) The Board must, on a review of a level 1 community treatment order, revoke the order unless satisfied that grounds exist for a level 2 community treatment order to be made under Division 2 in respect of the patient.</p>
			19	<p>Compliance with level 2 orders is to be monitored on an ongoing basis.</p> <p>Chief Psychiatrist to ensure monitoring of compliance with level 2 orders</p> <p>The Chief Psychiatrist must ensure that for each patient to whom a level 2 community treatment order applies there is a mental health clinician who has ongoing responsibility for monitoring and reporting to the Chief Psychiatrist on the patient's compliance with the order.</p>
			21(5)	<p>Patients under a level 1 inpatient treatment order must be examined within 24 hours of the order being made, to either confirm or revoke the order.</p> <p>On the making of a level 1 inpatient treatment order, the following provisions apply:</p> <p>(a) the patient must be examined by a psychiatrist or authorised medical practitioner, who must, if the order was made by a psychiatrist or authorised medical practitioner, be a different</p>

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				<p>psychiatrist or authorised medical practitioner;</p> <p>(b) the examination must occur within 24 hours of the making of the order;</p> <p>(c) if it is not practicable for the examination to occur within that period, it must occur as soon as practicable thereafter; and</p> <p>(d) after completion of the examination, the psychiatrist or authorised medical practitioner may confirm the level 1 inpatient treatment order if satisfied that the grounds referred to in subsection (1) exist for the making of a level 1 inpatient treatment order, but otherwise must revoke the order.</p>
			47	<p>See in particular (2)(a) and (5).</p> <p>Patients' right to be supported by guardian etc</p> <p>(1) A patient is entitled to have another person's support, wherever practicable, in:</p> <p>(a) the exercise of a right under this Act; or</p> <p>(b) any communications between the patient and a medical practitioner examining or treating the patient or between the patient and the director or staff of a treatment centre in which the patient is an inpatient.</p> <p>(2) The support may be provided by:</p> <p>(a) if the patient is a child - a parent or guardian of the patient; or</p>

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				<p>(b) a guardian, medical agent, relative, carer or friend of the patient who has been nominated by the patient for the purpose or who has or is assuming responsibility for the care of the patient; or</p> <p>(c) a person who provides advocacy services whether on a professional or voluntary basis; or</p> <p>(d) a community visitor.</p> <p>(3) A person providing support to a patient under this section must be allowed access to the patient subject to reasonable limits imposed by the medical practitioner in charge of the patient's treatment or by the director or staff of a treatment centre in which the patient is an inpatient.</p> <p>(4) However, a person providing support to a patient may be allowed to be present during a medical examination or treatment of the patient or may be excluded according to the discretion of the medical practitioner performing or supervising the examination or treatment.</p> <p>(5) This section is in addition to and does not derogate from the operation of section 4 (which entitles a parent or guardian of a child under 16 years of age to exercise rights conferred under this Act on behalf of the child).</p>
			79	<p>This section lists the reviews to be conducted by the Board.</p> <p>Reviews</p> <p>(1) The Board must conduct the following reviews:</p>



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				<p>(a) a review of the circumstances involved in the making and revocation of a level 1 community treatment order if the order was not reviewed by the Board before its revocation (which review must be conducted as soon as practicable after the revocation of the order); and</p> <p>(b) a review of a level 2 community treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months); and</p> <p>(c) a review of the circumstances involved in the making of a level 1 inpatient treatment order if the order has been made within 7 days after the expiry or revocation of a previous inpatient treatment order applying to the same person (which review must be conducted as soon as practicable after the making of the level 1 inpatient treatment order); and</p> <p>(d) a review of a level 3 inpatient treatment order that has been made in respect of a child and continues to apply to the person 3 months after the making of the order (which review must be conducted as soon as practicable after the end of the period of 3 months); and</p> <p>(e) any review that is required under the regulations.</p> <p>(2) The Board may conduct any other review that it considers appropriate relating to a community treatment order or inpatient treatment order or treatment administered to a person to whom an order applies under this Act.</p> <p>(3) The Board may conduct a review under this section in any</p>

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				<p>manner that it considers appropriate.</p> <p>(4) If a review under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the Board at or before the commencement of the Board's proceedings on the review.</p>
			80	<p>This section sets out the actions that must be taken by the Board subsequent to a review.</p> <p>Decisions and reports on reviews</p> <p>(1) On completion of a review, the Board must revoke, with immediate effect, any community treatment order or inpatient treatment order to which the review relates if the Board is not satisfied that there are proper grounds for it to remain in operation.</p> <p>(2) Subject to subsection (1), the Board may, on a review relating to a community treatment order or inpatient treatment order, do 1 or more of the following:</p> <p>(a) affirm the order; and</p> <p>(b) vary the order; and</p> <p>(c) revoke the order; and</p> <p>(d) make an order, not being an inpatient treatment order, that the Board considers should be made in respect of the person, including an order that the treatment and care plan applying to</p>

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				<p>the person be reviewed.</p> <p>(3) The Board may, on a review, provide to the Minister a written report on any matter the Board considers should be drawn to the Minister's attention.</p>
			81	<p>This section sets out the circumstances in which a patient may appeal to the Board.</p> <p>Appeals to Board against orders (other than Board orders)</p> <p>(1) Any of the following persons who is dissatisfied with a community treatment order or inpatient treatment order (other than an order made by the Board) may appeal to the Board against the order:</p> <ul style="list-style-type: none"> <li>(a) the person to whom the order applies; or</li> <li>(b) the Public Advocate; or</li> <li>(c) a guardian, medical agent, relative, carer or friend of the person to whom the order applies; or</li> <li>(d) any other person who satisfies the Board that he or she has a proper interest in the matter.</li> </ul> <p>(2) An appeal under this section may be instituted at any time during the currency of the order the subject of the appeal.</p> <p>(3) If an appeal under this section relates to a patient to whom a treatment and care plan applies, the Chief Psychiatrist must cause a copy of the plan to be submitted to the Board at or before the commencement of the Board's proceedings on the</p>

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				<p>appeal.</p> <p>(4) On hearing an appeal against an order, the Board must revoke the order, with immediate effect, if the Board is not satisfied that there are proper grounds for it to remain in operation.</p> <p>(5) Subject to subsection (4), the Board may, on hearing an appeal against an order, do 1 or more of the following:</p> <p>(a) dismiss the appeal; and</p> <p>(b) affirm the order; and</p> <p>(c) vary the order; and</p> <p>(d) revoke the order; and</p> <p>(e) make an order, not being an inpatient treatment order, that the Board considers should be made in respect of the person, including an order that the treatment and care plan applying to the person be reviewed.</p>

## 6. Western Australia

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<p><b>Children and Community Services Act</b></p>	<p>WA</p>	36	CEO must make a protection application in respect of a child taken into provisional protection and care as soon as practicable and in any event not more than 2 working days after the child is taken into provisional protection and care.
			38(4)	If CEO decides to make a protection or other application in relation to the child CEO must make a protection application in respect of a child taken into provisional protection and care without a warrant as soon as practicable and in any event not more than 2 working days after the child is taken into provisional protection and care.
			40(7)	A child must not be kept in a hospital under subsection (2) for more than 2 working days.
			48(2)	The period specified in a protection order (supervision) must not exceed 2 years and must end before the child reaches 18.
			48(3)	The Court may, if satisfied it is in the best interests of the child, extend the order for a period not exceeding 2 years that ends before the child reaches 18.
			48(4)	A protection order must not be extended more than once under this section.
			88D(1)	The period for which a provisionally protected child is kept in a secure care facility must not exceed the period set out in an

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				interim order or otherwise, 21 days.
			90	The CEO must review the operation and effectiveness of every care plan at least every 12 months.
			92	Establishes a case review panel to review care planning decisions of the CEO.
			94	A person aggrieved by a decision of the CEO to confirm, vary or reverse a care planning decision (after consideration of a report from the case review panel) may apply to the State Administrative Tribunal for review.
	<b>Mental Health Act 1996</b>	WA	50	An involuntary patient must be examined by a psychiatrist before the end of the period specified in the order made under section 49 which may be up to 6 months.  <b>Note:</b> A draft Mental Health Bill has been released by the WA Government for public comment following a review of its mental health legislation last year.
			69	A community treatment order does not have effect unless 72 hours after it is made it is confirmed by another psychiatrist.
			75	The supervising psychiatrist of an involuntary patient in the community is to ensure that not more than one month passes without the patient being examined.
			Part 6	Establishes the Mental Health Review Board.
			137	In a review by the Board, it is to have regard to the psychiatric condition of the person and consider the medical and psychiatric

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				history and the social circumstances of the person.
			138	As soon as practicable and within at least 8 weeks of the making of an order in relation to an involuntary patient, the Board is to carry out a review of whether or not the order should continue to have effect.
			139	As soon as practicable and within at least 8 weeks of the making of an order in relation to an involuntary patient, the Board is to carry out a review of whether or not the order should continue to have effect.
			148A	A person in respect of whom the Board makes a decision or order may without payment of any fee, apply to the State Administrative Tribunal for a review of the decision or order.
			149	A person in respect of whom the State Administrative Tribunal makes a decision who is dissatisfied with the decision may without leave, appeal under section 105 of the <i>State Administrative Tribunal Act</i> against the decision or order.
			Part 9	Establishes the Council of Official Visitors to ensure affected persons are informed of their rights, inspect facilities, be accessible to hear complaints, enquire into and resolve complaints and to assist with the making and presentation of an application or appeal under this Act in respect of an affected person or, to make any such application.

## 7. Northern Territory

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<p><b>Care and Protection of Children Act</b></p>	<p>NT</p>	70	As soon as practicable after a child is taken into the CEO's care, the CEO must prepare and implement a care plan for the child.
			74(1)	The CEO must conduct regular reviews of the care plan; 2 months after the child is taken into the CEO's care and every 6 months thereafter.
			74(2)	In addition the CEO must conduct a review following death of a parent or carer of the child, change of placement arrangement or variation of court order relating to the child.
			74(3)	Plan may be reviewed at any other time.
			74(4)	In conducting a review the CEO must have regard to views of the child, parent or carer of the child and any other person having a direct and significant interest in the wellbeing of the child.
	<p><b>Disability Services Act</b></p>	<p>NT</p>	39(1)	A behaviour support plan for a person with a disability must be reviewed by the CEO at least once in each 12 months.
			39(2)	The person with a disability or a person consulted in its preparation may request the CEO to review the behaviour support plan at any time.
			40	A resident of a residential facility or someone consulted on the preparation of a behaviour support plan may apply to the review panel for the review of the inclusion of the use of a restrictive



CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
				intervention in the plan.
			Part 5	Provides for procedures to be established and followed to deal with complaints relating to residents of the facility.
			Part 6	<p>Provides for the community visitors program for community visitors to access residential facilities to amongst other things:</p> <p>(a) inquire into and make recommendations in relation to such things as the adequacy of information relating to the rights of residents receiving treatment; and</p> <p>(b) hear and facilitate the resolution of complaints of residents and help residents make complaints, apply for reviews or file notices of appeal under the Act.</p>
	<b>Mental Health and Related Services Act</b>	NT	39	A person admitted as an involuntary patient on the grounds of mental illness may be detained at an approved treatment facility for up to 24 hours or for up to 14 days after a psychiatric examination.
			40	An authorised psychiatric practitioner must examine an involuntary patient not less than once every 72 hours and must discharge the person if satisfied that the person no longer meets the criteria for admission.
			42	An involuntary patient on grounds of mental disturbance may be detained for up to 72 hours on those grounds. They may be detained for a further period of up to 7 days if 2 psychiatric practitioners are satisfied that the person is likely to cause serious harm, is likely to suffer serious mental deterioration and there is no less restrictive way of ensuring the person receives

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				treatment and care.
			44	A psychiatric practitioner must examine a person admitted as an involuntary patient on grounds of mental disturbance every 24 hours where the person is detained initially for 72 hours. If the person is detained for the further period of 7 days they must be examined not less than once every 72 hours.
			48	The Tribunal must review an interim community management order as soon as practicable after it has been made and make a community management order.
			50	A psychiatric practitioner must examine a person subject to a community management order no less frequently than specified in the order and regularly review the order.
			55(1)	Subject to 55(2), treatment must not be administered to a person who is admitted as an involuntary patient unless it is authorised by the Tribunal.
			Part 14	<p>Provides for Principal Community Visitor and community visitors to:</p> <p>inquire into and make recommendations in relation to adequacy of services, standard of facilities, adequacy of information, effectiveness of complaint procedures and other matters; and</p> <p>to be accessible to patients to hear and resolve complains and assist with making applications under the Act relating to complaints, reviews or appeals and where appropriate to present those applications.</p>

## 8. Tasmania

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>Tasmania</b>			
	<p><b>Children, Young Persons and Their Families Act 1997</b></p>	<p>Tas</p>	<p>42</p>	<p>This section provides for a care and protection order to be made.</p> <p>Care and protection order</p> <p>(1) In this section, '<b>specified</b>' means specified in a care and protection order.</p> <p>(2) The Secretary may apply to the Court for a care and protection order.</p> <p>(3) On the application of the Secretary, the Court may make a care and protection order if:</p> <p>(a) the Court is satisfied:</p> <p>(i) that a child is at risk; and</p> <p>(ii) that a care and protection order should be made to secure the care and protection of the child; or</p> <p>(b) the Court is satisfied that:</p> <p>(i) proper arrangements exist for the care and protection of a child (whether pursuant to the Secretary approving the arrangements recommended in a decision of a family group conference or otherwise); and</p>

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				<p>(ii) the child would be likely to suffer significant psychological harm if the arrangements were to be disturbed; and</p> <p>(iii) it would be in the best interests of the child for the arrangements to be incorporated in a care and protection order.</p> <p>(4) A care and protection order may contain one or more of the following orders:</p> <p>(a) an order requiring the child or a guardian of the child, for a specified period not exceeding 12 months, to do any specified thing or to refrain from doing any specified thing;</p> <p>(b) an order granting custody of the child, for a specified period not exceeding 12 months, to one of the following persons:</p> <p>(i) a guardian of the child; or</p> <p>(ii) a member of the child's family; or</p> <p>(iii) the chief executive officer of a non-Government organisation that provides facilities for the residential care of children, or a person who holds a position similar in nature to that of chief executive officer in such an organisation; or</p> <p>(iv) the Secretary; or</p> <p>(v) any other person that the Court considers appropriate in the circumstances; or</p> <p>(c) an order placing the child, for a specified period not exceeding 12 months, under the guardianship of:</p>

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				<ul style="list-style-type: none"> <li>(i) the Secretary; or</li> <li>(ii) one or 2 other persons; or</li> <li>(d) an order placing the child, until the child attains 18 years of age, under the guardianship of:               <ul style="list-style-type: none"> <li>(i) the Secretary; or</li> <li>(ii) one or 2 other persons; or</li> <li>(e) an order providing for access to the child; or</li> <li>(f) an order providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child; or</li> <li>(g) any other order the Court considers appropriate.</li> </ul> </li> <li>(5) A care and protection order may include conditions to be observed by one or more of the following persons:               <ul style="list-style-type: none"> <li>(a) the child; or</li> <li>(b) a guardian of the child; or</li> <li>(c) a person with whom the child is living; or</li> <li>(d) the Secretary; or</li> <li>(e) a person who is to supervise the child; or</li> </ul> </li> </ul>

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				<p>(f) a person who is granted custody of the child; or</p> <p>(g) any other person who is involved with the care and protection of the child.</p> <p>(6) The Court may not make an order under subsection (4)(d) unless satisfied that:</p> <p>(a) all reasonable steps have been taken to provide the services required to enable the child's protection and care needs to be met within the home of a parent or other existing guardian of the child; and</p> <p>(b) the person proposed as guardian:</p> <p>(i) is suitable to have guardianship of the child, having regard to any prescribed matters; and</p> <p>(ii) is willing and able to assume guardianship of the child; and</p> <p>(c) the wishes and feelings of the child have been duly considered, having regard to the age, understanding and maturity of the child; and</p> <p>(d) the wishes of the parents in respect of any prescribed matters referred to in paragraph (b)(i) have been duly considered; and</p> <p>(e) no other order, apart from the order considered, would be in the best interests of the child.</p>
			44	A care and protection order may be extended.

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				<p>Extension of care and protection order</p> <p>(1) On the application of the Secretary made before a care and protection order under section 42(4)(a), (b) or (c) ceases to have effect, the Court may extend that order if:</p> <p>(a) a family group conference has been held to review the arrangements for securing the care and protection of the child implemented under that order; and</p> <p>(b) the Court is satisfied:</p> <p>(i) that the child would be at risk if the order were to cease to have effect; or</p> <p>(ii) that it is in the best interests of the child for those arrangements to continue to be the subject of a care and protection order.</p> <p>(2) A care and protection order may not be extended so that the total period of the order exceeds 3 years.</p> <p>(3) If an application is made for the extension of a care and protection order before the day on which the order is due to cease to have effect but is not determined before that day, the order continues in force until the application is determined.</p>
			45	<p>Limited adjournment only</p> <p>The Court must not, unless it is satisfied that there are exceptional circumstances, grant adjournments in relation to an application for a care and protection order or the variation or revocation of a care and protection order so that the period</p>

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				between the lodging of the application and the commencement of the hearing exceeds 10 weeks.
			46	<p>Interim care and protection order on adjournment</p> <p>(1) If the Court adjourns the hearing of an application for a care and protection order, the Court may also make an interim care and protection order.</p> <p>(2) An interim care and protection order may contain one or more of the following orders:</p> <p>(a) an order requiring the child or a guardian of the child to do any specified thing or refrain from doing any specified thing; and</p> <p>(b) an order granting custody of the child to one or more of the following persons:</p> <p>(i) a guardian of the child; or</p> <p>(ii) a member of the child's family; or</p> <p>(iii) the chief executive officer of a non-Government organisation that provides facilities for the residential care of children, or a person who holds a position similar in nature to that of chief executive officer in such an organisation; or</p> <p>(iv) the Secretary; or</p> <p>(v) any other person that the Court considers appropriate in the circumstances; or</p>



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				<p>(c) an order placing the child under the guardianship of the Secretary or one or 2 other persons as the Court considers appropriate in the circumstances; or</p> <p>(d) an order providing for access to the child; or</p> <p>(e) an order providing for the way in which a person who has custody or guardianship of the child under an order of the Court is to deal with matters relating to the care, protection, health, welfare or education of the child; or</p> <p>(f) any other order the Court considers appropriate.</p> <p>(3) An interim care and protection order may include conditions to be observed by one or more of the following persons:</p> <p>(a) the child; or</p> <p>(b) a guardian of the child; or</p> <p>(c) a person with whom the child is living; or</p> <p>(d) the Secretary; or</p> <p>(e) a person who is to supervise the child; or</p> <p>(f) a person who is granted custody of the child; or</p> <p>(g) any other person who is involved with the care and protection of the child.</p> <p>(4) An interim care and protection order has effect for the period of the adjournment and any subsequent adjournment.</p>

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				(5) This section does not prevent the Court from varying or revoking an interim care and protection order or from making a further interim care and protection order on any subsequent adjournment.
	<b>Mental Health Act 2006</b>	Tas	3	<b>'guardian'</b> means:  (a) a guardian appointed under a guardianship order; or  (b) an enduring guardian appointed under Part 5 of the <i>Guardianship and Administration Act 1995</i> ;
3			<b>'parent'</b> includes a guardian and a person acting <b>'in loco parentis'</b> ;	
5			<b>'Person responsible'</b> for another person means:  (a) where the other person is under 18 years and has a spouse, the spouse; or  (b) where the other person is under 18 years and has no spouse, his or her parent.	
17			A person may be admitted as a patient to an approved hospital:  (a) if the person is of or over the age of 14 years, with the consent of the person; or  (b) if the person is under the age of 14 years, with the consent of his or her parent; or  (c) under an initial order, a continuing care order or an	

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				authorisation for temporary admission.
			19	<p>A person is a voluntary patient if at the time of admission:</p> <p>(a) the person is of or over the age of 14 years and is admitted to an approved hospital with his or her consent; or</p> <p>(b) the person:</p> <p>(i) is under the age of 14 years; and</p> <p>(ii) is admitted to an approved hospital with the consent of his or her parent; and</p> <p>(iii) does not resist admission to the approved hospital.</p>
			24	<p>A person may be detained as an involuntary patient in an approved hospital if:</p> <p>(a) the person appears to have a mental illness; and</p> <p>(b) there is, in consequence, a significant risk of harm to the person or others; and</p> <p>(c) the detention of the person as an involuntary patient is necessary to protect the person or others; and</p> <p>(d) the approved hospital is properly equipped and staffed for the care or treatment of the person.</p>
			25	<p>An application for an order for the admission and detention of a person as an involuntary patient in an approved hospital may be made by:</p>

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				(a) an authorised officer; or (b) the person responsible for the person for whom admission to the approved hospital is sought.
			51	Functions of Mental Health Tribunal  The functions of the Mental Health Tribunal are: (a) to review decisions and orders to admit persons as involuntary patients in approved hospitals; and (b) to carry out periodic reviews of the detention of involuntary patients in approved hospitals; and (c) to review the making of, and carry out periodic reviews of, community treatment orders; and (d) to receive reports on the use of restraint, seclusion and the withholding of information under section 45(3) and, if thought fit, to issue directions or guidelines for regulating any such matter; and (da) to review a decision to admit an involuntary patient to a secure mental health unit under section 72B; and (e) to carry out the other functions conferred on the Mental Health Tribunal under this or any other Act.
			52	Reviews of certain orders, authorisations and admissions  (1) The Mental Health Tribunal must review a continuing care order or a community treatment order within 28 days after the

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				<p>date when the order is made.</p> <p>(2) The Mental Health Tribunal must review a continuing care order or a community treatment order within 28 days after the date when the order is renewed.</p> <p>(3) The Mental Health Tribunal must review a transfer of an involuntary patient to Tasmania under Division 1 of Part 12 within 28 days after the date on which the patient is transferred.</p> <p>(3A) The Mental Health Tribunal must review the admission of an involuntary patient to a secure mental health unit under section 72B within 3 days after the date on which the patient is so admitted.</p> <p>(4) In addition to the mandatory reviews required under this section, the Mental Health Tribunal must, subject to subsection (5), review:</p> <p>(a) a continuing care order; or</p> <p>(b) a community treatment order; or</p> <p>(ba) an authorisation for temporary admission; or</p> <p>(c) a transfer order made under section 39(1) or the refusal to make any such order; or</p> <p>(d) the transfer of an involuntary patient under Part 12:</p> <p>on application by the patient, a person responsible for the patient or another person who has, in the opinion of the Mental Health</p>

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				<p>Tribunal, a proper interest in the patient's welfare.</p> <p>(5) The Mental Health Tribunal may decline to carry out a review on application under subsection (4) if:</p> <p>(a) the period that has elapsed since the last review is 3 months or less; or</p> <p>(b) the application does not indicate a material change in the circumstances of the case since the time of the last review.</p> <p>(6) The Mental Health Tribunal may combine a review under subsection (4) with a mandatory review.</p>
			53	<p>This section sets out the review application process.</p> <p>Applications for review</p> <p>(1) An application for review of a decision, order or authorisation for temporary admission that is subject to review under this Act may be made in writing to the registrar.</p> <p>(2) The application must state the grounds on which the applicant seeks a review of the decision, order or authorisation for temporary admission.</p> <p>(3) The controlling authority of an approved hospital must ensure that reasonable assistance is available to involuntary patients in the hospital:</p> <p>(a) to make out applications for review of decisions, orders or authorisations for temporary admission under this Act affecting</p>

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				<p>the involuntary patients; and</p> <p>(b) to lodge the applications with the registrar.</p> <p>(4) An application for review may be withdrawn at any time.</p> <p>(5) An application for review may be heard by the Mental Health Tribunal notwithstanding that the patient to whom the application relates has been released from detention.</p>
			54	<p>This section provides that a review is to be heard within 21 days.</p> <p>Notification and hearing of review</p> <p>(1) The registrar must give reasonable notice of a review under this Act to:</p> <p>(a) the involuntary patient; and</p> <p>(b) the person responsible for the involuntary patient; and</p> <p>(c) where relevant, the controlling authority of the approved hospital; and</p> <p>(d) any other person to whom the Mental Health Tribunal directs that notice should be given.</p> <p>(2) A review sought under section 53 is to be heard within 21 days after the date when the application is made unless another review under this Act is to be heard within 35 days after that date except for the review of an authorisation for temporary admission, which is to be heard within 7 days after the date</p>

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			72A	<p>when the application is made.</p> <p>Admission of forensic patients</p> <p>(1) A person may be admitted to a secure mental health unit as a forensic patient if:</p> <p>(a) the person is subject to a restriction order; or</p> <p>(b) the person is subject to a supervision order and is apprehended under section 31 of the <i>Criminal Justice (Mental Impairment) Act 1999</i>; or</p> <p>(c) the person is subject to an order under section 39(1)(b)(ii) of the <i>Criminal Justice (Mental Impairment) Act 1999</i>; or</p> <p>(d) the person is subject to an assessment order made under the <i>Sentencing Act 1997</i>; or</p> <p>(e) the person is subject to an order made under section 47 of the <i>Justices Act 1959</i> committing him or her to a secure mental health unit; or</p> <p>(f) the person is subject to an order made under section 348 of the <i>Criminal Code</i> remanding him or her to a secure mental health unit; or</p> <p>(g) the person is subject to an order made under section 105 of the <i>Youth Justice Act 1997</i> remanding him or her to a secure mental health unit; or</p> <p>(h) the person is subject to any other order of a court made under the <i>Criminal Justice (Mental Impairment) Act 1999</i>, the</p>



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				<p><i>Criminal Code Act 1924</i>, the <i>Sentencing Act 1997</i>, the <i>Youth Justice Act 1997</i> or the <i>Justices Act 1959</i> remanding or committing him or her to or in, or otherwise requiring him or her to be detained in, a secure mental health unit; or</p> <p>(i) in the case of a person who is a prisoner but not a detainee under the <i>Youth Justice Act 1997</i>, the Director makes a direction under section 36A(2) or (3) of the <i>Corrections Act 1997</i> that the person be removed from a prison to a secure mental health unit; or</p> <p>(j) in the case of a person who is a detainee under the <i>Youth Justice Act 1997</i>, the Secretary (Youth Justice) makes a direction under section 134A(2) or (3) of that Act that the person be removed from a detention centre to a secure mental health unit.</p> <p>(2) A forensic patient may be detained by the controlling authority of a secure mental health unit –</p> <p>(a) if the patient is subject to a restriction order, until the order is discharged; or</p> <p>(b) if the patient is subject to a supervision order, for the period allowed under section 31(6), (7) or (8) of the <i>Criminal Justice (Mental Impairment) Act 1999</i>; or</p> <p>(c) if the patient is subject to an order referred to in subsection (1)(c), (d), (e), (f), (g) or (h), until the order ends by reason of the terms of the order or the provisions of any Act; or</p> <p>(d) if the patient is a prisoner admitted to the secure mental health unit by a direction referred to in subsection (1)(i), until</p>

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				<p>whichever of the following events first occurs:</p> <p>(i) the end of the period specified in the direction or an agreement made under section 36A(5) of the <i>Corrections Act 1997</i>;</p> <p>(ii) the end of the period of 48 hours, or such longer period as agreed between the Director and the Chief Forensic Psychiatrist, after the Chief Forensic Psychiatrist requires the Director to remove the person from the secure mental health unit under section 36A(7) of the <i>Corrections Act 1997</i>;</p> <p>(iii) the end of the period of 48 hours after the Chief Forensic Psychiatrist determines under section 72E(4) that it would be appropriate for the patient to be returned to the custody of the Director or any longer period agreed under that section;</p> <p>(iv) the prisoner is released from prison on parole under the <i>Corrections Act 1997</i>;</p> <p>(v) where the prisoner is a detainee, within the meaning of the <i>Corrections Act 1997</i>, the order remanding or otherwise committing him or her to prison ends;</p> <p>(vi) the prisoner completes his or her sentence of imprisonment; or</p> <p>(e) if the patient is a youth detainee admitted to the secure mental health unit by a direction referred to in subsection (1)(j), until whichever of the following events first occurs:</p> <p>(i) the end of the period specified in the direction;</p>

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				<p>(ii) the end of the period of 48 hours, or such longer period as agreed between the Secretary (Youth Justice) and the Chief Forensic Psychiatrist, after the Chief Forensic Psychiatrist requires that Secretary to remove the youth detainee from the secure mental health unit under section 134A(5) of the <i>Youth Justice Act 1997</i>;</p> <p>(iii) the end of the period of 48 hours after the Chief Forensic Psychiatrist determines under section 72E(4) that it would be appropriate for the youth detainee to be returned to the custody of the Secretary (Youth Justice) or any longer period agreed under that section;</p> <p>(iv) the youth detainee is released from detention on a supervised release order under the <i>Youth Justice Act 1997</i>;</p> <p>(v) where the youth detainee has not been sentenced for the offence in respect of which he or she is being detained in custody, the order remanding or otherwise committing him or her to a detention centre ends; or</p> <p>(vi) the youth detainee completes his or her sentence of imprisonment.</p>
			72C	<p>This section sets out the review procedure for involuntary patients in secure mental health units. reviews must occur within 3 days.</p> <p>Review of admission under section 72B</p> <p>(1) The Mental Health Tribunal is to:</p> <p>(a) review the admission of an involuntary patient to a secure</p>

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				<p>mental health unit within 3 days after being notified of that admission under section 72B(4); and</p> <p>(b) review any extension of the period of that admission within 3 days after being notified of that extension under section 72B(5A).</p> <p>(2) The Mental Health Tribunal may conduct a review under this section despite its failure or inability to notify the person responsible for the involuntary patient as required by section 54(1)(b).</p> <p>(3) On reviewing the admission of an involuntary patient to a secure mental health unit or any extension of the period of that admission, the Mental Health Tribunal may –</p> <p>(a) confirm the admission or extension and the period for which the patient can be detained in the secure mental health unit determined by the Chief Forensic Psychiatrist and the controlling authorities of the approved hospital and secure mental health unit concerned; or</p> <p>(b) confirm the admission or extension but shorten the period of detention; or</p> <p>(c) direct that the patient be returned to the approved hospital.</p> <p>(4) The Mental Health Tribunal is to notify the Chief Forensic Psychiatrist, the controlling authorities of the approved hospital and secure mental health unit concerned and the person responsible for the patient of its decision under subsection (3) as soon as practicable.</p>

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			72E	<p>Forensic patients can request that they be returned to prison, after which the patient is to be assessed.</p> <p>Right of certain forensic patients to request return to prison</p> <p>(1) In this section:</p> <p><b>'voluntary forensic patient'</b> means a forensic patient referred to in section 72A(1)(i) or (j) if the direction under section 36A(2) or (3) of the <i>Corrections Act 1997</i> or section 134A(2) or (3) of the <i>Youth Justice Act 1997</i> that removed the patient to the secure mental health unit was made at the request of the patient.</p> <p>(2) At any time, a voluntary forensic patient may request the Chief Forensic Psychiatrist, in writing, that he or she be returned to the custody of the Director or the Secretary (Youth Justice).</p> <p>(3) On receipt of the request of a voluntary forensic patient, the Chief Forensic Psychiatrist is to ensure that the patient is assessed by an approved medical practitioner for the purpose of determining whether it would be suitable for the patient to be returned to the custody of the Director or the Secretary (Youth Justice).</p> <p>(4) If the Chief Forensic Psychiatrist, after considering the assessment of the approved medical practitioner, determines that it would be appropriate to return the voluntary forensic patient to the custody of the Director or the Secretary (Youth Justice):</p> <p>(a) the Chief Forensic Psychiatrist, as soon as practicable, is to require the Director or the Secretary (Youth Justice) to remove the patient from the secure mental health unit; and</p>

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				<p>(b) the patient is to be so removed from the secure mental health unit and transferred to the custody of the Director or the Secretary (Youth Justice) within 48 hours after the requirement is made under paragraph (a) or such longer period as agreed between the Chief Forensic Psychiatrist and the Director or that Secretary.</p> <p>(5) If the Chief Forensic Psychiatrist determines that it would not be appropriate to return the voluntary forensic patient to a prison, the patient is taken not to be a voluntary forensic patient from the time that determination is made.</p> <p>(6) If the Chief Forensic Psychiatrist determines that it would not be appropriate to return the voluntary forensic patient to a prison, the patient may apply within 7 days to the Forensic Tribunal for a review of the determination.</p> <p>(7) On the review of a determination of the Chief Forensic Psychiatrist, the Forensic Tribunal may confirm the determination or revoke the determination.</p> <p>(8) If the Forensic Tribunal revokes the determination of the Chief Forensic Psychiatrist, subsection (4) applies as if the Chief Forensic Psychiatrist had determined that it would be appropriate to return the voluntary forensic patient to the custody of the Director or the Secretary (Youth Justice).</p>

## 9. Australian Capital Territory

### CONVENTION ON THE RIGHTS OF THE CHILD (CRC): TABLE OF RELEVANT AUSTRALIAN LEGISLATION

CRC Article Number & Description	Relevant Australian Legislation	Cth/ State	Relevant Provisions of the Australian Legislation	Summary/Description of Relevant Provision
<p><b>ARTICLE 25:</b> States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.</p>	<b>Australian Capital Territory</b>			
	<p><b>Children and Young People Act 2008</b></p>	<p>ACT</p>	<p>19</p>	<p>This section allows a person with daily care and responsibility for a child to consent to a health assessment. See (2)(a) and (b) in particular.</p> <p>Daily care responsibility for children and young people</p> <p>(1) A person who has '<b>daily care responsibility</b>' for a child or young person has responsibility for, and may make decisions about, the child's or young person's daily care.</p> <p><b>Examples - daily care responsibilities and decisions</b></p> <p>(1) where and with whom the child or young person lives</p> <p>(2) people with whom the child or young person may, or must not, have contact</p> <p>(3) arrangements for temporary care of the child or young person by someone else</p> <p>(4) everyday decisions, including, for example, about the personal appearance of the child or young person</p> <p>(5) daily care decisions about education, training and employment</p> <p><b>Note:</b> An example is part of the Act, is not exhaustive and may</p>

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				<p>extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).</p> <p>(2) A person who has daily care responsibility for a child or young person may do any of the following:</p> <p>(a) consent to a health care assessment of the child or young person’s physical or mental wellbeing and have access to the assessment report;</p> <p>(b) on the advice of a health practitioner or health professional - consent to health care treatment, not including surgery (other than surgery mentioned in paragraph (c)), for the child or young person; and</p> <p>(c) on the advice of a dentist or dental therapist - consent to dental treatment, including minor dental surgery, for the child or young person.</p> <p>(3) If the person makes a decision about the people with whom the child or young person may have contact, the person is also responsible for arrangements to give effect to the decision.</p> <p>(4) This section does not limit the matters for which the person has responsibility to make decisions for the child or young person, but is subject to:</p> <p>(a) a court order (under this Act or another law); and</p> <p><b>Examples</b></p> <p>1 A decision by a person who has daily care responsibility for a child about people with whom the child may or may not have</p>



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				<p>contact is subject to a care and protection order that includes a contact provision about who may, or must not, have contact with the child.</p> <p>2 A decision by a person who has daily care responsibility for a child or young person about where and with whom the child or young person lives is subject to a care and protection order that includes a residence provision.</p> <p>3 The Children's Court makes a care and protection order for a young person that includes a parental responsibility provision that a stated person who has daily care responsibility for the young person must exercise it in a stated way. The person's exercise of daily care responsibility for the young person is subject to the order.</p> <p><b>Note:</b> An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).</p> <p>(b) if there is a care plan in force for the child or young person - the care plan.</p> <p><b>Note:</b> A care plan for a child or young person is a written plan of the director-general's proposals for the care and protection of the child or young person (see s 455).</p> <p>(5) To remove any doubt, this section does not affect any right of a child or young person to consent to their own health care treatment.</p> <p>(6) In this section:</p>

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				<p><b>'dental therapist':</b></p> <p>(a) means a person registered under the <i>Health Practitioner Regulation National Law (ACT) Act 2010</i> to practise the health profession of dental therapist (other than as a student); and</p> <p>(b) for an activity, includes a person mentioned in paragraph (a) holding limited or provisional registration, to the extent that the person is allowed to do the activity under the person's registration.</p> <p><b>'health care assessment'</b>, of a child or young person, means an assessment of the child's or young person's physical or mental wellbeing (including admission to hospital).</p>
			109	<p>This section relates to youth detention, and provides for health care. See (4) in particular - a health practitioner must approve discharge.</p> <p>Transfers to health facilities</p> <p>(1) The director-general may direct that a young detainee be transferred to a health facility at a detention place, or outside a detention place, if the director-general believes on reasonable grounds that it is necessary or prudent for the young detainee to receive health services at the facility.</p> <p><b>Note:</b> <b>'Health facility'</b> - see the dictionary.</p> <p>(2) The director-general must have regard to the advice of a treating doctor when considering whether to make a direction under subsection (1).</p>

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				<p>(3) The director-general may direct an escort officer to escort the young detainee to or from the health facility, or while at the facility.</p> <p>(4) The young detainee may be discharged from the health facility only if:</p> <p>(a) the health practitioner or health professional in charge of the young detainee's care approves the discharge; or</p> <p>(b) the director-general directs that the young detainee be removed from the facility.</p> <p><b>Example - direction for removal of young detainee from health facility</b></p> <p>where the young detainee is a danger to the safety of people at the facility</p> <p><b>Note:</b> An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).</p> <p>(5) The director-general must have regard to the health of the young detainee when considering whether to make a direction under subsection (4).</p> <p>(6) The director-general may give a direction for ensuring that a young detainee discharged from a health facility under subsection (4) is returned to a detention place stated in the direction.</p> <p>(7) For chapter 8 (Criminal matters - discipline at detention</p>

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			209	<p>places), this section is taken to provide an entitlement for each young detainee in relation to health care.</p> <p>Young detainees may be segregated in a safe-room.</p> <p>Segregation - safe room</p> <p>(1) The director-general may direct that a young detainee be segregated from other young detainees by separate confinement in a safe room if:</p> <p>(a) the director-general believes on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young detainee harming himself or herself; and</p> <p>(b) the director-general has:</p> <p>(i) tried less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways have not been successful; or</p> <p>(ii) considered less restrictive ways to prevent an imminent risk of the young detainee harming himself or herself but the less restrictive ways were not appropriate.</p> <p>(2) When considering whether to make the direction, the director-general must have regard to the young detainee's age, sex, maturity, cultural identity physical and mental health and any history of abuse.</p> <p>(3) The director-general may give the direction at any time, on the director-general's own initiative.</p>

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				(4) The director-general must revoke the direction if the director-general believes on reasonable grounds that the grounds for making the direction no longer exist.
			211	<p>Segregation must be reviewed after 2 hours and at the end of each subsequent 2 hour period.</p> <p>Review of safe room segregation directions</p> <p>(1) The director-general must review a safe room segregation direction:</p> <p>(a) after it has been in effect for 2 hours; and</p> <p>(b) at the end of every subsequent 2 hour period for which it is in effect.</p> <p>(2) When reviewing a direction under subsection (1) (b), the director-general must:</p> <p>(a) seek the advice of a health practitioner (other than a non-treating health practitioner) about the action the director-general should take under subsection (4); and</p> <p>(b) have regard to that advice in deciding what action to take.</p> <p>(3) The director-general may also review a safe room segregation direction at any other time, on the director-general's own initiative or on request by the young detainee.</p> <p>(4) After reviewing a safe room segregation direction under subsection (1) or (3), the director-general must do 1 of the</p>

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				<p>following:</p> <p>(a) confirm the direction; or</p> <p>(b) make a further safe room segregation direction if the grounds for making the direction exist; or</p> <p>(c) revoke the direction under section 209 (4); or</p> <p>(d) make a direction under section 109 that the young detainee be transferred to a health facility.</p> <p>(5) To remove any doubt, the director-general may make more than 1 further safe room segregation direction after a review.</p>
			214	<p>Young detainees may be segregated on health grounds.</p> <p>Segregation - health etc</p> <p>(1) The director-general may direct that a young detainee be segregated from other young detainees if the director-general believes on reasonable grounds that the segregation is necessary or prudent:</p> <p>(a) to assess the young detainee's physical or mental health; or</p> <p>(b) to protect anyone (including the young detainee) from harm because of the young detainee's physical or mental health; or</p> <p>(c) to prevent the spread of disease.</p> <p>(2) The director-general must revoke the direction if the director-general believes on reasonable grounds that the purpose</p>

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				<p>mentioned in subsection (1) for making the direction is no longer necessary or prudent.</p> <p>(3) When acting under subsection (1) or (2), the director-general must have regard to any advice by a treating doctor given in relation to the segregation of the young detainee.</p>
			217	<p>Segregation must be reviewed after 7 days, then after a further 7 days, then after each 14 day period.</p> <p>Internal review of segregation directions</p> <p>(1) The director-general:</p> <p>(a) may review a segregation direction (the '<b>original segregation direction</b>') at any time, on the director-general's own initiative or on request by the young detainee; and</p> <p>(b) must review the direction before any transfer of the young detainee to a correctional centre or elsewhere; and</p> <p>(c) must review the direction:</p> <p>(i) before the end of 7 days after it has been in force (the '<b>initial</b></p>

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				<p><b>review'</b>); and</p> <p>(ii) before the end of 7 days after the day of the initial review; and</p> <p>(iii) before the end of each subsequent period of 14 days while it remains in force; and</p> <p>(d) for a health segregation direction - must review the direction on request by a treating doctor.</p> <p>(2) After reviewing the original segregation direction, the director-general may:</p> <p>(a) confirm the direction; or</p> <p>(b) make a further segregation direction under the same provision that the original segregation direction was made under if the grounds for making the direction exist; or</p> <p>(c) revoke the original segregation direction under section 212 (3), section 213 (3) or section 214 (2).</p> <p>(3) When acting under subsection (2) in relation to a health segregation direction, the director-general must have regard to any advice by a treating doctor given in relation to the segregation.</p> <p>(4) To remove any doubt, the director-general may make more than 1 further segregation direction after a review.</p>
			220	External review is available.



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				<p>External review of segregation directions</p> <p>(1) On application under section 219, an external reviewer may:</p> <p>(a) review the segregation direction; or</p> <p>(b) refuse to review the direction.</p> <p>(2) Chapter 9 (Criminal matters - conduct of disciplinary reviews) applies, with any necessary changes, in relation to the review as if it were a review under that chapter.</p> <p>(3) After completing a review, the external reviewer may:</p> <p>(a) confirm the direction under review; or</p> <p>(b) give any direction the director-general may give under the section authorising the direction under review, either by:</p> <p>(i) amending the direction under review; or</p> <p>(ii) setting aside the direction under review and making a direction in substitution for the direction set aside.</p>
			531	<p>A child or young person can be confined to a therapeutic protection place.</p> <p>Therapeutic protection only under therapeutic protection order or for emergency protection</p> <p>The director-general may confine a child or young person at a therapeutic protection place only:</p>

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				<p>(a) under a therapeutic protection order; or</p> <p>(b) under an interim therapeutic protection order; or</p> <p>(c) if the director-general believes on reasonable grounds the child or young person is in need of emergency therapeutic protection.</p>
			532	<p>What is a '<b>therapeutic protection order</b>'?</p> <p>In this Act:</p> <p><b>'therapeutic protection order'</b>, for a child or young person, means an order that:</p> <p>(a) directs that the child or young person be confined:</p> <p>(i) for a period of time (the '<b>period of confinement</b>') starting on a stated day (the '<b>start day</b>'); and</p> <p>(ii) at a therapeutic protection place; and</p> <p>(iii) for implementation of a stated therapeutic protection plan; and</p> <p>(b) transfers daily care responsibility for the child or young person to the director-general for the period of confinement; and</p> <p><b>Note:</b> Pt 15.3 (Director-general has daily care responsibility) does not apply if daily care responsibility for a child or young person is transferred to the director-general under a therapeutic protection order (see s 506).</p>

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				(c) includes any conditions the Children's Court considers necessary to prevent the child or young person from engaging in harmful conduct.
			542	<p>The Children's Court must consider an application for a therapeutic protection order within 2 working days.</p> <p>Therapeutic protection order - Children's Court to consider application promptly</p> <p>(1) The Children's Court must give initial consideration to an application for a therapeutic protection order not later than 2 working days after the day the application is filed.</p> <p>(2) The Children's Court must give directions about the conduct of the proceeding (including the hearing of the application) at the time the application is initially considered.</p> <p>(3) This section does not apply if the director-general or a police officer has daily care responsibility for a child or young person under part 13.1 (Emergency action).</p>
			545	<p>This section sets out the circumstances in which the Children's Court must make an interim therapeutic protection order.</p> <p>Interim therapeutic protection order - mental health referral</p> <p>(1) The Children's Court must make an interim therapeutic protection order for a child or young person if:</p> <p>(a) an application for a therapeutic protection order for the child or young person has been made but not finally decided; and</p>

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				<p>(b) the Children's Court suspects on reasonable grounds that the child or young person is suffering from a mental illness or mental dysfunction.</p> <p>(2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT:</p> <p>(a) to decide whether the child or young person is suffering from a mental illness or mental dysfunction; and</p> <p>(b) if the ACAT decides that the child or young person is suffering from a mental illness or mental dysfunction - to make recommendations to the Children's Court about how the child or young person should be dealt with.</p>
			546	<p>The interim therapeutic protection order must, in general, not exceed 2 weeks in length.</p> <p>Interim therapeutic protection order - length</p> <p>(1) The length of an interim therapeutic protection order:</p> <p>(a) must be stated in the order; and</p> <p>(b) must not be longer than 2 weeks.</p> <p>(2) However, if the interim therapeutic protection order would end before the application for the therapeutic protection order is decided, the interim order continues in force until the application is decided.</p> <p>(3) An interim therapeutic protection order must end on, or</p>

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			549	<p>before, the day the application for the therapeutic protection order is decided.</p> <p>This section sets out the criteria for therapeutic protection orders.</p> <p>Therapeutic protection order - criteria for making</p> <p>The Children's Court may, on the application of the director-general, make a therapeutic protection order for a child or young person only if satisfied that:</p> <p>(a) if the order is not made:</p> <p>(i) there will be a significant risk of significant harm to:</p> <p>(A) the child or young person; or</p> <p>(B) someone else; and</p> <p>(ii) the risk of harm arises from the child's or young person's conduct; and</p> <p>(iii) the risk of harm will be imminent; and</p> <p>(b) the director-general has:</p> <p>(i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or</p> <p>(ii) considered less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less</p>

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				<p>restrictive ways were not appropriate; and</p> <p>(c) there are no less restrictive ways for the director-general to prevent the child or young person from engaging in harmful conduct; and</p> <p>(d) the child or young person is at least 10 years old; or</p> <p>(e) the child or young person:</p> <p>(i) is not suffering from a mental illness or mental dysfunction; or</p> <p>(ii) in addition to any other behaviours or dysfunction giving rise to the risk of harm is suffering from a mental illness or mental dysfunction but the Children's Court is satisfied that making a therapeutic protection order for the child or young person is the best way to support the child or young person; and</p> <p><b>Note:</b> The Children's Court must make an interim therapeutic protection order for a child or young person if an application for a therapeutic protection order for the child or young person has been made but not finally decided and the court suspects on reasonable grounds that the child or young person is suffering from a mental illness or mental dysfunction. The order must direct the child or young person to submit to the jurisdiction of the ACAT (see s 545).</p> <p>(f) no-one who has parental responsibility for the child or young person (other than the director-general) is willing and able to prevent the child or young person from engaging in harmful conduct; and</p>

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				<p><b>Note:</b> Parental responsibility is dealt with in div 1.3.2.</p> <p>(g) confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and</p> <p>(h) the director-general has developed a therapeutic protection plan for the child or young person; and</p> <p>(i) the therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and</p> <p>(j) making the order is in the best interests of the child or young person.</p> <p><b>Examples - other ways to prevent child or young person from engaging in harmful conduct - par (b) and (c)</b></p> <p>1 The director-general provided Alex’s family with intensive family support services.</p> <p>2 The director-general sought a care and protection order including a parental responsibility provision for Bonny. Under the order, Bonny was placed with a foster carer and provided with intensive support services.</p> <p>3 The director-general provided Colin with the same services that are provided under a therapeutic protection plan but Colin was not confined at a therapeutic protection place.</p>
			550	Therapeutic protection orders must not exceed 8 weeks in

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				<p>length.</p> <p>Therapeutic protection order - length</p> <p>The length of a therapeutic protection order:</p> <p>(a) must be stated in the order; and</p> <p>(b) must not be longer than 8 weeks.</p> <p><b>Note:</b> A therapeutic protection order may be extended (see div 16.2.6).</p>
			553	<p>An initial review for a child or young person must be carried out within 4 weeks.</p> <p>Initial review within 4 weeks</p> <p>(1) This section applies if a therapeutic protection order is in force for a child or young person.</p> <p>(2) The director-general must review the operation of the order (the '<b>initial review</b>') not later than 4 weeks after the order is made.</p>
			554	<p>Ongoing reviews for a child or young person must be conducted every 4 weeks.</p> <p>Ongoing review at least each 4 weeks</p> <p>(1) This section applies if a therapeutic protection order is in force for a child or young person.</p> <p>(2) The director-general must review the operation of the order</p>



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				<p>(an '<b>ongoing review</b>') not later than 4 weeks after:</p> <p>(a) the initial review; and</p> <p>(b) each ongoing review.</p>
			557	<p>This section sets out the actions that may be taken by the Director-General after a review. The order can be extended, amended, or revoked.</p> <p>Director-general's action after review</p> <p>(1) This section applies if the director-general has carried out an initial review, or ongoing review, of the operation of a therapeutic protection order.</p> <p>(2) If the director-general decides that the order should be extended, the director-general must apply to the Children's Court for the order to be extended.</p> <p><b>Note:</b> The Children's Court may extend the order under div 16.2.6.</p> <p>(3) If the director-general decides that the order should be amended, the director-general must apply to the Children's Court for the order to be amended.</p> <p><b>Note:</b> Amending a therapeutic protection order is dealt with in div 16.2.7.</p> <p>(4) If the director-general decides that the order should be revoked, the director-general must apply to the Children's Court</p>

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				<p>for the order to be revoked.</p> <p><b>Note:</b> Revoking a therapeutic protection order is dealt with in div 16.2.7.</p>
			562	<p>This section sets out the criteria for extending a therapeutic protection order.</p> <p>Therapeutic protection order - criteria for extension up to 6 months</p> <p>(1) The Children's Court may, by order, extend a therapeutic protection order only if satisfied that:</p> <p>(a) if the order is not extended:</p> <p>(i) there will be a significant risk of significant harm to:</p> <p>(A) the child or young person; or</p> <p>(B) someone else; and</p> <p>(ii) the risk of harm arises from the child's or young person's conduct; and</p> <p>(iii) the risk of harm will be imminent; and</p> <p>(b) the director-general has:</p> <p>(i) tried less restrictive ways to prevent the child or young person from engaging in harmful conduct but the less restrictive ways have not been successful; or</p> <p>(ii) considered less restrictive ways to prevent the child or</p>

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				<p>young person from engaging in harmful conduct but the less restrictive ways were not appropriate; and</p> <p>(c) there are no less restrictive ways for the director-general to prevent the child or young person from engaging in harmful conduct; and</p> <p>(d) if, in addition to any other behaviours or dysfunction giving rise to the risk of harm, the child or young person is suffering from a mental illness or mental dysfunction - extending the order is the best way to support the child or young person; and</p> <p>(e) no-one who has parental responsibility for the child or young person (other than the director-general) is willing and able to prevent the child or young person from engaging in harmful conduct; and</p> <p><b>Note:</b> Parental responsibility is dealt with in div 1.3.2.</p> <p>(f) further confinement of the child or young person is necessary to prevent the child or young person from engaging in harmful conduct; and</p> <p>(g) the director-general has developed a further therapeutic protection plan for the child or young person; and</p> <p>(h) the further therapeutic protection plan is more likely than not to reduce the likelihood of the child or young person engaging in harmful conduct in the future; and</p> <p>(i) extending the order is in the best interests of the child or young person.</p>

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				<p><b>Note 1:</b> In a proceeding for a care and protection order, a fact is proved if it is proved on the balance of probabilities (see s 711).</p> <p><b>Note 2:</b> The Children's Court may make an order imposing an obligation on a person only if the person agrees to it, has been given an opportunity to be heard about it or cannot be found (see s 718).</p> <p>(2) The Children's Court may extend a therapeutic protection order for as long as a further 8 weeks.</p> <p>(3) However, the Children's Court must not extend a therapeutic protection order if the total length of the order and the proposed extension will be longer than 6 months.</p>
	<p><b>Mental Health (Treatment and Care) Act 1994</b></p>	<p>ACT</p>	<p>6</p>	<p>Proceeding relating to children</p> <p>In determining whether a person who is the subject of a proceeding is a child, regard shall be had to the age of the person at the commencement of the proceeding.</p>
			<p>16</p>	<p>Assessment orders</p> <p>(1) This section applies if:</p> <p>(a) the ACAT is satisfied, on the face of an application or referral under division 4.1 that a person is mentally dysfunctional or mentally ill, and that:</p> <p>(i) the person's health or safety is, or is likely to be, substantially at risk; or</p>

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				<p>(ii) the person is or is likely to do serious harm to others; or</p> <p>(b) the ACAT reviews a mental health order in force in relation to a person under section 36L; or</p> <p>(c) a person is required to submit to the jurisdiction of the ACAT by:</p> <p>(i) an ACAT mental health provision in a care and protection order or interim care and protection order; or</p> <p>(ii) an interim therapeutic protection order; or</p> <p>(d) a person is required to submit to the jurisdiction of the ACAT by an order under the <i>Crimes Act</i>, part 13 (Unfitness to plead and mental impairment); or</p> <p>(e) the ACAT reviews an order for detention in force in relation to a person under section 72 (Periodic review of orders for detention).</p> <p>(2) The ACAT may order an assessment in relation to the person.</p>
			21	<p>Assessment must take place within 7 days unless another time is stated in the assessment order. This time period may be extended, but only by 7 days.</p> <p>Time for conducting assessments</p> <p>(1) The assessment of a person in relation to whom an assessment order is made must be conducted as soon as</p>

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				<p>practicable, and not later than:</p> <p>(a) 7 days after the assessment order is made; or</p> <p>(b) another day stated in the assessment order.</p> <p>(2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).</p> <p>(3) The extension must be for a period not longer than 7 days.</p>
			24	<p>ACAT must hold inquiry</p> <p>Before making a mental health order in relation to a person, the ACAT must hold an inquiry into the matter.</p>
			25	<p>See 25(1)(a) in particular - the people with responsibility for the child are to be consulted.</p> <p>Consultation by ACAT etc</p> <p>(1) Before making a mental health order in relation to a person, the ACAT must, as far as practicable, consult:</p> <p>(a) if the person is a child - the people with parental responsibility for the child under the <i>Children and Young People Act 2008</i>, division 1.3.2; and</p> <p>(b) if the person has a guardian under the <i>Guardianship and</i></p>

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				<p><i>Management of Property Act 1991</i> - the guardian; and</p> <p>(c) the person most likely to be responsible for providing the treatment, programs and other services proposed to be ordered.</p> <p>(2) If the person has an attorney appointed under the <i>Powers of Attorney Act 2006</i>, the ACAT must also consider consulting the attorney.</p> <p>(3) Before making a mental health order for the provision of a particular treatment, program or other service (including an assessment) at a stated facility or by a stated person, the ACAT must be satisfied that the treatment, program or service can be provided or performed at that facility or by that person.</p>
			26	<p>See (e) in particular.</p> <p>What ACAT must take into account</p> <p>In making a mental health order in relation to a person, the ACAT must take into account the following:</p> <p>(a) whether the person consents, refuses to consent or has the capacity to consent, to a proposed course of treatment, care or support; and</p> <p>(b) the views and wishes of the person, so far as they can be found out; and</p> <p>(c) the views and wishes of the people responsible for the day-to-day care of the person, so far as those views and wishes are made known to the ACAT; and</p>

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				<p>(d) the views of the people appearing at the proceeding; and</p> <p>(e) the views of the people consulted under section 25; and</p> <p>(f) that the person’s welfare and interests should be appropriately protected; and</p> <p>(g) that the person’s rights should not be interfered with except to the least extent necessary; and</p> <p>(h) that the person should be encouraged to look after himself or herself; and</p> <p>(i) that, as far as possible, the person should live in the general community and join in community activities; and</p> <p>(j) that any restrictions placed on the person should be the minimum necessary for the safe and effective care of the person; and</p> <p>(k) the alternative treatments, programs and other services available, including:</p> <p>(i) the purposes of those treatments, programs and services; and</p> <p>(ii) the benefits likely to be derived by the person from those treatments, programs and services; and</p> <p>(iii) the distress, discomfort, risks, side effects or other disadvantages associated with those treatments, programs and services; and</p> <p>(l) any relevant medical history of the person; and</p>



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				<p>(m) the religious, cultural and language needs of the person; and</p> <p>(n) for a person referred to the ACAT under section 13 or an offender with a mental impairment - the nature and circumstances of the offence in relation to which the person has been arrested, or may be or has been charged; and</p> <p>(o) for an offender with a mental impairment - the nature and extent of the person's mental impairment, including the effect it is likely to have on the person's behaviour in the future; and</p> <p>(p) for an offender with a mental impairment - whether or not, if the person is not detained:</p> <p>(i) the person's health or safety is, or is likely to be, substantially at risk; or</p> <p>(ii) the person is likely to do serious harm to others; and</p> <p>(q) anything else prescribed under the regulations for this section.</p>
			35	<p>This section sets out powers after a psychiatric treatment order is in place, in relation to detaining and restraining patients.</p> <p>Powers in relation to detention, restraint etc</p> <p>(1) This section applies if a psychiatric treatment order has been made in relation to a person.</p> <p>(2) If the chief psychiatrist considers that it is necessary for the treatment and care of the person to detain the person at certain</p>

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				<p>premises, the chief psychiatrist may:</p> <p>(a) take, or authorise someone else to take, the person to the premises and for that purpose:</p> <p>(i) use the force and assistance that is necessary and reasonable to apprehend the person and take the person to the premises stated by the chief psychiatrist; and</p> <p>(ii) if there are reasonable grounds for believing that the person is at particular premises - enter those premises using the force and assistance that is necessary and reasonable; and</p> <p>(b) keep the person at the premises in the custody that the chief psychiatrist considers appropriate; and</p> <p>(c) subject the person to the confinement or restraint that is necessary and reasonable:</p> <p>(i) to prevent the person from causing harm to himself, herself or someone else; or</p> <p>(ii) to ensure that the person remains in custody under the order; and</p> <p>(d) subject the person to involuntary seclusion if satisfied that it is the only way in the circumstances to prevent the person from causing harm to himself, herself or someone else.</p> <p>(3) In acting under this section, the chief psychiatrist must have regard to the matters stated in section 7 (Objectives of Act) and section 9 (Maintenance of freedom, dignity and self-respect).</p>

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				<p>(4) If the chief psychiatrist subjects a person to involuntary restraint or seclusion, the chief psychiatrist must:</p> <p>(a) enter in the person’s record the fact of and the reasons for the involuntary restraint or seclusion; and</p> <p>(b) tell the public advocate in writing within 24 hours after the person is subjected to the involuntary restraint or seclusion; and</p> <p>(c) keep a register of the involuntary restraint or seclusion.</p>
			36L	<p>Review, variation and revocation of orders</p> <p>(1) The ACAT may, on application or on its own initiative, review a mental health order in force in relation to a person.</p> <p>(2) If the ACAT receives notice under section 34, section 36F or section 36K (2) in relation to a person, the ACAT must review the mental health orders in force in relation to the person within 72 hours.</p> <p>(3) Subsection (2) has effect despite section 85 (Notice of hearing).</p> <p>(4) If the ACAT is satisfied that a person subject to a psychiatric treatment order or community care order is no longer a person in relation to whom the ACAT could make a psychiatric treatment order or community care order, the ACAT must revoke all the mental health orders in force in relation to the person.</p> <p>(5) In any other case, the ACAT may, if appropriate to do so:</p> <p>(a) vary or revoke any of the mental health orders in force in</p>

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				<p>relation to the person; or</p> <p>(b) make additional mental health orders in relation to the person; or</p> <p>(c) make an order for another assessment under section 16 in relation to the person.</p>
			38	<p>This section sets out the detention powers.</p> <p>Detention</p> <p>(1) Where a person is taken to an approved health facility under section 37 or the <i>Crimes Act</i>, section 309 (1) (a), the person in charge of the facility shall detain the person at the facility and while the person is so detained:</p> <p>(a) may keep the person in such custody as the person in charge thinks appropriate; and</p> <p>(b) may subject the person to such confinement as is necessary and reasonable:</p> <p>(i) to prevent the person from causing harm to himself or herself or to another person; or</p> <p>(ii) to ensure that the person remains in custody; and</p> <p>(c) may subject the person to such restraint (other than confinement) as is necessary and reasonable:</p> <p>(i) to prevent the person from causing harm to himself or herself</p>

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				<p>or to another person; or</p> <p>(ii) to ensure that the person remains in custody.</p> <p>(2) If a doctor or mental health officer believes on reasonable grounds that a person who has voluntarily attended an approved health facility is a person to whom section 37 (2) (a) to (d) apply, the doctor or mental health officer may detain the person at the facility and, while the person is so detained, the person in charge of the facility may exercise the powers mentioned in subsection (1) (a) to (c) in relation to the person detained.</p>
			40	<p>The patient must be reviewed within 4 hours of detention.</p> <p>Examination by doctor</p> <p>(1) The person in charge of an approved health facility shall ensure that a person taken to the facility under section 37 or the <i>Crimes Act</i>, section 309 (1) (a) is examined by a doctor employed at the facility within 4 hours of the person arriving at the facility.</p> <p>(2) The person in charge of an approved mental health facility must ensure that a person detained at the facility under section 38 (2) is examined by a doctor employed at the facility within 4 hours of being detained.</p>
			41	<p>Authorisation of involuntary detention</p> <p>(1) Where the doctor who examines a person under section 40 has reasonable grounds for believing that:</p>

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				<p>(a) the person is mentally dysfunctional or mentally ill and:</p> <p>(i) as a consequence, requires immediate treatment or care; or</p> <p>(ii) in the opinion of the doctor, the person's condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care; and</p> <p>(b) the person has refused to receive that treatment or care; and</p> <p>(c) detention is necessary for the person's own health or safety, social or financial wellbeing, or for the protection of members of the public; and</p> <p>(d) adequate treatment or care cannot be provided in a less restrictive environment;</p> <p>the doctor may authorise the involuntary detention and care of the person at an approved mental health facility for a period not exceeding 3 days.</p> <p>(2) Where:</p> <p>(a) a person is detained under subsection (1); and</p> <p>(b) an application for further detention is made by a psychiatrist before the period of detention expires;</p> <p>the ACAT may order that, on the expiration of that period, the person be so detained for the further period (not exceeding 7 days) specified in the order.</p> <p><b>Note:</b> If a form is approved under s 146A (Approved forms) for</p>

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				<p>a seclusion register, the form must be used.</p> <p>(3) The ACAT shall, on application, review the decision of a doctor or mental health officer under subsection (1) (a) (ii) within 2 working days of the date of receipt of the application.</p> <p>(4) On receipt of an application under subsection (2) (b), the ACAT shall review an order under subsection (2) within 2 working days after the date of the application.</p>
			43	<p>Patient must be examined within 24 hours of being detained.</p> <p>Medical examination</p> <p>The person in charge of an approved mental health facility shall ensure that a proper physical and psychiatric examination of a person detained at the facility under section 41 (1) is undertaken within 24 hours of the person being so detained.</p>
			70A	<p>Recommendations about people with mental illness or mental dysfunction</p> <p>(1) This section applies if the Children's Court makes a care and protection order, interim care and protection order with a mental health ACAT provision or interim therapeutic protection order, under the <i>Children and Young People Act 2008</i> requiring a person to submit to the jurisdiction of the ACAT to enable the ACAT:</p> <p>(a) to determine whether the person has a mental illness or mental dysfunction; and</p> <p>(b) if the ACAT determines that the person has a mental illness</p>

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				<p>or mental dysfunction - to make recommendations to the court about how the person should be dealt with.</p> <p>(2) After an inquiry, and as the ACAT thinks appropriate in relation to the person:</p> <p>(a) the ACAT must determine on the balance of probabilities, whether or not the person has a mental illness or mental dysfunction; and</p> <p>(b) if the ACAT determines that the person has a mental illness or mental dysfunction, the ACAT must make recommendations to the court about how the person should be dealt with.</p>
			72	<p>Review is required after 6 months and then every 6 months afterwards.</p> <p>Periodic review of orders for detention</p> <p>(1) In this section:</p> <p><b>'order for detention'</b> means:</p> <p>(b) an order of a court under the <i>Crimes Act</i>, part 13 requiring a person to be detained in custody until the ACAT orders otherwise; or</p> <p>(c) an order of the ACAT requiring a person to be detained in custody under section 74.</p> <p>(2) Where a person has been in custody under an order for detention:</p>



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				<p>(a) for a period of 6 months; or</p> <p>(b) for a further period of 6 months following the last review of the order under this section;</p> <p>the ACAT shall, as soon as practicable, review the order for detention and may order the release of the person.</p> <p>(3) In considering whether or not to order the release of a person, the ACAT shall have regard to the following:</p> <p>(a) the nature and extent of the person’s mental dysfunction or mental illness, including the effect it is likely to have on the person’s behaviour in the future;</p> <p>(b) whether or not, if released:</p> <p>(i) the person’s health or safety would be, or would be likely to be, substantially impaired; or</p> <p>(ii) the person would be likely to do serious harm to others; and</p> <p>(c) the best estimate of the sentence of imprisonment nominated by the relevant court under the <i>Crimes Act</i>, part 13 as the sentence it would have imposed had the person been found guilty of the relevant offence.</p> <p>(4) An order for the release of a person may be made subject to such conditions (if any) as the ACAT thinks appropriate, including a requirement to comply with specified mental health orders.</p> <p>(5) If, on a review, the ACAT does not order the release of a</p>

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				<p>person, the ACAT may:</p> <p>(a) make mental health orders (including additional orders) in respect of the person; or</p> <p>(b) vary or revoke any of the mental health orders in force in respect of the person.</p>