

Severe Substance Dependence Treatment Act 2010
No. 43 of 2010

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Victoria

Severe Substance Dependence Treatment Act 2010[†]

No. 43 of 2010

[Assented to 10 August 2010]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to provide for the detention and treatment of persons with a severe substance dependence.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.

- (2) If this Act does not come into operation before 1 March 2011, it comes into operation on that day.

3 Objectives of Act

- (1) The objectives of this Act are—
- (a) to provide for the detention and treatment of persons with a severe substance dependence where this is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health; and
 - (b) to enhance the capacity of those persons to make decisions about their substance use and personal health, welfare and safety.
- (2) This Act must be interpreted, and every function conferred or imposed by this Act must be performed or exercised, so that—
- (a) detention and treatment is a consideration of last resort; and
 - (b) any limitations on the human rights and any interference with the dignity and self-respect of a person who is the subject of any actions authorised under this Act are kept to the minimum necessary to achieve the objectives specified in subsection (1).

4 Definitions

In this Act—

ambulance paramedic means a person employed or engaged by an ambulance service, within the meaning of the **Ambulance Services Act 1986**—

- (a) as an ambulance paramedic or intensive care paramedic; or
- (b) in any capacity to provide medical or other assistance to patients in an emergency;

Court means the Magistrates' Court;

criteria for detention and treatment means the criteria specified in section 8(2);

detention and treatment order means an order for the detention and treatment of a person at a treatment centre made under section 20;

family member, of a person, has the same meaning as in section 3A of the **Magistrates' Court Act 1989**;

guardian, of a person, means a plenary guardian or a limited guardian appointed in respect of the person under a guardianship order under the **Guardianship and Administration Act 1986** and includes a person who becomes a guardian under section 35 of that Act;

magistrate means a person who holds the office of magistrate under section 7 of the **Magistrates' Court Act 1989** or acting magistrate under section 9 of that Act;

manager, of a treatment centre, means the person in charge of the treatment centre or a person acting in that capacity;

nurse practitioner means a registered nurse whose registration as a nurse has been endorsed by the Nurses Board of Victoria under section 20(1) of the **Health Professions Registration Act 2005** that he or she is qualified to use the title nurse practitioner;

Public Advocate has the same meaning as in the **Guardianship and Administration Act 1986**;

registered medical practitioner means a medical practitioner registered under the **Health Professions Registration Act 2005**;

registered nurse means a nurse registered under the **Health Professions Registration Act 2005**;

Secretary means the Secretary to the Department of Health;

senior clinician, of a treatment centre, means—

- (a) the registered medical practitioner appointed by the governing body of the treatment centre under section 7(2) to be the senior clinician of the centre; or
- (b) a registered medical practitioner or nurse practitioner who is exercising the powers and functions of the senior clinician delegated to him or her under section 7(3) by the person referred to in paragraph (a);

treatment has the meaning given in section 6(1);

treatment centre means a premises or service declared by the Secretary under section 7(1) to be a treatment centre;

treatment team means the team of people who are employed or engaged by the treatment centre to implement a treatment plan for a person detained at the treatment centre under a detention and treatment order.

5 Severe substance dependence

For the purposes of this Act, a person has a ***severe substance dependence*** if—

- (a) the person has a tolerance to a substance; and
- (b) the person shows withdrawal symptoms when the person stops using, or reduces the level of use of, the substance; and

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- (c) the person is incapable of making decisions about his or her substance use and personal health, welfare and safety due primarily to the person's dependence on the substance.

6 Meaning of treatment

- (1) For the purposes of this Act, *treatment* means anything done in the course of the exercise of professional skills to provide medically assisted withdrawal from a severe substance dependence or to lessen the ill effects, or the pain and suffering, of the withdrawal.
- (2) This Act prevails over the **Medical Treatment Act 1988** and the **Guardianship and Administration Act 1986** in respect of any treatment given under this Act including any treatment given under an order made under this Act.

7 Treatment centres

- (1) The Secretary may by notice published in the Government Gazette declare—
- (a) a premises (including part of a building or place) at which treatment is to be provided; or
 - (b) a service through which treatment is to be provided—
- to be a treatment centre.
- (2) The governing body of a treatment centre must appoint a suitably qualified registered medical practitioner to be the senior clinician of the centre.
- (3) The senior clinician may by written instrument delegate to a suitably qualified registered medical practitioner or nurse practitioner any power, duty or function of the senior clinician other than this power of delegation.

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- (4) For the purposes of subsections (2) and (3), a practitioner is suitably qualified if the practitioner has relevant expertise in severe substance dependence and its treatment.

8 Criteria for detention and treatment

- (1) A person must not be detained, or continue to be detained, for treatment under this Act unless—
- (a) the person is 18 years of age or older; and
 - (b) each of the criteria specified in subsection (2) applies to the person.
- (2) The criteria for the detention and treatment of a person under this Act are that—
- (a) the person has a severe substance dependence; and
 - (b) because of the person's severe substance dependence, immediate treatment is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health; and
 - (c) the treatment can only be provided to the person through the admission and detention of the person in a treatment centre; and
 - (d) there is no less restrictive means reasonably available to ensure the person receives the treatment.
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PART 2—DETENTION AND TREATMENT ORDER

Division 1—Magistrates' Court

9 Jurisdiction

- (1) The Magistrates' Court has exclusive jurisdiction to hear and determine any application made under this Act for a detention and treatment order or the revocation of a detention and treatment order.
- (2) In respect of any proceedings under this Act, the **Magistrates' Court Act 1989** applies except to the extent that provision is otherwise made under this Act.
- (3) The Chief Magistrate may from time to time issue practice directions, statements or notes for the Magistrates' Court in relation to proceedings under this Act.

Division 2—Application

10 Application for detention and treatment order

- (1) A person who is 18 years of age or older may file an application at the proper venue of the Magistrates' Court requesting that the Court make a detention and treatment order in respect of a person.
 - (2) The application must—
 - (a) be in the prescribed form and contain the prescribed information; and
 - (b) have attached a recommendation for the detention and treatment of the person who is the subject of the application made by a prescribed registered medical practitioner that is current at the time of the filing of the application.
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Note

Under section 12(7)(b), a recommendation for the detention and treatment of a person remains current for 72 hours after the examination on which the recommendation is based.

- (3) Within 24 hours of the filing of the application, the applicant must take all reasonable steps to—
 - (a) personally serve a copy of the application, together with a copy of the recommendation and any other documents filed with the application on the person who is the subject of the application; and
 - (b) serve a copy of the application, together with a copy of the recommendation and any other documents filed with the application on the senior clinician or the manager of the treatment centre at which it is proposed to detain the person.
- (4) For the purposes of subsection (1), the proper venue of the Magistrates' Court is the venue of the Court that is nearest to the place of residence of the person who is the subject of the application.

11 Guardian of person who is subject of proposed order

- (1) An applicant for a detention and treatment order under section 10 must make a request to VCAT to provide the following information—
 - (a) whether or not a guardianship order is in force in respect of the person who is the subject of the application; and
 - (b) if so, the name and contact details of the person's guardian.

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- (2) If—
- (a) a guardian has been appointed for the person;
and
 - (b) VCAT is satisfied that the request for the guardian's name and contact details is made pursuant to subsection (1)—

VCAT must provide the guardian's name and contact details to the applicant.

- (3) If a guardian has been appointed for the person, the applicant must, within 24 hours of the filing of the application, take all reasonable steps to serve the guardian with a copy of the application, together with a copy of the recommendation and any other documents filed with the application.

12 Recommendation for detention and treatment

- (1) A prescribed registered medical practitioner may make a recommendation for the detention and treatment of a person if—
- (a) the prescribed registered medical practitioner has personally examined the person; and
 - (b) in the opinion of the prescribed registered medical practitioner, each of the criteria for detention and treatment applies to the person; and
 - (c) the prescribed registered medical practitioner has complied with subsection (2).
- (2) If, after personally examining a person, a prescribed registered medical practitioner is of the opinion that each of the criteria for detention and treatment applies to the person, the prescribed registered medical practitioner must consult with the senior clinician of the treatment centre at which it is proposed to detain the person.
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- (3) As part of the consultation required under subsection (2), the prescribed registered medical practitioner must—
 - (a) provide information about—
 - (i) the nature of the person's severe substance dependence; and
 - (ii) the nature of the urgent risk to the person's life or health; and
 - (iii) any previous efforts to treat the person's severe substance dependence; and
 - (b) discuss if there are any less restrictive options available to ensure the person receives treatment; and
 - (c) confirm that the treatment centre has facilities or services available to treat the person.
 - (4) A recommendation made by a prescribed registered medical practitioner under subsection (1) must—
 - (a) specify the facts upon which the opinion that each of the criteria for detention and treatment applies to the person is based; and
 - (b) distinguish the facts personally observed by the prescribed registered medical practitioner from facts not personally observed.
 - (5) If the prescribed registered medical practitioner relies on facts additional to his or her own observations, the prescribed registered medical practitioner must have reasonable grounds for relying on those facts.
 - (6) Before examining a person with the intention of determining whether or not to make a recommendation for the person's detention and treatment, the prescribed registered medical
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practitioner must, to the extent that is reasonable, explain the purpose of the examination to the person and must record in the clinical notes of the examination what steps were taken to give that explanation to the person.

- (7) A recommendation for the detention and treatment of a person—
- (a) must be in the prescribed form and contain the prescribed information; and
 - (b) remains current for 72 hours after the examination on which the recommendation is based.
- (8) A prescribed registered medical practitioner must not make a recommendation for the detention and treatment of a person if the prescribed registered medical practitioner is—
- (a) the applicant for the detention and treatment order for the person; or
 - (b) a family member of the person; or
 - (c) the person's guardian; or
 - (d) the senior clinician of the treatment centre in which it is proposed to detain the person.

13 Special warrant to examine person

- (1) A member of the police force or anyone else who is 18 years or older may apply to a magistrate for a special warrant under this section if the applicant believes on reasonable grounds that—
- (a) each of the criteria for detention and treatment applies to a person; and
 - (b) a prescribed registered medical practitioner is unable to examine the person for the purposes of determining whether or not to make a recommendation under section 12.

- (2) If a magistrate is satisfied by evidence on oath or by affidavit that there are reasonable grounds for the belief under subsection (1), the magistrate may issue a special warrant in the prescribed form.
- (3) A special warrant issued under this section authorises and directs a member of the police force accompanied by a prescribed registered medical practitioner—
 - (a) subject to section 37, to enter the premises specified in the warrant; and
 - (b) to use such force as may be reasonably necessary to enable the prescribed registered medical practitioner to examine the person named in the warrant for the purposes of determining whether or not to make a recommendation under section 12.
- (4) A special warrant issued under this section remains in force for 7 days after its making.

14 Certificate of available services

- (1) As soon as possible before the hearing of the application for the detention and treatment order, the senior clinician or the manager of a treatment centre—
 - (a) who has been served under section 10(3)(b) with a copy of the application; or
 - (b) who has been requested under subsection (4)(a) to provide a certificate of available services—must provide a certificate of available services to the Magistrates' Court.
 - (2) A certificate of available services provided under subsection (1) must give an outline of the facilities and services available at the treatment centre for the treatment of the person who is the subject of the application.
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- (3) Subsection (4) applies if—
- (a) the senior clinician or the manager of a treatment centre has been served under section 10(3)(b) with a copy of an application for a detention and treatment order; and
 - (b) facilities or services for the treatment of the person are not available at the treatment centre.
- (4) The senior clinician or the manager of the treatment centre must—
- (a) request the senior clinician or the manager of a treatment centre where facilities and services for the treatment of the person are available to provide a certificate of available services to the Magistrates' Court; and
 - (b) notify the Magistrates' Court of the request as soon as is practicable.

Division 3—Hearing of Application

15 Conduct of hearing

- (1) An application for a detention and treatment order must be heard by the Magistrates' Court within 72 hours of the filing of the application.
- (2) The person who is the subject of the application has the right to appear at the hearing of the application.
- (3) In hearing the application, the Court is not bound by rules or practice as to evidence but may inform itself in relation to any matter in the manner it thinks fit.

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- (4) Without limiting subsection (3), the Court may permit the person who is the subject of the application to lead evidence and cross-examine witnesses.
 - (5) The onus of proof is on the applicant to establish on the balance of probabilities that each of the criteria for detention and treatment applies to the person who is the subject of the application.

16 Evidence of service

- (1) The applicant for a detention and treatment order must give evidence of how and when the copy of the application for the order was served on—
 - (a) the person who is the subject of the application; and
 - (b) if applicable, the person's guardian.
 - (2) If a copy of the application was not—
 - (a) personally served on the person who is the subject of the application; or
 - (b) if applicable, served on the person's guardian—the applicant must give evidence about the steps taken to serve the application.
 - (3) A detention and treatment order must not be made in the absence of the person who is the subject of the application unless the Court is satisfied—
 - (a) that the person has been personally served with a copy of the application for the order; or
 - (b) if the person has not been so served, that—
 - (i) all reasonable steps have been taken to effect personal service; and
 - (ii) it would be detrimental to the person's health to delay hearing the application.
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17 Adjournment of hearing

- (1) The Court may, in its discretion, adjourn the hearing of an application for a detention and treatment order.
- (2) Without limiting subsection (1), the hearing of an application may be adjourned—
 - (a) if the person who is the subject of the application contests the application, to permit the person to obtain legal advice and legal representation;
 - (b) if the person has a guardian and the guardian has not been served with a copy of the application, to allow further efforts to serve a copy of the application on the guardian.

18 Representation and appearance at hearing

- (1) The person who is the subject of the application is entitled to be represented by a legal practitioner at the hearing of the application.
- (2) If the applicant for the order is a member of the police force, a police prosecutor may appear on behalf of the applicant.
- (3) If the person who is the subject of the application has a guardian, the guardian has the right to appear at the hearing and make representations to the Court.

19 Confidentiality

- (1) The Court, on its own initiative or on the application of a party to the hearing, may order that the whole or any part of the hearing of the application be held in closed court.
- (2) The Court, on its own initiative or on the application of a party to the hearing, may make an order prohibiting or restricting—

- (a) the publication or broadcasting of any report of the proceeding;
 - (b) the publication of evidence given in the course of the proceeding;
 - (c) the publication of matters contained in documents lodged with the Court or received in evidence in the course of the proceeding.
- (3) If an order has been made under subsection (1) or (2), the Court must cause a copy of the order to be posted on a door of, or in another conspicuous place at, the place at which the Court is held.
- (4) A person must not contravene an order made and posted under this section.
- Penalty: 1000 penalty units or imprisonment for 3 years.
- (5) Whether or not the Court makes an order under subsection (1) or (2), a person must not publish or broadcast anything in relation to the hearing in which the following persons are identified or are identifiable—
- (a) the person who is the subject of the application;
 - (b) the applicant for the order;
 - (c) a person who appears as a witness at the hearing.
- Penalty: 1000 penalty units or imprisonment for 3 years.
- (6) For the purposes of subsections (2) and (5), publication does not include a communication by a person made for the purposes of administering or giving effect to the order.
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Division 4—Detention and Treatment Order

20 Detention and treatment order

- (1) Following the hearing of an application under Division 2, the Court may make a detention and treatment order in the prescribed form authorising the admission, detention and treatment of a person at a treatment centre.
 - (2) The Court must not make a detention and treatment order in respect of a person unless—
 - (a) the Court is satisfied, on the balance of probabilities, that each of the criteria for detention and treatment applies to the person; and
 - (b) having regard to all other relevant matters, the Court considers the detention and treatment of the person at a treatment centre is necessary; and
 - (c) the Court has obtained a certificate of available services from the senior clinician or the manager of the treatment centre at which it is proposed to detain the person.
 - (3) A detention and treatment order authorises the detention and treatment of the person named in the order at the treatment centre specified in the order for 14 days following the admission of the person to the treatment centre.
 - (4) Each of the following are authorised to take the person who is the subject of the detention and treatment order to the treatment centre—
 - (a) a member of the police force;
 - (b) an ambulance paramedic;
 - (c) a person who provides non-emergency patient transport services in accordance with a licence granted under section 5(1) of the
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**Non-Emergency Patient Transport Act
2003;**

- (d) anyone else specified in the order.
- (5) For the purposes of taking the person to the treatment centre, a person referred to in subsection (4) is authorised, subject to section 37, to enter any premises in which he or she reasonably believes the person who is the subject of the detention and treatment order may be found.

Note

Section 38 provides powers to restrain or sedate a person if either or both are necessary to enable the person to be safely taken to the treatment centre.

**21 Notification to treatment centre and currency of
detention and treatment order**

- (1) The Magistrates' Court must—
 - (a) notify the treatment centre specified in a detention and treatment order of the making of the order; and
 - (b) give a copy of the detention and treatment order to the applicant for the order.
 - (2) The applicant must make the necessary arrangements, in consultation with the senior clinician or the manager of the treatment centre specified in the order, for the person to be taken and admitted to the treatment centre.
 - (3) If a bed is not available at the treatment centre specified in the order, the person may be taken and admitted to any other appropriate treatment centre.
 - (4) If within 7 days after a detention and treatment order is made, the person in respect of whom the order is made has not been admitted to a treatment centre, the order lapses.
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- (5) However, the applicant for a detention and treatment order may, within 7 days after the order is made, apply to the Court for an extension of the order.
 - (6) On an application under subsection (5), the Court may, if satisfied that the person who is the subject of the order is likely to be admitted to a treatment centre within the next 7 days, extend a detention and treatment order by that period.
 - (7) A detention and treatment order may only be extended once under subsection (6).

Division 5—Revocation of Order

22 Revocation of order

- (1) A person who is the subject of a detention and treatment order may at any time apply to the Magistrates' Court, in the prescribed form, for the order to be revoked.
 - (2) An application for the revocation of the order may be made on behalf of the person by—
 - (a) the person's nominated person; or
 - (b) if applicable, the person's guardian.
 - (3) The applicant for the revocation of the order must, within 24 hours of the filing of the application, serve a copy of the application on—
 - (a) the person who originally applied for the detention and treatment order; and
 - (b) the senior clinician of the treatment centre at which the person who is the subject of the order is detained
 - (c) if applicable, the guardian of the person who is the subject of the detention and treatment order unless the guardian is the applicant.
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- (4) An application for the revocation of the order must be on the ground that one or more of the criteria for detention and treatment no longer applies to the person.
 - (5) The Court must hear an application as soon as practicable but not later than 48 hours of the filing of the application.
 - (6) Sections 15(2), 15(3), 15(4), 17(1), 18(1), 18(3) and 19 apply to the hearing of an application for the revocation of a detention and treatment order, except that a reference to the applicant for the detention and treatment order is a reference to the applicant for the revocation of the order.
 - (7) The following are entitled to appear at the hearing of the application and make representations—
 - (a) the applicant for the revocation of the detention and treatment order;
 - (b) the person who originally applied for the order or, if that person is a member of the police force, a police prosecutor acting on that person's behalf;
 - (c) the senior clinician of the treatment centre at which the person who is the subject of the order is detained;
 - (d) if applicable, the guardian of the person who is the subject of the order;
 - (e) anyone who satisfies the Court that he or she has a substantial interest in the hearing of the application.
 - (8) The onus of proof is on the person applying for the revocation of the detention and treatment order to establish on the balance of probabilities that one or more of the criteria for detention and treatment no longer applies to the person who is the subject of the order.
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- (9) If the Court is satisfied on the balance of probabilities that one or more of the criteria for detention and treatment no longer applies to the person, the Court must revoke the detention and treatment order.
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**PART 3—ADMISSION, DETENTION AND TREATMENT OF
PERSON AT TREATMENT CENTRE**

Division 1—Admission to Treatment Centre

23 Initial examination

- (1) As soon as practicable after a person is admitted to a treatment centre under a detention and treatment order but not more than 24 hours after the admission, the senior clinician of the treatment centre must examine the person.
- (2) At the examination, the senior clinician must review whether the criteria for detention and treatment apply to the person.
- (3) If the senior clinician is of the opinion that one or more of the criteria does not apply to the person, the person must be discharged from the detention and treatment order.

Note

If the person is discharged from the detention and treatment order, the provisions of Division 4 apply.

- (4) If the senior clinician is of the opinion that each of the criteria applies to the person, the senior clinician must confirm the order.

24 Nominated person

- (1) At any time after a person is admitted to a treatment centre under a detention and treatment order, the person may nominate another person to protect his or her interests.
- (2) A nomination under subsection (1)—
 - (a) must be in writing and given to the senior clinician or the manager of the treatment centre; and

- (b) may be revoked, in writing, at any time; and
 - (c) remains in force until the detention and treatment order expires unless it is sooner revoked.
- (3) If the person's nomination is refused by the person who is nominated—
- (a) the senior clinician or the manager of the treatment centre must inform the person of the refusal; and
 - (b) the nomination has no further effect.
- (4) The senior clinician or the manager of the treatment centre is not required to give effect to the person's nomination if he or she reasonably believes that—
- (a) to do so may put the health or safety of the person, or anyone else, at serious risk; or
 - (b) the person was incapable of making the nomination.
- (5) If the senior clinician or the manager of the treatment centre refuses to give effect to the person's nomination, he or she must inform the person of the refusal and give the reasons for the refusal.

25 Other action required within 24 hours of admission

- (1) As soon as practicable after a person is admitted to a treatment centre under a detention and treatment order but not more than 24 hours after the admission, the senior clinician or the manager of the treatment centre must ensure that—
- (a) the person is given a written statement of the person's rights and entitlements under this Act; and

- (b) the Public Advocate is informed that the person has been admitted to the treatment centre under a detention and treatment order; and
 - (c) all reasonable steps are taken to notify—
 - (i) the person's nominated person; and
 - (ii) if applicable, the person's guardian—that the person has been admitted to the treatment centre under a detention and treatment order.
- (2) The senior clinician or the manager of the treatment centre must ensure that all reasonable steps are taken to give a copy of the statement of rights and entitlements under this Act to—
- (a) the person's nominated person; and
 - (b) if applicable, the person's guardian.
- (3) The actions specified in subsections (1) and (2) are not required to be taken if the person is discharged from the detention and treatment order within 24 hours after being admitted to the treatment centre.

26 Statement of rights and entitlements

- (1) The statement of rights and entitlements required to be given to a person under section 25(1)(a) must—
- (a) be in the form approved by the Secretary; and
 - (b) include advice that the person has the right to obtain legal advice and obtain a second opinion; and
 - (c) be written in plain language and, wherever possible, be printed in the language with which the person is most familiar.
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- (2) In addition, the manager of the treatment centre must ensure that the person is given an oral explanation of the information contained in the statement.
 - (3) If the person appears not to have understood, or appears incapable of understanding, the information contained in the statement or in the oral explanation, the manager of the treatment centre must ensure that arrangements are made to provide the information to the person in the language, mode of communication or in terms which the person is most likely to understand.
 - (4) If the person is incapable of understanding the information contained in the statement or in the oral explanation at the time when it would otherwise be provided, the manager of the treatment centre must ensure that reasonable further attempts are made to provide the information at a time when the person is able to understand the information.
 - (5) If requested to do so by the person who is admitted, the manager of the treatment centre must ensure that all reasonable steps are taken to assist the person to obtain legal advice.

27 Role of Public Advocate

- (1) On being informed of the admission of a person under a detention and treatment order, the Public Advocate must make arrangements with the manager of the treatment centre to visit the person as soon as practicable.
 - (2) The role of the Public Advocate is—
 - (a) to make representations on behalf of, or act for, the person; and
 - (b) to provide advice to the person as to his or her rights and entitlements under this Act; and
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- (c) where required, to assist the person in—
 - (i) arranging legal representation; or
 - (ii) obtaining a second opinion; or
 - (iii) applying for the revocation of the detention and treatment order.

Division 2—Treatment

28 Consent to treatment and applicable principles

- (1) A person who is admitted to a treatment centre under a detention and treatment order must be provided treatment in accordance with this Act.
 - (2) Treatment provided to the person under this Act may be provided without the consent of the person.
 - (3) The following principles apply to the provision of treatment to the person and the preparation of a discharge plan for the person under this Act—
 - (a) voluntary treatment must be promoted in preference to detention and treatment wherever possible;
 - (b) the person must be given the best possible treatment based on best evidence;
 - (c) treatment must be provided in the least restrictive environment and least intrusive manner that will enable treatment to be effectively given and identified risks to be effectively managed;
 - (d) if the person has a coexisting medical condition or mental disorder, the person must be appropriately assessed and referred to relevant welfare, health, mental health or disability services, and treatment must be coordinated with services provided by those other service providers;
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- (e) the person must be involved in decisions about his or her treatment and discharge planning and must be given sufficient information and supported where necessary, to enable this to occur;
- (f) the age-related, gender-related, religious, cultural, language, and other special needs of the person must be taken into consideration;
- (g) the role of families and other persons who are significant in the life of the person must be considered and respected.

29 Interim treatment

- (1) This section applies if—
 - (a) a person is admitted to a treatment centre under a detention and treatment order; and
 - (b) the person has not been examined by the senior clinician of the treatment centre under section 23.
- (2) A registered medical practitioner employed or engaged at the treatment centre may provide treatment to the person if the registered medical practitioner believes on reasonable grounds that the treatment is necessary as a matter of urgency to lessen the ill effects or the pain and suffering of the person's withdrawal.

30 Treatment

- (1) The senior clinician of the treatment centre must determine the treatment to be provided to the person and prepare a treatment plan in accordance with this section.
- (2) In determining the treatment to be provided to the person and preparing the treatment plan, the senior clinician must take into account each of the following—

- (a) the wishes and preferences of the person as far as they can be ascertained;
 - (b) the views of—
 - (i) the person's nominated person;
 - (ii) if applicable, the person's guardian;
 - (c) with the person's consent, the views of any family member of the person;
 - (d) any beneficial alternative treatment available;
 - (e) the nature and degree of any significant risks associated with the proposed treatment or alternative treatment;
 - (f) the consequences to the person if the treatment is not provided;
 - (g) any second opinions obtained in accordance with section 31;
 - (h) any prescribed matters.
- (3) The senior clinician or a member of the treating team must discuss the plan or any revision of the plan under subsection (4) with—
- (a) the person; and
 - (b) the person's nominated person; and
 - (c) if applicable, the person's guardian.
- (4) The senior clinician must review the treatment plan on a regular basis and revise the plan as required.
- (5) In reviewing or revising a treatment plan for a person, the senior clinician must take into account each of the matters referred to in subsection (2).
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31 Second opinion

- (1) A person detained at a treatment centre under a detention and treatment order is entitled to obtain a second opinion from a registered medical practitioner with relevant expertise in severe substance dependence and its treatment.
- (2) The second opinion must address whether or not each of the criteria for detention and treatment apply to the person and the treatment of the person.
- (3) The senior clinician or the manager of the treatment centre must take all reasonable steps to assist the person in obtaining a second opinion.
- (4) If a registered medical practitioner gives a second opinion that one or more of the criteria for detention and treatment no longer applies to the person, the senior clinician of the treatment centre must examine the person without delay and decide whether or not those criteria continue to apply to the person.
- (5) If, following an examination of a person under subsection (4), the senior clinician is of the opinion that each of the criteria for detention and treatment continue to apply to the person—
 - (a) the detention and treatment order under which the person is detained at the treatment centre remains in force; and
 - (b) the senior clinician must ensure that the Public Advocate is notified as soon as is practicable.

Note

In the scenario described in subsection (5), the person who is the subject of the detention and treatment order has the option of applying under section 22 for a revocation of the order. Under section 27 the Public Advocate may assist the person in applying for the revocation.

- (6) If, following an examination of a person under subsection (4), the senior clinician is of the opinion that one or more of the criteria for detention and treatment no longer apply to the person, the senior clinician must discharge the person from the detention and treatment order in accordance with section 35.

32 Transfer to another treatment centre

- (1) This section applies if—
- (a) a person is detained at a treatment centre under a detention and treatment order; and
 - (b) the senior clinician of the treatment centre is satisfied that the transfer of the person to another treatment centre—
 - (i) would be of benefit to the person; or
 - (ii) is necessary for the person's treatment.
- (2) The senior clinician may, with the approval of the senior clinician or the manager of the receiving treatment centre, order the transfer of the person to that treatment centre.

Note

Section 38 provides powers to restrain or sedate a person if either or both are necessary to enable the person to be safely transferred to the treatment centre.

- (3) Before ordering the transfer of a person to another treatment centre, the senior clinician must take into account each of the following—
- (a) the wishes and preferences of the person as far as they can be ascertained;
 - (b) the views of—
 - (i) the person's nominated person; and
 - (ii) if applicable, the person's guardian.
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- (4) The senior clinician or the manager of the treatment centre from which a person is to be transferred must ensure that—
- (a) the Public Advocate is notified of the transfer; and
 - (b) all reasonable steps are taken to notify the following of the person's transfer—
 - (i) the person's nominated person;
 - (ii) if applicable, the person's guardian; and
 - (c) a copy of the detention and treatment order of the person being transferred and any other documents relevant to the admission and future treatment of the person accompany the person to the receiving treatment centre.

Division 3—Leave of Absence

33 Leave of absence

- (1) The senior clinician or the manager of a treatment centre may allow a person detained at the treatment centre under a detention and treatment order to be absent from the treatment centre—
- (a) for the purposes of receiving medical treatment; or
 - (b) for any other purpose that the senior clinician or the manager of the treatment centre considers appropriate.
- (2) Leave of absence may be granted—
- (a) for the period; and
 - (b) subject to any conditions—
- that the senior clinician or the manager of the treatment centre considers appropriate having regard to the health and safety of the person and the purpose of the leave.

- (3) The senior clinician or the manager of the treatment centre must take all reasonable steps to inform the following that the person has been granted leave of absence—
 - (a) the person's nominated person;
 - (b) if applicable, the person's guardian.
- (4) Leave of absence does not affect the duration of the detention and treatment order made in respect of the person.

Example

A detention and treatment order in respect of a person is due to expire on 20 September. If on 18 September the person is granted 5 days leave, the order will still expire on 20 September.

- (5) The senior clinician or the manager of the treatment centre may revoke the leave of absence if he or she considers that the person's health or safety are at serious risk unless the leave is revoked.
- (6) If leave of absence is revoked while the person is absent from the treatment centre, the senior clinician or the manager of the treatment centre must take all reasonable steps to notify the person that his or her leave has been revoked and that he or she is required to return to the treatment centre.

34 Apprehension

- (1) This section applies if a person detained at a treatment centre under a detention and treatment order—
 - (a) is absent from the treatment centre without leave granted under section 33; or

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- (b) has been granted leave of absence under section 33 but—
- (i) the person fails to return to the treatment centre at the expiry of the leave; or
 - (ii) the leave is revoked.
- (2) For the purposes of returning the person to the treatment centre, an authorised person may at any time—
- (a) subject to section 37, enter any premises in which the authorised person reasonably believes the person may be found; and
 - (b) apprehend the person.
- Note**
- Section 38 provides powers to restrain or sedate a person if either or both are necessary to enable the person to be safely returned to the treatment centre.
- (3) The senior clinician or the manager of the treatment centre must take all reasonable steps to inform the following of the person's absence without leave—
- (a) the person's nominated person;
 - (b) if applicable, the person's guardian.
- (4) In this section, an **authorised person** means—
- (a) a member of the police force; or
 - (b) an ambulance paramedic; or
 - (c) a person who provides non-emergency patient transport services in accordance with a licence granted under section 5(1) of the **Non-Emergency Patient Transport Act 2003**; or
 - (d) the senior clinician or the manager of the treatment centre; or
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- (e) any other person who is authorised to apprehend the person by the senior clinician or the manager of the treatment centre.

Division 4—Discharge

35 Discharge from detention and treatment order

- (1) The senior clinician must discharge a person from a detention and treatment order if the senior clinician is of the opinion that one or more of the criteria for detention and treatment no longer applies to the person.
- (2) In deciding whether or not the criteria for detention and treatment apply to a person, the senior clinician must have regard to any second opinion in respect of the person obtained under section 31.
- (3) If the senior clinician discharges a person under subsection (1), the senior clinician must—
 - (a) notify—
 - (i) the Court; and
 - (ii) the Public Advocate; and
 - (b) ensure that all reasonable steps are taken to notify—
 - (i) the person's nominated person; and
 - (ii) if applicable, the person's guardian.
- (4) A person may not be detained at the treatment centre if the detention and treatment order—
 - (a) expires; or
 - (b) has been revoked by the Court under section 22(9).

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- (5) If a detention and treatment order is revoked by the Court under section 22(9) the senior clinician must—
- (a) notify the Public Advocate; and
 - (b) ensure that all reasonable steps are taken to notify—
 - (i) the person's nominated person; and
 - (ii) if applicable, the person's guardian.

36 Discharge plan

- (1) If a detention order expires, is revoked or discharged, the senior clinician must prepare a discharge plan outlining follow-up treatment and support that is to be provided to the person.
 - (2) The senior clinician or the manager of the treatment centre must take all reasonable steps to ensure that the following are consulted in the preparation of the discharge plan and provided with a copy of the plan—
 - (a) the person being discharged from the treatment centre;
 - (b) the person's nominated person;
 - (c) if applicable, the person's guardian;
 - (d) with the consent of the person—
 - (i) any family member of the person;
 - (ii) any agencies or services which will be involved in providing services to the person as part of the discharge plan.
 - (3) The senior clinician or a member of the treating team must discuss the discharge plan with—
 - (a) the person; and
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Part 3—Admission, Detention and Treatment of Person at Treatment Centre

- (b) the person's nominated person; and
 - (c) if applicable, the person's guardian.
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PART 4—GENERAL

37 Power of entry

- (1) This section applies if a person is authorised to enter a premises—
 - (a) under a warrant issued under section 13; or
 - (b) under a detention and treatment order to take a person to a treatment centre; or
 - (c) under section 34 to apprehend someone who is absent without leave from a treatment centre.
- (2) Before entering the premises, the person must—
 - (a) announce that he or she is authorised to enter the premises; and
 - (b) state the basis of that authority; and
 - (c) give anyone at the premises an opportunity to permit entry to the premises.
- (3) If permission to enter the premises is not given, a member of the police force may use reasonable force to gain entry.
- (4) On gaining entry, the person referred to in subsection (1) must—
 - (a) identify himself or herself to the person who is the subject of the warrant or the detention and treatment order or who is absent without leave from the treatment centre, as the case may be; and
 - (b) give that person a copy of the warrant or the detention and treatment order.

38 Power to restrain or sedate a person

- (1) This section applies if—
- (a) a person is to be taken to a treatment centre under a detention and treatment order; or
 - (b) a person is to be transferred to another treatment centre under section 32; or
 - (c) a person who is granted leave of absence under section 33(1)(a) for the purposes of receiving medical treatment is to be taken to or returned from a medical facility; or
 - (d) a person who is absent without leave from a treatment centre is to be returned to the treatment centre.
- (2) If necessary to enable the person to be taken, transferred or returned safely to the treatment centre or taken to or returned from the medical facility—
- (a) a member of the police force or an ambulance paramedic may use reasonable force to restrain the person; and
 - (b) a registered medical practitioner may administer or direct a suitably qualified person to administer sedation to the person.
- (3) Subsection (2) does not limit the power of an ambulance paramedic or a registered nurse to administer sedation within the ordinary scope of his or her practice.
- (4) Before the person is taken or returned to the treatment centre or taken to or returned from the medical facility, a member of the police force may carry out a frisk search or ordinary search of the person if the member of the police force reasonably suspects that the person is carrying anything that—
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- (a) presents a danger to the person or anyone else; or
- (b) could be used to assist the person to escape.
- (5) A frisk search or ordinary search of the person taken or returned to the treatment centre or returned from the medical facility may be carried out by—
- (a) the senior clinician or the manager of the treatment centre; or
- (b) a person employed or engaged by the treatment centre who has been directed to do so by the senior clinician or the manager of the treatment centre.
- (6) The senior clinician or the manager of the treatment centre must not carry out a frisk search or ordinary search of the person or direct any other person to do so unless he or she reasonably suspects that the person is carrying anything that—
- (a) presents a danger to the person or anyone else; or
- (b) could be used to assist the person to escape.
- (7) Before a frisk search or ordinary search is carried out under subsection (4) or (5), the person carrying out the search must explain its purpose to the person being searched.
- (8) In this section—
- frisk search* means—
- (a) a search of a person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or in close proximity to the person's outer clothing; and
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- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, including an examination conducted by passing an electronic metal detection device over or in close proximity to that thing;

ordinary search means a search of a person or of things in the possession or under the control of a person that may include—

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and
- (b) an examination of those items;

suitably qualified person means—

- (a) a registered nurse; or
- (b) an ambulance paramedic.

39 Payment for recommendation

- (1) If a prescribed registered medical practitioner has made a recommendation for the detention and treatment of a person under section 12 and is not otherwise entitled to receive payment for making the recommendation, the prescribed registered medical practitioner may apply to the Secretary for payment for the recommendation at the prescribed rate.
- (2) For the purposes of subsection (1), payment for making a recommendation under section 12 includes payment for the examination on which the recommendation is based.

40 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing forms to be used for the purposes of this Act;
 - (b) prescribing fees for the purposes of this Act;
 - (c) prescribing additional matters that must be taken into account in the preparation, review or revision of a treatment plan;
 - (d) prescribing the amount payable to a prescribed registered medical practitioner for making a recommendation for the detention and treatment of a person;
 - (e) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
 - (2) Regulations made under this Act—
 - (a) may be of general or of specially limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department or public authority or any officer thereof;
 - (d) may confer powers or impose duties in connection with the regulations on any government department or public authority;
 - (e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time;
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- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made;
- (g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
- (3) A power conferred by this Act to make regulations providing for the imposition of fees or charges may be exercised by providing for all or any of the following matters—
- (a) specific fees or charges;
 - (b) maximum or minimum fees or charges;
 - (c) maximum and minimum fees or charges;
 - (d) scales of fees or charges according to the value of goods or services provided for the fees or charges;
 - (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees or charges.
- (4) If under subsection (3)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee or charge, the reduction, waiver or refund may be expressed to apply either generally or specifically—
- (a) in respect of certain matters or transactions or classes of matters or transactions; or
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- (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of matters, transactions, documents, events or persons—
and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (5) A fee or charge that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.

41 Review

- (1) The Minister must ensure that a review of this Act is completed by 1 March 2015.
 - (2) The purpose of the review is to determine—
 - (a) whether the objectives of this Act are being achieved and are still appropriate; and
 - (b) whether the Act is effective or needs to be amended.
 - (3) The Minister must make a report of the review, including the response of the Government to the review, available to the public within 3 months after the expiry of the period specified in subsection (1).
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PART 5—REPEAL AND TRANSITIONAL PROVISIONS

42 Repeal of Alcoholics and Drug-dependent Persons Act 1968

- (1) The **Alcoholics and Drug-dependent Persons Act 1968** is repealed.
- (2) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Alcoholics and Drug-dependent Persons Act 1968** is to be construed as a reference to this Act, unless the contrary intention appears.

43 Transitional Provisions

An order made under section 11 of the **Alcoholics and Drug-dependent Persons Act 1968** which is in force immediately before the date on which this Act comes into operation has effect as if it were a detention and treatment order made under section 20 of this Act and expires on the date provided by the Court in the order.

PART 6—CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

44 Coroners Act 2008

In section 3 of the **Coroners Act 2008** in the definition of *person placed in custody or care* for paragraph (h) **substitute**—

"(h) a person detained in a treatment centre under a detention and treatment order made under section 20 of the **Severe Substance Dependence Treatment Act 2010**;"

45 Drugs, Poisons and Controlled Substances Act 1981

In section 7 of the **Drugs, Poisons and Controlled Substances Act 1981** for "**Alcoholics and Drug-dependent Persons Act 1968**" **substitute** "**Severe Substance Dependence Treatment Act 2010**".

46 Health Professions Registration Act 2005

(1) In section 3(1) of the **Health Professions Registration Act 2005**—

(a) the definitions of *alcoholic* and *drug-dependent person* are **repealed**;

(b) **insert** the following definition—

"*severe substance dependence* has the same meaning as in section 5 of the **Severe Substance Dependence Treatment Act 2010**;"

(2) In sections 6(2)(b), 38(1)(a)(iii), 38(2)(c), 42(1)(a)(iii), 42(2)(c), 64(4)(c), 65(2)(a)(iii), 65(2)(b)(iii), 67(1)(a)(iii) and 67(1)(b)(iii) of the **Health Professions Registration Act 2005** for "is an alcoholic or drug-dependent person" **substitute** "has a severe substance dependence".

47 Human Services (Complex Needs) Act 2009

For section 7(b)(iv) of the **Human Services (Complex Needs) Act 2009** substitute—

"(iv) has a severe substance dependence within the meaning of section 5 of the **Severe Substance Dependence Treatment Act 2010**; and".

48 Sentencing Act 1991

(1) In section 3(1) of the **Sentencing Act 1991**—

(a) the definitions of *alcoholic*, *drug-dependent person*, *inspector* and *treatment centre* are repealed;

(b) insert the following definition—

"*severe substance dependence* has the same meaning as in section 5 of the **Severe Substance Dependence Treatment Act 2010**";

(2) In sections 99A(2)(a) and 99G(1)(k) of the **Sentencing Act 1991** for "is an alcoholic or drug-dependent person" substitute "has a severe substance dependence".

49 Veterinary Practice Act 1997

(1) In section 3(1) of the **Veterinary Practice Act 1997**—

(a) the definitions of *alcoholic* and *drug-dependent person* are repealed;

(b) insert the following definition—

"*severe substance dependence* has the same meaning as in section 5 of the **Severe Substance Dependence Treatment Act 2010**";

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- (2) In sections 6(2)(b), 25(c), 31(1)(c) and 46(1)(a)(iii) of the **Veterinary Practice Act 1997** for "is an alcoholic or a drug-dependent person" **substitute** "has a severe substance dependence".

50 Repeal of Part

This Part is **repealed** on 1 March 2012.

Note

The repeal of this Part does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 10 December 2009

Legislative Council: 11 March 2010

The long title for the Bill for this Act was "A Bill for an Act to enact a new legislative scheme for the detention and treatment of persons with a severe substance dependence, to repeal the **Alcoholics and Drug-dependent Persons Act 1968** and for other purposes."

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