

**EXTRACTS FROM THE MENTAL HEALTH ACT 1996, MENTAL HEALTH ACT 2014 AND  
MENTAL HEALTH REGULATIONS 1997 RE SECLUSION AND RESTRAINT AND USE OF  
REASONABLE FORCE TO DETAIN AND RESTRAIN**

**Mental Health Act 2014 – ss 83(2)(c), 86(c), 130(3), 147-149, 170-172 re authority to use reasonable force and ss 211-240 re seclusion and restraint .**

Comment:

Section 172 authorises reasonable force and s225 allows for regulations to be made prescribing who is authorised to use reasonable force by s172.

Where the place is an authorised hospital, it will be “*a staff member of the mental health service*”; where the place is not an authorised hospital (for eg Emergency Departments or EDs, regional nursing posts) it will be a “*health professional*”). EDs often use security guards so it is perhaps surprising that the proposal is that only “health professionals” can use reasonable force, however s172 allows that person to utilise other people to assist them so they will be able to call on security guards for assistance.

The use of the term “staff member” also means that security guards who are employed by a security guard company which has contracted with the hospital will not be prescribed but, like the EDs, a hospital staff member could call on them to assist.

Section 99 also authorises use of reasonable force when apprehending and returning a person who is AWOL by police officers and persons prescribed by regulation. Separate regulations in relation to this are still to be made.

**Division 2 — Detention at authorised hospital or other place for examination**

**83. Detention authorised**

- (1) This section applies in relation to any of these people —
  - (a) a person who can be detained at an authorised hospital under section 34(3) because of an order for an assessment made under section 34(1);
  - (b) a person who can be detained at an authorised hospital under section 52(1)(b) because of a referral made under section 26(2);
  - (c) a person who can be detained at an authorised hospital under section 53(1) because of a referral made under section 36(2);
  - (d) a person who is under an order made under section 55(1)(c) authorising the continuation of the person’s detention at an authorised hospital to enable a further examination to be conducted;
  - (e) a person who can be detained at a place that is not an authorised hospital under section 58(1)(b) because of a referral made under section 26(3)(a);

- (f) a person who is under an order made under section 59(2) authorising the continuation of the person's detention at a place that is not an authorised hospital to enable an examination to be completed;
  - (g) a person who is under an order made under section 61(1)(c) authorising the person's detention at an authorised hospital to enable an examination to be conducted.
- (2) The referral or order authorises —
- (a) the person's reception at the authorised hospital or other place specified in the referral or order; and
  - (b) the person's detention there for the period authorised by this Act for which the person can be detained because of the referral or under the order; and
  - (c) a person who is prescribed by the regulations for this paragraph to exercise the powers under section 172 for the purpose of detaining the person there.

*Notes for section 83:*

1. The period for which a person can be detained under section 34(3) is authorised under that provision.
2. The period for which a person can be detained under section 52(1)(b), 53(1) or 58(1)(b), or under an order made under section 55(1)(c), 59(2) or 61(1)(c), is authorised under Part 6 Division 3.

### **Division 3 — Detention at hospital under inpatient treatment order**

#### **86. Detention authorised**

An inpatient treatment order authorises —

- (a) the involuntary inpatient's admission as an inpatient by —
  - (i) the hospital specified in the order; and
  - (ii) any authorised hospital to which the patient is transferred under section 66(1) or 91(2);
- and
- (b) the involuntary inpatient's detention there for the period authorised by this Act for which the inpatient can be detained under this Act; and
- (c) a person who is prescribed by the regulations for this paragraph to exercise the powers under section 172 for the purpose of detaining the involuntary inpatient there.

#### **99. Operation of apprehension and return order**

An apprehension and return order made in respect of a person authorises a police officer or a person prescribed by the regulations for this section to do these things —

- (a) apprehend the person and, for that purpose, exercise the powers under sections 159(2) and 172;

- (b) if the person is apprehended — take the person to the hospital or other place specified in the apprehension and return order under section 98(2)(c) as soon as practicable and, in any event, before the order expires;
- (c) for the purpose of taking the person to that hospital or other place, detain the person until the first of these things occurs —
  - (i) the person is received into the hospital or other place;
  - (ii) the apprehension and return order expires.

**130. Detention at place specified in order to attend**

- (1) This section applies in relation to an involuntary community patient who —
  - (a) attends a place in compliance with an order to attend; or
  - (b) is transported to a place under a transport order made under section 129(2).
- (2) The involuntary community patient —
  - (a) must be received into the place; and
  - (b) can be detained at the place until the first of these things occurs —
    - (i) treatment is provided to the involuntary community patient;
    - (ii) the supervising psychiatrist makes an order under section 131(2)(a) in respect of the patient;
    - (iii) the expiry of 6 hours from the time when the patient was received.
- (3) A person prescribed by the regulations for this subsection is authorised to exercise the powers under section 172 for the purpose of detaining the involuntary community patient at the place.

**Transport officers**

- 147.** The regulations may authorise a person, or a person in a class of person, (a ***transport officer***) to carry out a transport order.

**148. Making transport order**

- (1) A transport order must be in the approved form and must include the following —
  - (a) the name of the person to be transported;
  - (b) the place from which the person is to be transported;
  - (c) the hospital or other place to which the person must be transported;
  - (d) the reasons why, in order to transport the person to that hospital or other place, it is necessary to make the order;

- (e) whether the order is to be carried out by a transport officer or, if section 149(2) applies, a police officer;
  - (f) if the order is to be carried out by a police officer, having regard to the matters referred to in section 149(2)(a) and (b) — the reasons why it cannot be carried out by a transport officer;
  - (g) the date and time when the order is made;
  - (h) the date and time when the order will expire under section 150(2)(a), (b) or (c);
  - (i) whether or not the order can be extended because of section 151(2) or under section 152(3) and, if it can, the process for extending it;
  - (j) the name, qualifications and signature of the psychiatrist or practitioner making the order.
- (2) A practitioner or psychiatrist who makes a transport order in respect of a person must, as soon as practicable —
- (a) file it and give a copy to the person; and
  - (b) give a copy to the transport officer or police officer responsible for carrying out the order.

**149. Operation of transport order**

- (1) A transport order made in respect of a person authorises a transport officer or, if subsection (2) applies, a police officer to do these things —
- (a) apprehend the person and, for that purpose, exercise the powers under sections 159(2) and 172;
  - (b) if the person is apprehended — transport the person to the hospital or other place specified in the order as soon as practicable and, in any event, before the transport order expires;
  - (c) for the purpose of transporting the person, detain the person until the first of these things occurs —
    - (i) the person is received into the hospital or other place;
    - (ii) the transport order expires.
- (2) A transport order can only authorise a police officer instead of a transport officer to carry out the order if the practitioner or psychiatrist making the order is satisfied —
- (a) that there is a significant risk of serious harm to the person being transported or to another person; or
  - (b) that —
    - (i) a transport officer will not be available to carry out the order within a reasonable time; and
    - (ii) any delay in carrying out the order beyond that time is likely to pose a significant risk of harm to the person being transported or to another person.

**159. Apprehension of other persons**

- (1) This section applies in relation to the apprehension of a person —
  - (a) under section 99(a) by a police officer or person prescribed for the purpose of carrying out an apprehension and return order; or
  - (b) under section 149(1)(a) by a transport officer or police officer for the purpose of carrying out a transport order; or
  - (c) under section 156(1) by a police officer because the person is suspected of having a mental illness and needs to be apprehended.
- (2) For the purpose of apprehending the person, the police officer, person prescribed or transport officer may do any of these things —
  - (a) enter any premises where the person is reasonably suspected to be;
  - (b) search, in accordance with sections 163 and 172, the person and any article found on or with the person;
  - (c) seize, in accordance with sections 164 and 172, any article listed in section 164(2) that is found on or with the person.
- (3) However, a transport officer can only enter premises prescribed by the regulations for this subsection.

## Part 12 — Exercise of certain powers

### Division 1 — Detention powers

#### 170. Principles relating to detention

These principles apply in relation to the detention of a person under this Act —

- (a) the person must be detained for as brief a period as practicable;
- (b) the degree of any force used to detain the person must be the minimum that is required to be used for that purpose;
- (c) while the person is detained —
  - (i) there must be the least possible restriction on the person's freedom of choice and movement consistent with the person's detention; and
  - (ii) the person is entitled to reasonable privacy consistent with the person's detention; and
  - (iii) the person must be treated with dignity and respect.

### Division 2 — Ancillary powers: reasonable assistance and force and directions

#### 171. Term used: prescribed provision

In this Division —

**prescribed provision** means a provision listed in the Table.

Table

s. 83(2)(c)	s. 86(c)
s. 99	s. 130(3)
s. 149(1)	Part 11
s. 225	

#### 172. Reasonable assistance and reasonable force authorised

- (1) A person exercising a power under a prescribed provision may request another person to give the person reasonable assistance in exercising that power.
- (2) A person exercising, or assisting in accordance with a request under subsection (1) another person in exercising, a power under a prescribed provision may use reasonable force in doing so.

## SECLUSION AND RESTRAINT PROVISIONS:

### Division 5 — Seclusion

#### 211. Terms used

In this Division —

**oral authorisation** means an authorisation given orally under section 214(1);

**seclusion order** —

- (a) means a seclusion order made under section 215(1); and
- (b) includes a seclusion order as extended under section 218(1).

#### 212. Seclusion: meaning

- (1) Seclusion is the confinement of a person who is being provided with treatment or care at an authorised hospital by leaving the person at any time of the day or night alone in a room or area from which it is not within the person's control to leave.
- (2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

#### 213. Seclusion must be authorised

A person must not keep another person in seclusion except in accordance with an oral authorisation or a seclusion order.

Penalty: a fine of \$6 000.

#### 214. Giving oral authorisation

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may orally authorise the seclusion of any of these people —
    - (a) a person who is a patient admitted by the authorised hospital;
    - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
    - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
  - (2) A person cannot give an oral authorisation in respect of a person unless satisfied of the matters specified in section 216.
  - (3) A person giving an oral authorisation in respect of a person must specify the room or area where the person can be secluded.
  - (4) A person who gives an oral authorisation in respect of a person must, as soon as practicable after the person is secluded under the authorisation —
    - (a) record the oral authorisation in the approved form, specifying the following —
      - (i) the date and time when it was given;
      - (ii) the room or area specified under subsection (3);
      - (iii) the reasons for giving it;
- and

- (b) file the record and give a copy to the person.
- (5) A mental health practitioner or the person in charge of a ward who gives an oral authorisation in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 222(4) or 223(2), inform a medical practitioner as to whether —
  - (a) the person is secluded under the oral authorisation; or
  - (b) the person was secluded under the oral authorisation but has since been released from seclusion.
- (6) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (5) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.
- (7) If a seclusion order confirming the oral authorisation is not made (either by the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a seclusion order) as soon as practicable and, in any event, within 2 hours after the time when the person is secluded under the authorisation —
  - (a) the person cannot continue to be secluded and must be released from seclusion; and
  - (b) the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a seclusion order must ensure that the person is informed of that fact and released from seclusion.

**215. Making seclusion order**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may make a seclusion order authorising the seclusion of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot make a seclusion order in respect of a person unless satisfied of the matters specified in section 216.
- (3) A seclusion order must be in the approved form and must include the following —
  - (a) the name and date of birth of the person being secluded under the order;
  - (b) the date and time when the order is made;



- (c) the date and time when any oral authorisation being confirmed by the order was given;
  - (d) the period for which the person can be secluded under the order, which cannot exceed 2 hours including the period for which the person was secluded under any oral authorisation being confirmed by the order;
  - (e) the room or area where the person can be secluded;
  - (f) with reference to the criteria specified in section 216(1), the reasons for authorising the seclusion;
  - (g) if a mental health practitioner or the person in charge of a ward makes the order — with reference to the criteria specified in section 216(2), the reasons for the urgency;
  - (h) particulars of any observations made about the person —
    - (i) if the order is confirming an oral authorisation — when the person was secluded under the oral authorisation; or
    - (ii) otherwise — when the person is secluded under the order;
  - (i) particulars of any directions given by a medical practitioner or mental health practitioner about the treatment and care to be provided to the person while secluded;
  - (j) the name, qualifications and signature of the person making the order.
- (4) A mental health practitioner or the person in charge of a ward who makes a seclusion order in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 222(4) or 223(2), inform a medical practitioner as to whether —
- (a) the person is secluded under the seclusion order; or
  - (b) the person was secluded under the seclusion order but has since been released from seclusion.
- (5) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (4) must, as soon as practicable —
- (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.
- (6) The person who makes a seclusion order in respect of a person must, as soon as practicable after the person is secluded under the order, file it and give a copy to the person.

**216. Criteria for authorising seclusion**

- (1) A person cannot give an oral authorisation or make a seclusion order in respect of a person unless satisfied of these things —
- (a) the person needs to be secluded to prevent the person from —
    - (i) physically injuring himself or herself or another person; or
    - (ii) persistently causing serious damage to property;

and

- (b) there is no less restrictive way of preventing the injury or damage.
- (2) A mental health practitioner or the person in charge of a ward cannot give an oral authorisation or make a seclusion order in respect of a person unless also satisfied that —
- (a) the person needs to be secluded urgently; and
  - (b) a medical practitioner is not reasonably available to give an oral authorisation or make a seclusion order in respect of the person.

**217. Treating psychiatrist (if any) to be informed**

- (1) This section applies if —
- (a) a person secluded under an oral authorisation or seclusion order has a treating psychiatrist; and
  - (b) the treating psychiatrist did not give the oral authorisation or make the seclusion order; and
  - (c) the medical practitioner informed under section 214(5) or 215(4) of the person's seclusion is not the treating psychiatrist.
- (2) The person who gave the oral authorisation or made the seclusion order must, as soon as practicable and, in any event, within 2 hours after the time when the person is secluded under the authorisation or order, inform the treating psychiatrist as to whether —
- (a) the person is secluded under the authorisation or order; or
  - (b) the person was secluded under the authorisation or order but has since been released from seclusion.
- (3) A person who informs the treating psychiatrist under subsection (2) must, as soon as practicable —
- (a) record in the approved form —
    - (i) the treating psychiatrist's name and qualifications; and
    - (ii) the date and time when the treating psychiatrist was informed;
- and
- (b) file the record and give a copy to the person.

**218. Extending seclusion order**

- (1) A medical practitioner may make an order extending a seclusion order in force in respect of a person from the end of the period of seclusion under the seclusion order for the further period (not exceeding 2 hours) specified in the order.
- (2) The medical practitioner cannot extend the seclusion order unless, immediately before doing so, the medical practitioner examines the person in accordance with section 222(4).
- (3) The medical practitioner must, as soon as practicable, file the order and give a copy to the person.

**219. Revoking seclusion order**

- (1) A medical practitioner or mental health practitioner or the person in charge of a ward at an authorised hospital may make an order revoking a seclusion order in force in respect of a person.

- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when the seclusion order is revoked;
  - (b) the name, qualifications and signature of the person making it.
- (3) The person who makes the order must, as soon as practicable, file it and give a copy to the person.

**220. Release of person on revocation or expiry of seclusion order**

A medical practitioner or mental health practitioner must, as soon as practicable after the time when a person cannot continue to be secluded under a seclusion order —

- (a) inform the person of that fact; and
- (b) ensure that the person is released from seclusion.

**221. Record of seclusion order expiring**

A medical practitioner or mental health practitioner must, as soon as practicable after a seclusion order expires, file a record in the approved form of the date and time of the expiry.

**222. Requirements relating to seclusion**

- (1) This section applies while a person is secluded under an oral authorisation or a seclusion order.
- (2) The person in charge of the ward where the person is secluded must ensure that the requirements specified in this section, and any other requirements prescribed by the regulations for this section, are complied with.
- (3) A mental health practitioner or a nurse must observe the person every 15 minutes and, as soon as practicable, file a record in the approved form of those observations and give a copy to the person.
- (4) A medical practitioner must examine the person at least every 2 hours and, as soon as practicable —
  - (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including whether or not the medical practitioner considers that, having regard to the criteria specified in section 216(1), the person should continue to be secluded;
  - and
  - (b) file the record and give a copy to the person.
- (5) The person must be provided with these things —
  - (a) the bedding and clothing appropriate in the circumstances;
  - (b) sufficient food and drink;
  - (c) access to toilet facilities;
  - (d) any other care appropriate to the person's needs.

**223. Examination of person released from seclusion**

- (1) This section applies whenever a person is released from seclusion under an oral authorisation or a seclusion order.

- (2) The person in charge of the ward where the person was secluded must ensure —
  - (a) that the person is examined by a medical practitioner within 6 hours after the time when the person is released from the seclusion; or
  - (b) if the person is to be released or discharged by, or against medical advice wants to leave, the authorised hospital where the person was secluded before being examined under paragraph (a) — that the person is offered an examination by a medical practitioner to be conducted before the person is released, discharged or leaves.
- (3) A medical practitioner who examines a person for the purposes of subsection (2) must, as soon as practicable —
  - (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including any complication of or deterioration in the person's mental or physical condition that is a result of, or may be the result of, the person being secluded;
  - and
  - (b) file the record and give a copy to the person.

**224. Report to Chief Psychiatrist and Mentally Impaired Accused Review Board**

- (1) This section applies whenever a person is released from seclusion under an oral authorisation or a seclusion order.
- (2) The treating psychiatrist or, if the person does not have a treating psychiatrist, the person in charge of the authorised hospital where the person was secluded must, as soon as practicable, give the documents specified in subsection (3) relating to the seclusion to —
  - (a) the Chief Psychiatrist; and
  - (b) if the person is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (3) For subsection (2), these documents are specified —
  - (a) a copy of the record of the oral authorisation (if any) made under section 214(4)(a);
  - (b) a copy of the seclusion order (if any) made under section 215(1);
  - (c) a copy of any order extending the seclusion order made under section 218(1);
  - (d) a copy of any order revoking the seclusion order made under section 219(1) or any record of the expiry of the seclusion order under section 221;
  - (e) a copy of each of the records made under section 214(6)(a), 215(5)(a), 217(3)(a), 222(3) and (4)(a) and 223(3)(a).
- (4) The treating psychiatrist or person in charge must, as soon as practicable, file a record of having complied with subsection (2).

**225. Reasonable assistance and force authorised**

A person prescribed by the regulations for this section is authorised to exercise the powers under section 172 for the purpose of secluding a person under an oral authorisation or a seclusion order.

**Division 6 — Bodily restraint**

**226. Terms used**

In this Division —

***bodily restraint order*** —

- (a) means a bodily restraint order made under section 231(1); and
- (b) includes a bodily restraint order as varied under section 234(1) or (3);

***oral authorisation*** means an authorisation given orally under section 230(1).

**227. Bodily restraint: meaning**

- (1) Bodily restraint is the physical or mechanical restraint of a person who is being provided with treatment or care at an authorised hospital.
- (2) Physical restraint is the restraint of a person by the application of bodily force to the person's body to restrict the person's movement.
- (3) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary —
  - (a) to enable the person to carry out daily living activities; or
  - (b) to redirect the person because the person is disoriented.
- (4) Mechanical restraint is the restraint of a person by the application of a device (for example, a belt, harness, manacle, sheet or strap) to a person's body to restrict the person's movement.
- (5) Mechanical restraint does not include either of these forms of restraint —
  - (a) the appropriate use of a medical or surgical appliance in the treatment of a physical illness or injury;
  - (b) the appropriate use of furniture that restricts a person's capacity to get off the furniture (for example, a bed fitted with cot sides or a chair fitted with a table across the arms).
- (6) Bodily restraint does not include —
  - (a) physical or mechanical restraint by a police officer acting in the course of duty; or
  - (b) physical restraint by a person exercising a power under section 172(2).

**228. Principles relating to use of bodily restraint**

These principles apply in relation to the use of bodily restraint on a person under this Division —

- (a) the degree of force used to restrain the person must be the minimum that is required in the circumstances;
- (b) while the person is restrained —

- (i) there must be the least possible restriction on the person's freedom of movement consistent with the person's restraint; and
- (ii) the person must be treated with dignity and respect.

**229. Bodily restraint must be authorised**

A person must not use bodily restraint on another person except in accordance with an oral authorisation or a bodily restraint order.

Penalty: a fine of \$6 000.

**230. Giving oral authorisation**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may orally authorise the bodily restraint of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot give an oral authorisation in respect of a person unless satisfied of the matters specified in section 232.
- (3) A person giving an oral authorisation in respect of a person must specify —
  - (a) whether physical or mechanical restraint can be used to restrain the person; and
  - (b) if mechanical restraint can be used —
    - (i) the device that can be used to restrain the person; and
    - (ii) the way in which the device can be applied to the person's body.
- (4) A person who gives an oral authorisation in respect of a person must, as soon as practicable after the person is restrained under the authorisation —
  - (a) record the oral authorisation in the approved form, specifying the following —
    - (i) the date and time when it was given;
    - (ii) the matters specified under subsection (3);
    - (iii) the reasons for giving it;and
  - (b) file the record and give a copy to the person.
- (5) A mental health practitioner or the person in charge of a ward who gives an oral authorisation in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 238(4) or 239(2)(a), inform a medical practitioner as to whether —
  - (a) the person is restrained under the oral authorisation; or

- (b) the person was restrained under the oral authorisation but has since been released from bodily restraint.
- (6) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (5) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
  - and
  - (b) file the record and give a copy to the person.
- (7) If a bodily restraint order confirming the oral authorisation is not made (either by the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a bodily restraint order) as soon as practicable and, in any event, within 30 minutes after the time when the person is restrained under the authorisation —
  - (a) the person cannot continue to be restrained and must be released from bodily restraint; and
  - (b) the person who gave the oral authorisation or, if that person is not reasonably available, another person who is authorised to make a bodily restraint order must ensure that the person is informed of that fact and released from bodily restraint.

**231. Making bodily restraint order**

- (1) A medical practitioner or mental health practitioner at an authorised hospital or the person in charge of a ward at an authorised hospital may make a bodily restraint order authorising the bodily restraint of any of these people —
  - (a) a person who is a patient admitted by the authorised hospital;
  - (b) a person who is referred under section 26(2) or 36(2) for an examination to be conducted by a psychiatrist at the authorised hospital;
  - (c) a person who is under an order made under section 55(1)(c) or 61(1)(c) to enable an examination to be conducted by a psychiatrist at the authorised hospital.
- (2) A person cannot make a bodily restraint order in respect of a person unless satisfied of the matters specified in section 232.
- (3) A bodily restraint order must be in the approved form and must include the following —
  - (a) the name and date of birth of the person being restrained under the order;
  - (b) the date and time when the order is made;
  - (c) the date and time when any oral authorisation being confirmed by the order was given;
  - (d) the period for which the person can be restrained under the order, which cannot exceed 30 minutes including the period for which

- the person was restrained under any oral authorisation being confirmed by the order;
- (e) whether physical or mechanical restraint can be used to restrain the person;
  - (f) if mechanical restraint can be used —
    - (i) the device that can be used to restrain the person; and
    - (ii) the way in which the device can be applied to the person's body;
  - (g) with reference to the criteria specified in section 232(1) —
    - (i) the reasons for authorising the use of bodily restraint on the person; and
    - (ii) if mechanical restraint is authorised — the reasons for authorising the use and application of the device specified under paragraph (f);
  - (h) if a mental health practitioner or the person in charge of a ward makes the order — with reference to the criteria specified in section 232(2), the reasons for the urgency;
  - (i) particulars of any observations made about the person —
    - (i) if the order is confirming an oral authorisation — when the person was restrained under the oral authorisation; or
    - (ii) otherwise — when the person is restrained under the order;
  - (j) particulars of any directions given by a medical practitioner or mental health practitioner about the treatment and care to be provided to the person while restrained;
  - (k) the name, qualifications and signature of the person making the order.
- (4) A mental health practitioner or the person in charge of a ward who makes a bodily restraint order in respect of a person must, as soon as practicable and, in any event, within sufficient time to enable the person to be examined as required by section 238(4) or 239(2)(a), inform a medical practitioner as to whether —
- (a) the person is restrained under the bodily restraint order; or
  - (b) the person was restrained under the bodily restraint order but has since been released from bodily restraint.
- (5) A mental health practitioner or the person in charge of a ward who informs a medical practitioner under subsection (4) must, as soon as practicable —
- (a) record in the approved form —
    - (i) the medical practitioner's name and qualifications; and
    - (ii) the date and time when the medical practitioner was informed;
- and
- (b) file the record and give a copy to the person.
- (6) The person who makes a bodily restraint order in respect of a person must, as soon as practicable after the person is restrained under the order, file it and give a copy to the person.



**232. Criteria for authorising bodily restraint**

- (1) A person cannot give an oral authorisation or make a bodily restraint order in respect of a person unless satisfied of these things —
  - (a) the person needs to be restrained to —
    - (i) provide the person with treatment; or
    - (ii) prevent the person from physically injuring himself or herself or another person; or
    - (iii) prevent the person from persistently causing serious damage to property;
  - and
  - (b) there is no less restrictive way of providing the treatment or preventing the injury or damage; and
  - (c) the use of bodily restraint on the person is unlikely to pose a significant risk to the person's physical health.
- (2) A mental health practitioner or the person in charge of a ward cannot give an oral authorisation or make a bodily restraint order in respect of a person unless also satisfied that —
  - (a) the person needs to be restrained urgently; and
  - (b) a medical practitioner is not reasonably available to give an oral authorisation or make a bodily restraint order in respect of the person.

**233. Treating psychiatrist (if any) must be informed**

- (1) This section applies if —
  - (a) a person restrained under an oral authorisation or a bodily restraint order has a treating psychiatrist; and
  - (b) the treating psychiatrist did not give the oral authorisation or make the bodily restraint order; and
  - (c) the medical practitioner informed of the restraint under section 230(5) or 231(4) is not the treating psychiatrist.
- (2) The person who gave the oral authorisation or made the bodily restraint order must, as soon as practicable and, in any event, within 30 minutes after the time when the person is restrained under the authorisation or order, inform the treating psychiatrist as to whether —
  - (a) the person is restrained under the authorisation or order; or
  - (b) the person was restrained under the authorisation or order but has since been released from bodily restraint.
- (3) A person who informs the treating psychiatrist under subsection (2) must, as soon as practicable —
  - (a) record in the approved form —
    - (i) the treating psychiatrist's name and qualifications; and
    - (ii) the date and time when the treating psychiatrist was informed;
  - and
  - (b) file the record and give a copy to the person.

**234. Varying bodily restraint order**

- (1) A medical practitioner may make an order extending a bodily restraint order in force in respect of a person from the end of the period of restraint under the bodily restraint order for the further period (not exceeding 30 minutes) specified in the order.
- (2) A medical practitioner cannot extend a bodily restraint order under subsection (1) unless, immediately before doing so, the medical practitioner examines the person in accordance with section 238(4).
- (3) A medical practitioner or mental health practitioner may make an order varying a bodily restraint order in force in respect of a person by —
  - (a) shortening the bodily restraint order by the period specified in the order; or
  - (b) varying the device that is authorised for use to restrict the person's movement or the way in which the device is authorised to be applied to the person's body.
- (4) An order made under subsection (1) or (3) must be in the approved form and must include the following —
  - (a) the date and time when it is made;
  - (b) the variation of the bodily restraint order;
  - (c) the reasons for the variation;
  - (d) the name, qualifications and signature of the practitioner making it.
- (5) A person who makes an order under subsection (1) or (3) must, as soon as practicable, file it and give a copy to the person.

**235. Revoking bodily restraint order**

- (1) A medical practitioner or mental health practitioner or the person in charge of a ward at an authorised hospital may make an order revoking a bodily restraint order in force in respect of a person.
- (2) The order must be in the approved form and must include the following —
  - (a) the date and time when the bodily restraint order is revoked;
  - (b) the name, qualifications and signature of the practitioner making it.
- (3) The person who makes the order must, as soon as practicable, file it and give a copy to the person.

**236. Release of person on revocation or expiry of bodily restraint order**

A medical practitioner or mental health practitioner must, as soon as practicable after the time when a person cannot continue to be restrained under a bodily restraint order —

- (a) inform the person of that fact; and
- (b) ensure that the person is released from bodily restraint.

**237. Record of bodily restraint order expiring**

A medical practitioner or mental health practitioner must, as soon as practicable after a bodily restraint order expires, file a record in the approved form of the date and time of the expiry.

**238. Requirements relating to bodily restraint**

- (1) This section applies while a person is restrained under an oral authorisation or a bodily restraint order.
- (2) The person in charge of the ward where the person is restrained must ensure that the requirements specified in this section, and any other requirements prescribed by the regulations for this section, are complied with.
- (3) A mental health practitioner or a nurse must be in physical attendance on the person at all times and, as soon as practicable, must file a record in the approved form of any observations he or she makes about the person and give a copy to the person.
- (4) A medical practitioner must examine the person at least every 30 minutes and, as soon as practicable —
  - (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including whether or not the medical practitioner considers that, having regard to the criteria specified in section 232(1), the person should continue to be restrained;
  - and
  - (b) file the record and give a copy to the person.
- (5) If the person remains restrained for more than 6 hours, a psychiatrist must review the use of bodily restraint on the person and, as soon as practicable —
  - (a) record in the approved form —
    - (i) the psychiatrist's name and qualifications; and
    - (ii) the date, time and results of the review;
  - and
  - (b) file the record and give a copy to the person.
- (6) The person must be provided with these things —
  - (a) the bedding and clothing appropriate in the circumstances;
  - (b) sufficient food and drink;
  - (c) access to toilet facilities;
  - (d) any other care appropriate to the person's needs.

**239. Examination of person when released**

- (1) This section applies whenever a person is released from bodily restraint under an oral authorisation or a bodily restraint order.
- (2) The person in charge of the ward where the person was restrained must ensure —
  - (a) that the person is examined by a medical practitioner as soon as practicable and, in any event, within 6 hours after the time when the person is released from the bodily restraint; or
  - (b) if the person is to be released or discharged by, or against medical advice wants to leave, the authorised hospital where the person was restrained before being examined under paragraph (a) — that

the person is offered an examination by a medical practitioner to be conducted before the person is released, discharged or leaves.

- (3) A medical practitioner who examines a person for the purposes of subsection (2) must, as soon as practicable —
  - (a) record in the approved form these things —
    - (i) the medical practitioner's name and qualifications;
    - (ii) the date and time of the examination;
    - (iii) the results of the examination, including any complication of or deterioration in the person's mental or physical condition that is a result of, or may be the result of, the person being restrained;
  - and
  - (b) file the record and give a copy to the person.

**240. Report to Chief Psychiatrist and Mentally Impaired Accused Review Board**

- (1) This section applies whenever a person is released from restraint under an oral authorisation or a bodily restraint order.
- (2) The treating psychiatrist or, if the person does not have a treating psychiatrist, the person in charge of the authorised hospital where the person was restrained must, as soon as practicable, give the documents specified in subsection (3) relating to the restraint to —
  - (a) the Chief Psychiatrist; and
  - (b) if the person is a mentally impaired accused — the Mentally Impaired Accused Review Board.
- (3) For subsection (2), these documents are specified —
  - (a) a copy of the record of the oral authorisation (if any) made under section 230(4)(a);
  - (b) a copy of the bodily restraint order (if any) made under section 231(1);
  - (c) a copy of any order varying the bodily restraint order made under section 234(1) or (3);
  - (d) a copy of any order revoking the bodily restraint order made under section 235(1) or any record of the expiry of the bodily restraint order made under section 237;
  - (e) a copy of each of the records made under section 230(6)(a), 231(5)(a), 233(3)(a), 238(3), (4)(a) and (5)(a) and 239(3)(a).
- (4) The treating psychiatrist or person in charge must, as soon as practicable, file a record of having complied with subsection (2).

## **Mental Health Act 1996:**

### **Division 8 — Seclusion of patients**

#### **116. Term used: seclusion**

In this Division —

*seclusion* means sole confinement in a room that it is not within the control of the person confined to leave.

#### **117. Seclusion allowed only at authorised hospital**

A person is not to cause a patient at a hospital, other than an authorised hospital, to be kept in seclusion.

Penalty: \$5 000 or imprisonment for one year.

#### **118. Seclusion must be authorised**

A person is not to cause a patient at an authorised hospital to be kept in seclusion at any time, whether it is day or night, except —

- (a) as authorised in accordance with this Division by a medical practitioner or, in an emergency, a senior mental health practitioner; and
- (b) within the period for which authorisation is given.

Penalty: \$1 000.

#### **119. Authorising seclusion**

- (1) A person is not to give authorisation to keep a patient in seclusion unless it is necessary for the protection, safety, or well-being of —

- (a) the patient; or
- (b) another person with whom the patient might come in contact if not kept in seclusion.

Penalty: \$1 000.

- (2) Authorisation to keep a patient in seclusion is to be in writing and is to include particulars of the period for which the authorisation is given and anything else prescribed by the regulations.
- (3) A senior mental health practitioner who in an emergency authorises a patient to be kept in seclusion is to notify a medical practitioner as soon as is practicable, and the medical practitioner may vary or revoke the authorisation.

Penalty: \$1 000.

- (4) Records of each authorisation to keep a patient in seclusion are required to be kept as prescribed by the regulations.

#### **120. Psychiatrist's duties where patient kept in seclusion**

Where a patient is kept in seclusion the treating psychiatrist is to ensure that —

- (a) appropriate provision is made for the basic needs of the patient, including bedding, clothing, food, drink, and toilet facilities; and
- (b) the patient is observed by a mental health practitioner at regular intervals, as prescribed by the regulations; and

- (c) the patient is regularly monitored by a psychiatrist or another medical practitioner; and
- (d) a report of the patient being kept in seclusion is made as soon as is practicable to the Mental Health Review Board.

### **Division 9 — Mechanical bodily restraint**

#### **121. Term used: mechanical bodily restraint**

In this Division —

*mechanical bodily restraint*, in relation to a person, means restraint preventing the free movement of the person's body or a limb by mechanical means, other than by the use of a medical or surgical appliance for the proper treatment of physical disease or injury.

#### **122. Mechanical bodily restraint must be authorised**

A person is not to cause mechanical bodily restraint to be used on a patient except —

- (a) as authorised in accordance with this Division by a medical practitioner or, in an emergency, a senior mental health practitioner; and
- (b) within the period for which authorisation is given.

Penalty: \$1 000.

#### **123. Authorising restraint**

- (1) A person is not to give authorisation to use mechanical bodily restraint on a patient unless it is necessary for —
  - (a) the medical treatment of the patient; or
  - (b) the protection, safety, or well-being of —
    - (i) the patient; or
    - (ii) another person with whom the patient might come in contact if the restraint is not used;or
  - (c) preventing the patient from persistently destroying property.

Penalty: \$1 000.

- (2) Authorisation to use mechanical bodily restraint on a patient is to be in writing and is to include particulars of the period for which the authorisation is given and anything else prescribed by the regulations.
- (3) A senior mental health practitioner who, in an emergency, authorises the use of mechanical bodily restraint on a patient is to notify a medical practitioner as soon as is practicable, and the medical practitioner may vary or revoke the authorisation.  
Penalty: \$1 000.
- (4) Records of each authorisation to use mechanical bodily restraint on a patient are to be kept as prescribed by the regulations.

#### **124. Use of restraint to be reported to Board**

The treating psychiatrist is to ensure that a report of the use of mechanical bodily restraint is made as soon as is practicable to the Mental Health Review Board.

## **Mental Health Regulations 1997:**

### **Particulars to be included in authorisation to keep patient in seclusion — s. 119(2)**

For the purposes of section 119(2), the following particulars are to be included in an authorisation to keep a patient in seclusion, in addition to particulars of the period for which the authorisation is given —

- (a) the name and qualifications of the senior mental health practitioner or medical practitioner who gave the authorisation;
- (b) the date and time that the authorisation was given;
- (c) the reason the authorisation was given, having regard to section 119(1);
- (d) particulars of any special observations made in respect of the patient at the time of seclusion and any directions issued by a medical practitioner or mental health practitioner regarding the clinical care of the patient while in seclusion; and
- (e) where the authorisation is given by a senior mental health practitioner, details of the emergency.

### **12. Records to be kept with respect to authorisation to keep patient in seclusion — s. 119(4)**

For the purposes of section 119(4), the treating psychiatrist of a patient in respect of which authorisation is given to keep the patient in seclusion, is to keep the following records as part of the patient's case notes —

- (a) the original of the authorisation;
- (b) where the authorisation is given by a senior mental health practitioner —
  - (i) the name and qualifications of the medical practitioner notified under section 119(3) and the time of that notification;
  - (ii) whether the medical practitioner notified saw the patient, and if so, the date and time the patient was seen; and
  - (iii) whether the medical practitioner varied or revoked the authorisation, and if so, the reasons for this, and if varied, the details of the variation;
- (c) the name and qualifications of the treating psychiatrist;
- (d) the date and time that the treating psychiatrist was notified of the authorisation;
- (e) the date, time and results of each medical examination of the patient in the 24 hours following seclusion and the name and qualifications of each examining medical practitioner;
- (f) details of any complications that have arisen in the patient's case as a result, or suspected result, of the seclusion;
- (g) the dates, times and results of the monitoring carried out under section 120(c); and
- (h) a copy of the report made to the Board under section 120(d).

### **13. Observation of patient in seclusion — s. 120(b)**

For the purposes of section 120(b), the treating psychiatrist of a patient in seclusion is to ensure that the patient is observed by a mental health practitioner every 15 minutes while in seclusion.

**14. Particulars to be included in authorisation to use mechanical bodily restraint on a patient — s. 123(2)**

For the purposes of section 123(2), the following particulars are to be included in an authorisation to use mechanical bodily restraint on a patient, in addition to particulars of the period for which the authorisation is given —

- (a) the name and qualifications of the senior mental health practitioner or medical practitioner who gave the authorisation;
- (b) the date and time that the authorisation was given;
- (c) the reason the authorisation was given, having regard to section 123(1) and the type of restraint used;
- (d) particulars of any special observations made in respect of the patient at the time of restraint and any directions issued by a medical practitioner or mental health practitioner regarding the clinical care of the patient while under restraint;
- (e) where the authorisation is given by a senior mental health practitioner, details of the emergency.

**15. Records to be kept with respect to authorisation to use mechanical bodily restraint — s. 123(4)**

For the purposes of section 123(4), the treating psychiatrist of a patient in respect of which the use of mechanical bodily restraint is authorised, is to keep the following records in a separate part of the patient's case notes entitled "Record of Restraint under Section 123 of the Act" —

- (a) the original of the authorisation;
- (b) where the authorisation is given by a senior mental health practitioner —
  - (i) the name and qualifications of the medical practitioner notified under section 123(3) and the time of that notification;
  - (ii) whether the medical practitioner notified saw the patient, and if so, the date and time the patient was seen; and
  - (iii) whether the medical practitioner varied or revoked the authorisation, and if so, the reasons for this, and if varied, the details of the variation;
- (c) the name and qualifications of the treating psychiatrist;
- (d) the date and time that the treating psychiatrist was notified of the authorisation;
- (e) the date, time and results of each medical examination of the patient in the 24 hours following restraint and the name and qualifications of each examining medical practitioner;
- (f) details of any complications that have arisen in the patient's case as a result, or suspected result, of the restraint;
- (g) the dates, times and results of the observations to be carried out under regulation 14; and
- (h) a copy of the report made to the Board under section 124.

**16. Special duties where patient under mechanical bodily restraint**

While a patient is under mechanical bodily restraint the treating psychiatrist is to ensure that —

- (a) a mental health practitioner is in physical attendance with the patient;



- (b) a medical practitioner is in physical attendance with the patient for the first 15 minutes that the patient is under restraint; and
- (c) after the first 15 minutes that the patient is under restraint, a medical practitioner monitors the patient every 30 minutes.

**17. Register of seclusions and restraints to be kept**

- (1) The psychiatrist in charge of the clinical psychiatric services of each authorised hospital is to —
  - (a) ensure that there is kept and maintained a register containing the clinical details of every seclusion authorised under section 119 and every restraint authorised under section 123 in respect of a patient at the hospital; and
  - (b) monitor the use of the powers contained in Divisions 8 and 9 of Part 5 of the Act in respect of patients at the hospital.
- (2) The psychiatrist in charge of the clinical psychiatric services of an authorised hospital is to provide a copy of the register of seclusions and restraints kept under subregulation (1) to the Chief Psychiatrist within 14 days of being requested in writing to do so by the Chief Psychiatrist.