



New South Wales

# Health Legislation Amendment Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to various Acts relating to health and associated matters.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Health Administration Act 1982 No 135**

**Schedule 1 [1]** inserts provisions into the *Health Administration Act 1982* to facilitate certain dispositions of land by the Health Administration Corporation (being dispositions, dedications or uses that are contrary to a provision of, or a trust arising under, the Crown grant of that land or that may make the land liable to be forfeited to the Crown). The provisions enable land to be disposed by the Health

Administration Corporation in the same manner as dispositions of land by local health districts under section 34 of the *Health Services Act 1997*.

**Schedule 1 [2]** makes it clear that a person may be appointed to a fourth consecutive term as a member of the Medical Services Committee established under the *Health Administration Act 1982* if the person was appointed as Chairperson of that Committee during the person's third consecutive term. In all other cases a person may not be appointed as a member for more than 3 consecutive terms.

## **Schedule 2      Amendment of Health Care Complaints Act 1993 No 105**

**Schedule 2 [1]** sets out the principles that are to govern the exercise of functions by the Health Care Complaints Commission (*the Commission*) and other government agencies in connection with health care complaints under the *Health Care Complaints Act 1993 (the HCC Act)*.

**Schedule 2 [2]** makes it clear that a complaint under the HCC Act may be made concerning a health service that is likely to affect the clinical management or care of an individual client in addition to health services that do affect such management or care. **Schedule 2 [10]** makes a consequential amendment.

**Schedule 2 [3]** provides that the Health Care Complaints Commissioner may make a complaint under the HCC Act but only if it appears to the Commissioner that the matter that is the subject of the complaint:

- (a) raises a significant issue of public health or safety, or
- (b) raises a significant question regarding a health service that affects, or is likely to affect, the clinical management or care of an individual client, or
- (c) if substantiated, would:
  - (i) provide grounds for disciplinary action against a health practitioner, or
  - (ii) be found to involve gross negligence on the part of a health practitioner, or
  - (iii) result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the *Public Health Act 2010*.

**Schedule 2 [4]** provides that the Commission must give written notice of the making of a complaint, the nature of the complaint and the identity of the complainant to a person who currently employs or engages the health practitioner concerned as a health practitioner if the Commission considers on reasonable grounds that the giving of the notice is necessary to assess the matter effectively or to protect the health or safety of the public or a member of the public. The Commission is not required to give the notice if it appears to the Commission, on reasonable grounds, that the giving of the notice will place the complainant or another person at risk of intimidation or harassment or unreasonably prejudice the employment or engagement of the health practitioner.

**Schedule 2 [5] and [8]** update certain references.

**Schedule 2 [6]** makes it clear that following the assessment of a complaint the Commission is to give notice of the action taken or decision made to all the parties to the complaint and not only to the complainant.

**Schedule 2 [7]** amends a note.

**Schedule 2 [9]** provides that the Commission is to notify the parties to a complaint against a health organisation, and may notify other persons, of the action taken and the reasons for taking that action in addition to notice of the results of the investigation.

**Schedule 2 [11]** inserts provisions into the HCC Act to enable the Director of Proceedings to refer a complaint back to the Commission for further investigation if the Director:

- (a) is unable to determine whether the complaint should be prosecuted before a disciplinary body, or
- (b) is of the opinion that further evidence is required to enable the Director to prosecute the complaint before the disciplinary body.

### **Schedule 3      Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86**

**Schedule 3** makes amendments to the Health Practitioner Regulation National Law as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland and as applied as a law of New South Wales by the *Health Practitioner Regulation (Adoption of National Law) Act 2009*.

**Schedule 3 [1]** provides that the Commission is not required to investigate a complaint referred to it by a health profession council, or cause it to be investigated, if the matter that is the subject of the complaint is being, or has been, investigated as, or as part of, another complaint to the Commission.

**Schedule 3 [2]–[4]** make amendments by way of statute law revision.

### **Schedule 4      Amendment of Health Services Act 1997 No 154**

**Schedule 4** amends the *Health Services Act 1997* to enable the Director-General of the Ministry of Health to suspend members of the NSW Health Service from duty without pay in certain circumstances, including certain cases of misconduct and being charged with certain serious criminal offences. The proposed power is generally similar to the power to suspend members of the Government Service contained in section 49 of the *Public Sector Employment and Management Act 2002*.

## **Schedule 5      Amendment of Mental Health Act 2007 No 8**

**Schedule 5 [1]** makes it clear that a correctional patient under the *Mental Health (Forensic Provisions) Act 1990* who is re-classified under that Act as an involuntary patient is an involuntary patient for the purposes of the *Mental Health Act 2007*.

**Schedule 5 [2]** provides that an authorised medical officer of a mental health facility must, as soon as is reasonably practicable, notify the Mental Health Review Tribunal if the officer becomes aware that a person detained in the mental health facility under the *Mental Health Act 2007* is a forensic patient.

**Schedule 5 [3]** provides that an authorised medical officer of a mental health facility must, as soon as is reasonably practicable, notify the Mental Health Review Tribunal of the discharge of a person detained in the mental health facility whom the officer knows is a forensic patient.

## **Schedule 6      Amendment of Mental Health (Forensic Provisions) Act 1990 No 10**

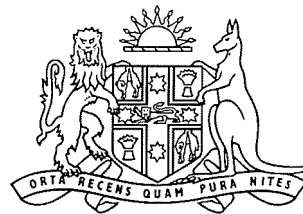
**Schedule 6 [1]** makes an amendment to clarify the circumstances in which a person ceases to be classified as a forensic patient under the *Mental Health (Forensic Provisions) Act 1990 (the MH (FP) Act)*.

**Schedule 6 [2]** provides that a community treatment order may be made in respect of a forensic patient who is to be released unconditionally in accordance with an order of the Mental Health Review Tribunal. On and from the release of the person, the community treatment order is taken to have been made under the *Mental Health Act 2007*.

**Schedule 6 [3]** makes it clear that an apprehension order under section 68 (Breach of orders for release) of the MH (FP) Act authorises the detention of the person concerned at the mental health facility, correctional centre or other place specified in the order.

**Schedule 6 [4]** makes it clear that the *Mental Health Act 2007* applies to a person who has been granted conditional release or leave of absence under Part 5 of the MH (FP) Act.

**Schedule 6 [5]** provides that if a party has appealed against a determination of the Mental Health Review Tribunal to the Supreme Court or the Court of Appeal on any question (not merely on a question of law), the Tribunal or the Court concerned may suspend, until the appeal is determined, the operation of any order or determination made in respect of the proceedings.



New South Wales

# Health Legislation Amendment Bill 2013

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New South Wales

# Health Legislation Amendment Bill 2013

No. , 2013

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## **A Bill for**

An Act to make miscellaneous amendments to various Acts that relate to health and associated matters.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Health Legislation Amendment Act 2013</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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<b>Schedule 1</b>	<b>Amendment of Health Administration Act 1982 No 135</b>	1
		2
<b>[1] Section 11 Disposal of land by Corporation</b>		3
Insert at the end of the section:		4
(2) The Corporation may request the Minister to give approval to (and the Minister may approve) a disposition of land, being a disposition:		5
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(a) that is contrary to a provision of, or a trust arising under, the Crown grant of that land, or		8
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(b) that, if this section had not been enacted, may make the land liable to be forfeited to the Crown.		10
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(3) If the Minister has given an approval under this section to a disposition of land, the disposition of the land:		12
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(a) is not to be regarded as a breach of any provision of, or any trust arising under, the Crown grant of that land, and		14
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(b) does not make the land liable to be forfeited to the Crown.		16
<b>[2] Schedule 4 Medical Services Committee</b>		17
Insert after clause 4 (2):		18
(3) Despite subclause (2), a person may be appointed to a fourth consecutive term as a member if the person was appointed as Chairperson during the person's third consecutive term.		19
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<b>Schedule 2</b>	<b>Amendment of Health Care Complaints Act 1993 No 105</b>	1
		2
<b>[1]</b>	<b>Section 3A Outline of role and principles of Commission and related government agencies in health care system</b>	3
	Insert after section 3A (5A):	4
	(5B) <b>Principles</b>	5
	The Commission and other government agencies with functions in connection with health care complaints under this Act are, in carrying out those functions, to have regard to the following principles:	6
	(a) the Commission and those government agencies are to be accountable to the New South Wales community,	7
	(b) the decision-making processes are to be open, clear and understandable for clients and health service providers,	8
	(c) an acceptable balance is to be maintained between protecting the rights and interests of clients and health service providers,	9
	(d) the processes of the Commission and those government agencies are to be effective in protecting the public from harm,	10
	(e) the Commission and those government agencies are to strive to improve the efficiency of the administration of those functions so as to benefit the New South Wales community,	11
	(f) the Commission and those government agencies are to be flexible and responsive as the health care system evolves and changes.	12
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<b>[2]</b>	<b>Sections 7 (1) (b), 25 (4) (b) and 25A (3) (b)</b>	28
	Insert “, or is likely to affect,” after “affects” wherever occurring.	29
<b>[3]</b>	<b>Section 8 Who may make a complaint?</b>	30
	Insert at the end of the section:	31
	(2) The Commissioner may make a complaint under this Act, but only if it appears to the Commissioner that the matter that is the subject of the complaint:	32
	(a) raises a significant issue of public health or safety, or	33
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(b)	raises a significant question regarding a health service that affects, or is likely to affect, the clinical management or care of an individual client, or	1 2 3
(c)	if substantiated, would:	4
(i)	provide grounds for disciplinary action against a health practitioner, or	5 6
(ii)	be found to involve gross negligence on the part of a health practitioner, or	7 8
(iii)	result in the health practitioner being found guilty of an offence under Division 1 or 3 of Part 7 of the <i>Public Health Act 2010</i> .	9 10 11
(3)	The provisions of this Part apply to the making of a complaint by the Commissioner, subject to any modifications prescribed by the regulations.	12 13 14
<b>[4]</b>	<b>Section 16A</b>	15
	Insert after section 16:	16
	<b>16A Employer to be notified of complaint against employee</b>	17
(1)	The Commission must give written notice of the making of a complaint, the nature of the complaint and the identity of the complainant to a person who currently employs or engages the health practitioner concerned as a health practitioner if the Commission considers on reasonable grounds that the giving of the notice is necessary:	18 19 20 21 22 23
(a)	to assess the matter effectively, or	24
(b)	to protect the health or safety of the public or a member of the public.	25 26
(2)	This section does not require the Commission to give notice under this section if it appears to the Commission, on reasonable grounds, that the giving of the notice will:	27 28 29
(a)	place the complainant or another person at risk of intimidation or harassment, or	30 31
(b)	unreasonably prejudice the employment or engagement of the health practitioner.	32 33
<b>[5]</b>	<b>Section 25 Notification of certain complaints to Director-General</b>	34
	Omit “Division 3 of Part 2A of the <i>Public Health Act 1991</i> ” from the note to the section.	35 36
	Insert instead “Division 3 of Part 7 of the <i>Public Health Act 2010</i> ”.	37

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<b>[6] Section 28 Notice of action taken or decision made following assessment</b>	1
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Omit “to the complainant” from section 28 (8).	3
Insert instead “to the parties to the complaint”.	4
<b>[7] Part 2, Division 5, note</b>	5
Omit the following:	6
The Commission will investigate with a view to moving to prosecution of the complaint before the appropriate professional board, committee or tribunal.	7
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<b>[8] Section 41A Prohibition orders and public statements</b>	10
Omit “Section 10AK (1) of the <i>Public Health Act 1991</i> ” from the note to section 41A (2) (a).	11
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Insert instead “Section 102 (3) of the <i>Public Health Act 2010</i> ”.	13
<b>[9] Section 45 Notification of results of investigation</b>	14
Insert after section 45 (3):	15
(4) In this section, <i>results of an investigation</i> includes any action taken under section 42 and the reasons for taking that action.	16
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<b>[10] Section 80 Functions of Commission</b>	18
Omit “complaints concerning the clinical management or care of individual clients by health service providers” from section 80 (1) (a).	19
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Insert instead “complaints concerning a health service that affects, or is likely to affect, the clinical management or care of individual clients”.	21
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<b>[11] Section 90B Functions of Director of Proceedings</b>	23
Insert after section 90B (3A):	24
(3B) The Director may refer a complaint back to the Commission for further investigation under Division 5 of Part 2 if the Director:	25
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(a) is unable to determine whether the complaint should be prosecuted before a disciplinary body, or	27
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(b) is of the opinion that further evidence is required to enable the Director to prosecute the complaint before the disciplinary body.	29
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(3C) If a complaint has been referred to the Commission for further investigation under subsection (3B), sections 39 (2) and 40 apply in relation to the complaint only if the Commission, at the end of	32
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the further investigation of the complaint, proposes to take any of the following action:

- (a) change the person whose conduct appears to be the subject of the complaint or include another person as a person whose conduct appears to be the subject of the complaint,
- (b) add to, substitute, amend or delete any of the specific allegations comprising the complaint (including add an allegation arising out of an investigation of the complaint that may not be the particular object of the complaint).

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<b>Schedule 3</b>	<b>Amendment of Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86</b>	1
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<b>[1]</b>	<b>Schedule 1 Modification of Health Practitioner Regulation National Law</b>	4
	Insert after section 150D (4) in Schedule 1 [15]:	5
	(4A) Despite subsections (3) and (4), the Commission is not required to investigate the complaint or cause it to be investigated if the matter that is the subject of the complaint is being, or has been, investigated as, or as part of, another complaint to the Commission.	6 7 8 9 10
<b>[2]</b>	<b>Schedule 1 [15]</b>	11
	Insert “or suspension” after “conditions” in section 152J (b).	12
<b>[3]</b>	<b>Schedule 1 [25]</b>	13
	Insert after Part 4 of Schedule 5A:	14
<b>Part 5</b>	<b>Provision consequent on enactment of Health Legislation Amendment Act 2013 [NSW]</b>	15 16 17
<b>35</b>	<b>Appointments of acting members and acting President of Councils</b>	18
	The amendment of clause 11 (1) and (3) of Schedule 5C by the <i>Health Legislation Amendment Act 2013</i> does not affect the appointment of any person holding office as an acting member or an acting President of a Council immediately before the commencement of that amendment.	19 20 21 22 23
<b>[4]</b>	<b>Schedule 1 [25]</b>	24
	Omit “Governor” wherever occurring in clause 11 (1), (3) and (5) of Schedule 5C.	25 26
	Insert instead “Minister”.	27

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## Schedule 4      Amendment of Health Services Act 1997 No 154

**Section 120A**

Insert after section 120:

**120A      Suspension of members of staff from duty pending decision in relation to misconduct or serious criminal charge**

(1) If:

- (a) the registration of a member of staff as a registered health practitioner is suspended under section 150 of the *Health Practitioner Regulation National Law (NSW)*, or
- (b) conditions are imposed on the registration of a member of staff as a registered health practitioner under section 150 (1) (b) of that Law that, in the opinion of the Director-General, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (c) an interim prohibition order is made in respect of a member of staff under section 41AA of the *Health Care Complaints Act 1993* that prohibits the staff member from providing health services or specified health services, or
- (d) an interim prohibition order is made in respect of a member of staff under section 41AA of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Director-General, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or
- (e) a member of staff is charged with having committed a serious criminal offence,

the Director-General may suspend the member of staff from duty until the suspension, interim prohibition order or conditions have been removed or expire or the criminal charge has been dealt with.

**Note.** Under section 3J of the *Public Sector Employment and Management Act 2002* the Public Service Commissioner may, for the purposes of exercising his or her functions, give a direction in writing to the head of a public sector agency in relation to the staff of that agency. The head of a public sector agency to whom such a direction is given must comply with the direction.

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- (2) Any salary payable to a person as a member of staff while the person is suspended from duty under this section is (if the Director-General so directs) to be withheld. 1  
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- (3) If: 4
- (a) the registration of the member of staff as a registered health practitioner is cancelled or suspended under section 149C of the *Health Practitioner Regulation National Law (NSW)*, or 5  
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- (b) conditions are imposed on the registration of the member of staff as a registered health practitioner under section 149A (1) (b) of that Law that, in the opinion of the Director-General, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or 9  
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- (c) a prohibition order is made in respect of the member of staff under section 41A of the *Health Care Complaints Act 1993* that prohibits the staff member from providing health services or specified health services, or 15  
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- (d) a prohibition order is made in respect of the member of staff under section 41A of that Act that places conditions on the provision of health services or specified health services by the staff member that, in the opinion of the Director-General, are inconsistent with any of the inherent requirements of the terms of employment of the staff member, or 19  
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- (e) the person is convicted of the offence concerned, 26  
the salary withheld under subsection (2) is forfeited to the State 27  
unless the Director-General otherwise directs or that salary was 28  
due to the person in respect of a period before the suspension was 29  
imposed. 30
- (4) If, at the time that the relevant suspension, interim prohibition order or conditions referred to in subsection (1) (a)–(d) are removed or expire, action referred to in subsection (3) (a)–(d) is not taken in relation to the member of staff, the salary withheld under subsection (2) is to be paid to that member of staff unless the Director-General directs that the salary is to be forfeited to the State (other than any salary that was due to the person in respect of a period before the suspension was imposed). 31  
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- (5) If the Director-General has suspended a member of staff from duty under this section, the Director-General may at any time remove the suspension. 39  
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- (6) Nothing in this section prevents the Director-General from suspending a member of staff under any other provision of this Act or any other law (with or without pay) or from taking any other action against a member of staff under this Part. 1  
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- (7) In this section, *serious criminal offence* means an offence committed in New South Wales that is punishable by imprisonment for 5 years or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable. 5  
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<b>Schedule 5</b>	<b>Amendment of Mental Health Act 2007</b>	1
	<b>No 8</b>	2
<b>[1] Section 4 Definitions</b>		3
	Omit paragraph (b) of the definition of <i>involuntary patient</i> in section 4 (1).	4
	Insert instead:	5
	(b) a forensic patient who is re-classified as an involuntary patient under section 53 of the <i>Mental Health (Forensic Provisions) Act 1990</i> , or	6
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	(c) a correctional patient who is re-classified as an involuntary patient under section 65 of the <i>Mental Health (Forensic Provisions) Act 1990</i> .	8
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<b>[2] Section 28A</b>		12
	Insert after section 28:	13
<b>28A Tribunal to be informed if detained person is a forensic patient</b>		14
	If an authorised medical officer of a mental health facility becomes aware that a person detained in the mental health facility under this Division is a forensic patient, the officer is, as soon as is reasonably practicable, to notify the Tribunal.	15
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<b>[3] Section 43A</b>		19
	Insert after section 43:	20
<b>43A Tribunal to be informed of discharge of a forensic patient</b>		21
	An authorised medical officer of a mental health facility must, as soon as is reasonably practicable, notify the Tribunal of the discharge of a person detained in the mental health facility whom the officer knows is a forensic patient.	22
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<b>Schedule 6</b>	<b>Amendment of Mental Health (Forensic Provisions) Act 1990 No 10</b>	1
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<b>[1]</b>	<b>Section 52 Additional circumstances for termination of classification as forensic patient</b>	3
	Insert “under section 53” after “patient” in section 52 (2) (b).	4
		5
<b>[2]</b>	<b>Section 67 Community treatment orders</b>	6
	Insert after section 67 (4):	7
	(5) A community treatment order may be made in respect of a forensic patient who is to be released unconditionally in accordance with an order of the Tribunal. On and from the release of the person, the community treatment order is taken to have been made under the <i>Mental Health Act 2007</i> .	8
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<b>[3]</b>	<b>Section 68 Breach of orders for release</b>	13
	Insert after section 68 (4):	14
	(5) An apprehension order under this section authorises the detention of the person at the mental health facility, correctional centre or other place specified in the order.	15
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<b>[4]</b>	<b>Section 76HA</b>	18
	Insert after section 76H:	19
	<b>76HA Forensic patients and correctional patients in the community may be detained and treated under Mental Health Act 2007</b>	20
		21
	Nothing in this Part limits the application of the <i>Mental Health Act 2007</i> to a person who has been granted conditional release or leave of absence under this Part.	22
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<b>[5]</b>	<b>Section 77A Appeals against Tribunal decisions</b>	25
	Omit “on a question of law” from section 77A (11).	26