

**MENTAL HEALTH.**13<sup>d</sup> Elizabeth II., No. XCII.

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**No. 92 of 1964.**

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**AN ACT to amend the Mental Health Act, 1962.***[Assented to 14th December, 1964.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Mental Health Act Amendment Act, 1964.* Short title and citation.

(2) In this Act the Mental Health Act, 1962, is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Mental Health Act, 1962-1964.

2. This Act shall come into operation on the date on which the principal Act comes into operation. Commencement.

S. 5  
amended.

3. Section five of the principal Act is amended—

(a) by substituting for the interpretation, “incapable person”, the following interpretation—

“incapable person” means a person declared, under the provisions of Part VI, to be incapable of managing his affairs;

and

(b) by substituting for the interpretation, “mental disorder”, the following interpretation—

“mental disorder” means any illness or defect that substantially impairs mental health; .

S. 19  
repealed and  
re-enacted.

4. Section nineteen of the principal Act is repealed and re-enacted with amendments as follows—

Hospitals and  
other services  
may be  
established.

19. (1) The Governor may, out of moneys appropriated by Parliament, establish and maintain—

- (a) hospitals;
- (b) in-patient units for children;
- (c) centres for geriatric patients;
- (d) day hospitals and training centres for the welfare, rehabilitation and occupation of persons who are, or have been, receiving treatment under this Act;
- (e) hostels and sheltered workshop units;
- (f) centres to provide for the institutional care and treatment of inebriates and drug addicts;
- (g) out-patient, and child guidance, clinics; and
- (h) any other service for the treatment of persons who are mentally ill or intellectually defective,

to be conducted by the Department for the purposes of this Act.

(2) The Governor may, by order, from time to time, set aside any one or more buildings or places, or part of a building or place, provided by the State or part of a public hospital, within the meaning of the Hospitals Act, 1927, for the purpose of any service mentioned in subsection (1) of this section, and may, in like manner, declare any such building or place, or part of a building or place or any part of a public hospital to be an approved hospital; and may vary or cancel any order made under this subsection. .

5. Section twenty of the principal Act is repealed and the following section is enacted— S. 20 repealed and re-enacted.

20. The Director shall make the final determination as to the nature of the service to be provided for any person requiring treatment under this Act. . Power of Director as to nature of service provided.

6. Section twenty-one of the principal Act is amended by deleting the passage, “, in the prescribed form.”, in lines three and four of subsection (1). S. 21 amended.

7. Section fifty of the principal Act is amended by adding, immediately after the numerals, “1903”, in line two, the passage, “, and the provisions of Divisions 1, 2 and 3 do not apply to a prisoner under conviction and sentence or under conviction and awaiting sentence”. S. 50 amended.

8. Section sixty-three of the principal Act is amended— S. 63 amended.

(a) by substituting for the word, “prescribed”, in line two of subsection (1), the word, “other”; and

- (b) by deleting the words, "and any prescribed person", in each case, where occurring, in lines ten and eleven of subsection (1) and in the penultimate line of subsection (2).

S. 64  
repealed and  
re-enacted.

9. Section sixty-four of the principal Act is repealed and re-enacted with amendments, as follows—

Incapable  
persons.

64. (1) Where, on the application of the Public Trustee, a corporate trustee or a natural person, the Court is satisfied that a person, whether resident or domiciled within or outside the jurisdiction, is incapable, by reason of any mental illness, defect or infirmity, however occasioned, of managing his affairs, the Court may make a declaration to that effect and may appoint the applicant or some other person or persons or appoint the applicant and some other person or persons, with or without security and subject to such conditions and limitations as it may impose, to be the manager or managers of the estate of the incapable person, under the order and direction of the Court and subject to the rules.

(2) An application under this section shall be made by way of originating application, supported by such evidence as may be prescribed by the rules.

(3) Where an application is made under this section by a person other than the Public Trustee, notice thereof shall be given to the Public Trustee who may be heard, on the hearing of the application.

(4) Notice of an application made under this section shall, unless the Court otherwise orders, be given to the person alleged to be incapable of managing his affairs; and, where personal service cannot be effected or is inexpedient, the Court may order service to be effected on such person or in such manner as may be prescribed by the rules or is directed by the Court.

(5) The Court may, by general or particular order, refer to the Master any inquiries it thinks necessary for the purposes of this Part.

(6) Notwithstanding any other provision of this section, the Court may, without appointing a person to be the manager of the estate of an incapable person, by order direct or authorise a person named in the order to deal with the incapable person's property, or any part of it, in any manner, specified in the order, that is not inconsistent with the provisions of this Part; and the person so directed or authorised shall render an account to the Court, at such time and in such manner as it directs.

(7) Where it appears to the Court that a person may be incapable, by reason of mental illness, defect or infirmity, of managing his affairs and the Court is of the opinion that it is necessary to make immediate provision for the doing of any of the things mentioned in section sixty-eight, then, pending the determination of the question whether the person is, in fact, incapable of managing his affairs, the Court may exercise such of the powers conferred on it by this section and by section sixty-eight as may be necessary for enabling that provision to be made. .

10. Section sixty-five of the principal Act is amended by substituting for the word, "is", in line seven of subsection (3), the word, "are". S. 65  
amended.

11. Section sixty-six of the principal Act is amended— S. 66  
amended.

(a) by substituting for the words, "mental disorder", in lines three and four of subsection (1), the word, "incapacity"; and

(b) by repealing subsection (2) and re-enacting it with amendments, as follows—

(2) Where an application under this section is made by a person other than the manager, notice of the application

shall, unless the Court otherwise orders, be given to the manager who may be heard on the hearing of the application. .

S. 67  
amended.

12. Section sixty-seven of the principal Act is amended by repealing subsection (3) and re-enacting it with amendments as follows—

(3) On the application of the manager or any other person, the Court may vary or rescind any order made under section sixty-four or section sixty-eight, relating to the management of the affairs of an incapable person. .

S. 68  
amended.

13. Section sixty-eight of the principal Act is amended—

(a) as to subsection (1),—

(i) by inserting, immediately after the word, “may”, in line one, the passage, “, subject to such conditions and limitations it thinks fit to impose”; and

(ii) by inserting, immediately after the word, “all”, in line one of paragraph (a), the passage, “, or any of”;

and

(b) by adding, after subsection (2), the following subsection—

(3) Notwithstanding, but without limiting, the provisions of subsections (1) and (2) of this section, the Court may make any other order (whether or not of the same nature as those mentioned in those subsections) that it thinks necessary or expedient for administering the affairs of the incapable person. .

S. 70  
repealed and  
re-enacted.

14. Section seventy of the principal Act is repealed and re-enacted with amendments as follows —

70. Whenever a manager—

(a) dies;

Power  
of Court  
to appoint  
new or  
additional  
managers.

- (b) wishes to be discharged;
- (c) has been guilty of such misconduct or of such default under this Act, the rules or any order of the Court as, in the opinion of the Court, renders him unfit to continue as manager;
- (d) is convicted of a crime or misdemeanour;
- (e) is declared to be an incapable person under this Part;
- (f) is bankrupt; or
- (g) being a corporate trustee, has ceased to carry on business, is in liquidation or has been dissolved,

the Court may, on the application of any person, or of its own motion, make an order appointing a new manager, discharging the manager and appointing a new manager or, discharging the manager, without appointing a new manager, as the case may require; and the Court may, where it appears to it necessary or expedient and whether or not any of the foregoing events has occurred, appoint a manager or managers, in addition to him or them already appointed. .

15. Section seventy-one of the principal Act is amended— S. 71  
amended.

- (a) by inserting, immediately after the section number, "71.", the subsection designation, "(1)"; and
- (b) by adding the following subsections—

(2) Where the Court is satisfied that a person has, under the law prevailing in a place outside the State, been appointed to exercise powers with respect to the property or affairs of some other person, on the ground (however formulated) that the other person is incapable, by reason of mental disorder, of managing and administering his property and affairs,

the Court may, if, having regard to the nature of the appointment and the circumstances of the case, it thinks it expedient, direct that any stock standing in the name of the latter person or the right to receive the dividends thereof be transferred into the name of the person so appointed or be otherwise dealt with as he may require and may give such directions as it thinks fit with respect to any accrued dividends of that stock.

(3) In this section, the expression, "stock", includes shares and any fund, annuity or security that is transferable in the books kept by any body corporate or unincorporated or transferable by an instrument of transfer either alone or accompanied by other formalities; and the expression, "dividends", shall be construed accordingly. .

S. 72  
amended.

16. Section seventy-two of the principal Act is amended—

- (a) by inserting, immediately after the word, "shall", in line two of subsection (1), the passage, ", unless the Court dispenses with the requirement,"; and
- (b) by substituting for the words, "so much of the commission prescribed by the rules", in lines seven and eight of subsection (5), the words, "such remuneration".

S. 73  
amended.

17. Section seventy-three of the principal Act is amended—

- (a) by substituting for the words, "the prescribed commission", in line three of subsection (3), the words, "its proper commission and fees"; and
- (b) by substituting for the words, "so much of the prescribed commission", in lines seven and eight of subsection (4), the words, "such amount of the proper commission".



18. Section seventy-five of the principal Act is amended, as to subsection (1),—

S. 75  
amended.

- (a) by substituting for the word, “proved”, in line two of paragraph (a), the word, “declared”; and
- (b) by substituting for the words, “mental disorder”, in line two of paragraph (b), the word, “incapacity”.

19. Section eighty-seven of the principal Act is amended—

S. 87  
amended.

- (a) by substituting for paragraph (a) the following paragraph—

- (a) for regulating and prescribing the procedure, practice and forms to be followed or used in proceedings commenced under this Act, the repealed Acts or Division 4 of Part II of the Public Trustee Act, 1941, and prescribing the extent to which orders made, or directions given, under the repealed Acts are to continue to be of force and effect; ;

and

- (b) by inserting, immediately after the word, “Act”, in line two of paragraph (d), the words, “or the repealed Acts”.

20. The Second Schedule of the principal Act is amended by substituting for clause seven the following clause—

Second  
Schedule  
amended.

7. (1) Where a person has, under the provisions of section one hundred and ten or one hundred and eleven of the Lunacy Act, 1903, been declared or found to be incapable of managing his affairs and the declaration or finding is, immediately before the coming into operation of this Act, still of full force and effect, the person so declared or found is deemed to be an incapable person under, and for the

purposes of, this Act; and all proceedings relating to the care and management of his estate commenced under the former Act shall be continued and be dealt with under this Act, in accordance with the rules.

(2) Every person who, immediately before the coming into operation of this Act, is, by virtue of any of the repealed Acts or of any other law of the State, the duly appointed committee or manager of the estate of a person of unsound mind or an incapable person shall, upon this Act coming into operation, be deemed to be the manager of that estate, under, and for the purposes of, Part VI. .