

WESTERN AUSTRALIA

**MENTAL HEALTH
(CONSEQUENTIAL PROVISIONS)
ACT 1996**

(No. 69 of 1996)

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**MENTAL HEALTH
(CONSEQUENTIAL PROVISIONS)
ACT 1996**

No. 69 of 1996

AN ACT —

- **to amend various Acts;**
- **to repeal the *Mental Health Act 1962* and the *Mental Health Act 1981*; and**
- **to enact transitional provisions,**

as a consequence of the enactment of the *Mental Health Act 1996* and the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

[Assented to 13 November 1996]

The Parliament of Western Australia enacts as follows:

s. 1 No. 69] *Mental Health (Consequential Provisions)
Act 1996*

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Mental Health (Consequential Provisions) Act 1996*.

Commencement

2. This Act comes into operation on the same day as the *Mental Health Act 1996* comes into operation.

PART 2 — BAIL ACT 1982

Schedule amended

3. (1) The *Bail Act 1982** is amended in Schedule 1 in Part D in clause 2 (1) by inserting after “(3)” the following —

“ , (3a) ”.

(2) The *Bail Act 1982** is amended in Schedule 1 in Part D by deleting clause 2 (3) and substituting the following subclauses —

“

(3) Where a judicial officer who grants bail to a defendant is of the opinion that the defendant’s physical condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the defendant is examined by a medical practitioner.

(3a) Where a judicial officer who grants bail to a defendant is of the opinion that the defendant’s mental condition ought to be examined the officer may, under subclause (1), impose any condition which the officer considers desirable for the purpose of ensuring that the defendant’s mental condition is examined including a condition —

- (a) that the defendant be examined by a medical practitioner or an authorized mental health practitioner (as defined in the *Mental Health Act 1996*) for the purpose of deciding whether to make a referral under section 29 of that Act;
- (b) that the defendant be admitted to an authorized hospital (as defined in the *Mental Health Act 1996*);
- (c) that the defendant be examined by a psychiatrist.

”.

(3) The *Bail Act 1982** is amended in Schedule 1 in Part D in clause 2 (5) by inserting after “(3)” the following —

“ , (3a) ”.

s. 3 No. 69] *Mental Health (Consequential Provisions)
Act 1996*

(4) The *Bail Act 1982** is amended in Schedule 1 in Part D in clause 2 (7) by deleting the definition of “psychiatrist” and substituting the following definition —

“

“**psychiatrist**” has the same meaning as it has in the *Mental Health Act 1996*.

”.

[* Reprinted as at 17 October 1991.

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 17 and Act No. 2 of 1996.]

PART 3 — CONSTITUTION ACTS AMENDMENT ACT 1899

Schedule 5 amended

4. The *Constitution Acts Amendment Act 1899** is amended in Schedule 5 —

- (a) in Part 1 in Division 1, by adding the following at the end of the Division —

“
President or other member of the Mental Health Review Board established under the *Mental Health Act 1996*, including a member of a panel established under section 127 of that Act.

”;

and

- (b) in Part 3 by deleting “Any board of visitors constituted under section 11 or section 26H of the *Mental Health Act 1962*” and substituting the following —

“
Council of Official Visitors established by Part 9 of the *Mental Health Act 1996*.

”.

[* Reprinted as at 17 May 1995.

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 44-7 and Acts Nos. 26 and 75 of 1995 and 14 of 1996.]

PART 4 — THE CRIMINAL CODE

The Code

5. In this Part *The Criminal Code** is referred to as “**the Code**”.

[* Reprinted as at 17 December 1993 as the Schedule to the Criminal Code Act 1913 appearing in Appendix B to the Criminal Code Compilation Act 1913.
For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 53-5 and Act No. 14 of 1996.]

Section 1 amended

6. Section 1 of the Code is amended by inserting after the definition of the term “member of the crew” the following definitions —

“

The term “**mental illness**” means an underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli;

The term “**mental impairment**” means intellectual disability, mental illness, brain damage or senility;

”.

Section 27 amended

7. Section 27 of the Code is amended —

(a) by inserting after “omission” in the first place where it occurs the following —

“ on account of unsoundness of mind ”; and

(b) by deleting “mental disease or natural mental infirmity” and substituting the following —

“ mental impairment ”.

Section 149 amended

8. Section 149 of the Code is amended by deleting “any law relating to mental disorder” in the 2 places it occurs and substituting the following —

“ the *Mental Health Act 1996* or any law relating to mental impairment ”.

Section 243 amended

9. Section 243 of the Code is amended by deleting “of unsound mind” and substituting the following —

“ mentally impaired ”.

Section 262 amended

10. Section 262 of the Code is amended by deleting “unsoundness of mind” and substituting the following —

“ mental impairment ”.

Section 330 amended

11. Section 330 of the Code is amended by deleting “mentally disabled or intellectually handicapped” and substituting the following —

“ mentally impaired ”.

Section 336 repealed and a section substituted

12. Section 336 of the Code is repealed and the following section is substituted—

“

Procuring apprehension or detention of persons not suffering from mental illness or impairment

336. Any person who, by the production of a false certificate or other document, knowingly and wilfully, procures any person, not suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, to be apprehended or detained, pursuant to that Act or any law relating to mental impairment, upon insufficient or unreasonable grounds, is guilty of a misdemeanour and is liable to imprisonment for 3 years.

”.

Section 337 repealed and a section substituted

13. Section 337 of the Code is repealed and the following section is substituted —

“

Unlawful detention or custody of persons who are mentally ill or impaired

337. Any person who detains, or assumes the custody of, a person suffering from mental illness (as defined in the *Mental Health Act 1996*) or mental impairment, contrary to that Act or any law relating to mental impairment, is guilty of a misdemeanour and is liable to imprisonment for 2 years.

Summary conviction penalty: Imprisonment for one year or a fine of \$4 000.

”.

Section 609A inserted

14. After section 609 of the Code the following section is inserted —

“

Mental fitness to stand trial

609A. If a person is committed for trial before a court for an indictable offence, any question about the person's mental fitness to stand trial is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

”.

Section 619 repealed and a section substituted

15. Section 619 of the Code is repealed and the following section is substituted —

“

Accused persons who will not or do not plead

619. (1) If an accused person, on being called on to plead to an indictment, will not or does not —

- (a) plead in a manner provided in this Code; or
- (b) answer directly to the indictment,

the court shall enter a plea of not guilty on behalf of the person unless the person is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

(2) A plea so entered has the same effect as if it had been actually pleaded.

”.

Section 631 repealed

16. Section 631 of the Code is repealed.

Section 652 repealed and a section substituted

17. Section 652 of the Code is repealed and the following section is substituted —

“ **Acquittal: consequences**

652. Subject to section 653, if a jury finds an accused person not guilty of an offence, or gives any other verdict that shows that the person is not liable to punishment for the offence, the person is entitled to be discharged in relation to that offence.

”.

Section 653 repealed and a section substituted

18. Section 653 of the Code is repealed and the following section is substituted —

“ **Acquittal on account of unsoundness of mind**

653. (1) If on the trial on indictment of an accused person the question arises whether the person was not criminally responsible for an act or omission on account of unsoundness of mind, the jury are required, if they find the person not guilty, to return a special verdict as to —

- (a) whether they found the person not guilty on account of unsoundness of mind at the time of the act or omission; and
- (b) if they so acquitted the person, the offence the person was acquitted of.

(2) If a jury finds an accused not guilty on account of unsoundness of mind the person is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

”.

Section 693 amended

19. Section 693 (4) of the principal Act is repealed and the following subsections are substituted —

“

(4) If it appears to the Court that a convicted appellant ought to have been found not guilty on account of unsoundness of mind, they may quash the conviction and direct a judgment and verdict of acquittal on account of unsoundness of mind to be entered.

(5) If a judgment and verdict of acquittal on account of unsoundness of mind is so entered the appellant is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

”.

Transitional provision

20. If immediately before the commencement of the *Mental Health Act 1996* a person —

- (a) is in custody under an order made under section 631 or 652 of the Code; and
- (b) is not in an approved hospital because of —
 - (i) a direction made under section 47 (1) (b) of the *Mental Health Act 1962*; or
 - (ii) an order made by the Governor under section 48 of that Act,

on that commencement the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

**PART 5 — CRIMINAL INJURIES COMPENSATION
ACT 1985**

Section 9 amended

21. Section 9 of the *Criminal Injuries Compensation Act 1985** is amended by deleting “incapable of understanding the proceedings at his trial or not of sound mind during his trial, ” in the 2 places it occurs and substituting the following —

“ mentally unfit to stand trial, ”.

[* *Act No. 73 of 1985.*

*For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 55.]*

PART 6 — ELECTORAL ACT 1907

Principal Act

22. In this Part the *Electoral Act 1907** is referred to as the principal Act.

[* *Reprinted as at 1 January 1989.*
*For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, pp. 67-8 and
Acts Nos. 14 and 78 of 1996.]*

Section 18 amended

23. Section 18 of the principal Act is amended by deleting paragraphs (cb), (cc) and (cd) and substituting the following paragraphs —

“

- (cb) is subject to an order under section 282 (c) (iii) or (d) (ii), 653 or 693 (4) of *The Criminal Code*;
- (cc) is subject to an order under repealed section 19 (6a) (a), 661 or 662 of *The Criminal Code*;
- (cd) is, or is taken to be, a mentally impaired defendant as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*; or

”.

Section 40 amended

24. Section 40 (1) (b) (i) of the principal Act is amended by deleting “Director of Mental Health Services” and substituting the following —

“
Chief Psychiatrist referred to in section 8 of the *Mental Health Act 1996*
”.

Section 51A amended

25. Section 51A (4) of the principal Act is repealed and the following subsection is substituted —

- “
- (4) The power of removal conferred on the Electoral Commissioner by subsection (1) does not extend to —
- (a) a person in respect of whom a guardianship or administration order is in force under the *Guardianship and Administration Act 1990*; or
 - (b) a person in respect of whom an order of the kind referred to in section 201 (1) of the *Mental Health Act 1996* is in force.
- ”.

Section 51AA amended

26. (1) After section 51AA (1) of the principal Act the following subsection is inserted —

- “
- (1a) On receipt under section 202 of the *Mental Health Act 1996* of notice of a determination under section 201 of that Act in respect of an elector, the Electoral Commissioner shall remove the name of that elector from the roll.
- ”.

(2) Section 51AA (2) of the principal Act is amended by inserting after “in subsection (1)” the following —

- “ , or a determination referred to in subsection (1a), ”.

Section 57 repealed

27. Section 57 of the principal Act is repealed.

Section 59 amended

28. (1) Section 59 (a) of the principal Act is amended by deleting “section 18 (c)” and substituting the following —

“ section 18 (b) to (cd) ”.

(2) Section 59 (b) of the principal Act is deleted and the following paragraph is substituted —

“

(b) the secretary of the Mentally Impaired Defendants Review Board established under the *Criminal Law (Mentally Impaired Defendants) Act 1996* shall forward to the Electoral Commissioner, in the prescribed form, a list containing the names and age of each person who became a mentally impaired defendant, as defined in Part 5 of that Act, during the preceding 3 months and shall show on the form the address and occupation of each such person prior to the person becoming a mentally impaired defendant.

”.

PART 7 — EVIDENCE ACT 1906

Principal Act

29. In this Part the *Evidence Act 1906** is referred to as the principal Act.

[* Reprinted as at 1 August 1992.
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, pp. 72-3 and
Act No. 14 of 1996.]

Section 106R amended

30. Section 106R (3) of the principal Act is amended by deleting paragraph (a) and substituting the following paragraph —

“

- (a) by reason of physical disability or mental impairment (as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*), be unlikely to be able to give evidence, or to give evidence satisfactorily; or

”.

Second Schedule amended

31. The principal Act is amended in the Second Schedule in Part 1 —

- (a) in the item relating to section 336 by deleting the description of the offence and substituting the following description —

“

Procuring apprehension or detention of persons not suffering from mental illness or impairment

”;

and

- (b) in the item relating to section 337 by deleting the description of the offence and substituting the following description —

“

Unlawful detention or custody of persons who
are mentally ill or impaired

”.

**PART 8 — GUARDIANSHIP AND ADMINISTRATION
ACT 1990**

Principal Act

32. In this Part the *Guardianship and Administration Act 1990** is referred to as the principal Act.

[* *Act No. 24 of 1990.*
*For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 95 and
Act No. 7 of 1996.]*

Section 3 amended

33. Section 3 (2) (b) of the principal Act is amended by deleting “approved hospital under the *Mental Health Act 1962*, to the superintendent of that hospital.” and substituting the following —

“
authorized hospital under the *Mental Health Act 1996*, to
the person in charge of that hospital.
”.

Section 45 amended

34. Section 45 (2) (d) of the principal Act is amended by deleting “other than treatment in an approved hospital under the *Mental Health Act 1962*”.

Section 52 repealed

35. Section 52 of the principal Act is repealed.

Section 98 amended

36. Section 98 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) If a person becomes a mentally impaired defendant (as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*) the secretary to the Mentally Impaired Defendants Review Board shall notify the Public Advocate accordingly.

”.

Schedule 5 amended

37. Schedule 5 to the principal Act is amended —

(a) in clause 1 (3) (b) (ii) by deleting “has been discharged from” and substituting the following —

“

is no longer an involuntary patient under the *Mental Health Act 1996*

”;

(b) in clause 1 (5) by deleting “Superintendent of the approved hospital in which the person is a patient under the *Mental Health Act 1962*” and substituting the following —

“

officer in charge of the authorized hospital in which the person is a patient under the *Mental Health Act 1996*

”;

(c) in clause 1 (5) (b) by deleting “the Superintendent” and substituting the following —

“ a psychiatrist at the hospital ”;

- (d) by deleting clause 1 (5) (c) and substituting the following paragraph —

“
(c) is no longer an involuntary patient under the *Mental Health Act 1996* or, in the case of a voluntary patient, leaves the hospital.”;

- (e) by deleting clause 1 (6) and substituting the following subclause —

“
(6) The officer in charge of an authorized hospital, when notifying the Public Trustee under subclause (5) that a person is no longer an involuntary patient or has left the hospital, shall also report to the Public Trustee whether or not, in the opinion of a psychiatrist at the hospital, the person is capable of managing his affairs.”;

and

- (f) in clause 1 (7) by deleting “Superintendent” and substituting the following —

“ officer in charge ”.

**PART 9 — HEALTH LEGISLATION ADMINISTRATION
ACT 1984**

Section 6 amended and transitional provision

38. (1) Section 6 of the *Health Legislation Administration Act 1984** is amended —

(a) in subsection (1) by deleting paragraph (d) and substituting the following paragraph —

“ (d) a Chief Psychiatrist, ”; and

(b) in subsection (4) (b) by deleting “under section 5 of the *Mental Health Act 1962*” and substituting the following —

“ in section 3 of the *Mental Health Act 1996* ”.

(2) The person who immediately before the commencement of this provision held office as the Director, Psychiatric Services under the section amended by subsection (1) is to be taken after the commencement to hold the office of Chief Psychiatrist under that section.

[* *Act No. 27 of 1984.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 100.]

**PART 10 — HOSPITALS AND HEALTH SERVICES
ACT 1927**

Principal Act

39. In this Part the *Hospitals and Health Services Act 1927** is referred to as the principal Act.

[* *Reprinted as at 22 April 1996.*
*For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 102 and
Act No. 14 of 1996.*]

Long title amended

40. The long title to the principal Act is amended by inserting after “**private hospitals**” the following —

“ **and private psychiatric hostels** ”.

Section 2 amended

41. After section 2 (1) of the principal Act the following subsection is inserted —

“

(1a) In the definition of “**hospital**” in subsection (1) “**illness**” includes mental illness as defined in section 4 of the *Mental Health Act 1996*, but this subsection does not affect the requirement of that Act that a person may only be detained under that Act in an authorized hospital as defined in that Act.

”.

Section 3 amended

42. (1) Section 3 (1) of the principal Act is amended by deleting the passage from “and continues to apply” to the end of the subsection and substituting the following —

“
but does not apply to a hospital used exclusively in connection with a prison.
”.

(2) Section 3 (1a) is repealed.

Section 4 inserted

43. After section 3 of the principal Act the following section is inserted —

“
Hospitals where mental illness is treated
4. Where a hospital or part of a hospital is an authorized hospital under the *Mental Health Act 1996*, this Act has effect in relation to the hospital or part of the hospital, and persons received or admitted into it, subject to the provisions of that Act.
”.

Section 26DA inserted

44. After section 26D of the principal Act the following section is inserted —

“
Endorsement of licence to allow admission etc. under *Mental Health Act 1996*

26DA. (1) A person shall not conduct or manage a private hospital in which any person is detained for the treatment of mental illness unless the licence for that hospital is endorsed under this section.

Penalty: \$ 5 000.

(2) A licence may be endorsed by the Commissioner to allow persons to be received and admitted to the hospital under the *Mental Health Act 1996* and to be detained as involuntary patients under that Act.

(3) An application may be made to the Commissioner for an endorsement under this section —

- (a) on the application for a licence; or
- (b) on an application under regulations referred to in subsection (5).

(4) The Commissioner may make an endorsement under this section subject to any condition or restriction.

(5) Regulations may be made under section 26O making provision for and in respect of applications for endorsements under this section, including the payment of fees in connection with the application.

”.

Section 26FA inserted

45. After section 26F of the principal Act the following section is inserted —

“

Cancellation of endorsement

26FA. (1) The Commissioner may cancel an endorsement under section 26DA if he or she is satisfied that —

- (a) a private hospital is no longer suitable to have its licence endorsed under that section; or
- (b) the licence holder —
 - (i) has contravened any provision of the *Mental Health Act 1996*; or

- (ii) failed to comply with any condition or restriction to which the endorsement is subject.

(2) Section 26F (2) applies to a proposed cancellation under this section as it applies to the proposed cancellation of a licence.

”.

Section 26H amended

46. (1) Section 26H (1) of the principal Act is amended —

(a) by inserting after “section 26F” the following —

“ or whose endorsement under section 26DA is cancelled

”;

(b) by inserting after “cancellation” the following —

“ or non-renewal ”.

(2) Section 26H (2) (a) of the principal Act is amended by inserting after “cancelling” the following —

“ the licence or endorsement ”.

(3) Section 26H (2) (b) of the principal Act is amended by deleting “of the licence”.

(4) Section 26H (3) is amended —

(a) by inserting after “cancelled” the following —

“ a licence or endorsement ”; and

(b) by inserting after “cancellation” where it first appears the following —

“ of the licence or endorsement ”.

Part IIIB inserted

47. After Part IIIA of the principal Act the following Part is inserted —

“

PART IIIB — PRIVATE PSYCHIATRIC HOSTELS

Interpretation

26P. In this Part —

“**mental illness**” has the same meaning as in the
Mental Health Act 1996;

“**private psychiatric hostel**” means private
premises in which 3 or more persons who —

- (a) are socially dependent because of mental illness; and
- (b) are not members of the family of the proprietor of the premises,

reside and are treated or cared for;

“**resident**”, in relation to a private psychiatric hostel,
means a person —

- (a) who is socially dependent because of mental illness; and
- (b) who is residing and being cared for or treated in the hostel.

Provisions of Part IIIA apply to private psychiatric hostels

26Q. (1) Subject to this section, Part IIIA applies to and in relation to private psychiatric hostels as if references in that Part to a private hospital were references to a private psychiatric hostel.

(2) In its application under subsection (1) Part IIIA is modified as follows —

- (a) section 26D (3) (a) is to be read as if it referred to “the maximum number of residents who may reside in a private psychiatric hostel at any one time and the kinds or classes of residents that may be cared for or treated at the private psychiatric hostel”;
- (b) section 26DA does not apply;
- (c) in section 26O (2) (d) the reference to “patient” is to be read as “resident”; and
- (d) section 26O is to be read as authorizing the making of regulations —
 - (i) prescribing, in relation to residents of private psychiatric hostels who are in receipt of pension payable under laws of the Commonwealth, the minimum proportion of pension that is to be paid or remitted to the resident for his or her own use; and
 - (ii) prescribing returns and other particulars to be furnished to the Chief Psychiatrist referred to in section 8 of the *Mental Health Act 1996*.

”.

PART 11 — JUSTICES ACT 1902

Principal Act

48. In this Part the *Justices Act 1902** is referred to as the principal Act.

[* *Reprinted as at 21 June 1995.*
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, pp. 114-5
and Acts Nos. 88 of 1994 and 14 of 1996.]

Section 71 inserted

49. After section 70 of the principal Act the following section is inserted —

“

Mental fitness to stand trial

71. If a question about a defendant's mental fitness to stand trial arises before justices on the hearing of a complaint for an offence, it is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

”.

Section 138A inserted

50. After section 138 of the principal Act the following section is inserted —

“

Defendants who will not or do not plead

138A. (1) If a defendant, on being called on to plead to a complaint, will not or does not —

(a) plead in a manner provided in section 138; or

- (b) answer directly to the complaint,

the justices shall enter a plea of not guilty on behalf of the defendant unless the defendant is not mentally fit to stand trial under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

(2) A plea so entered has the same effect as if it had been actually pleaded.

”.

Section 143 inserted

51. After section 142 of the principal Act the following section is inserted —

“

Acquittal on account of unsoundness of mind

143. (1) If on the hearing of a complaint for an offence the question arises whether the defendant was not criminally responsible for an act or omission on account of unsoundness of mind, the justices shall, if they find the defendant not guilty, make a special finding as to —

- (a) whether they found the person not guilty on account of unsoundness of mind at the time of the act or omission; and
- (b) if they so acquitted the person, the offence the person was acquitted of.

(2) If justices find a defendant not guilty on account of unsoundness of mind the defendant is to be dealt with under the *Criminal Law (Mentally Impaired Defendants) Act 1996*.

”.

PART 12 — MENTAL HEALTH ACT 1962

Division 1 — Repeal

Act repealed

52. The *Mental Health Act 1962* is repealed.

Division 2 — Transitional

Interpretation

53. In this Division —

“**commencement**” means the commencement of the
Mental Health Act 1996;

“**new Act**” means the *Mental Health Act 1996*;

“**repealed Act**” means the *Mental Health Act 1962*.

Interpretation Act 1984 not affected

54. The provisions of this Division do not affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 51.

Investigations under section 7

55. Any investigation under section 7 of the repealed Act —

- (a) begun by the Minister; or
- (b) which a person has been appointed by the Minister to conduct,

before the commencement may continue and be completed as if the repealed Act had not been repealed.

Authorized hospitals

56. A building, place or hospital or part of a building, place or hospital that is immediately before the commencement an approved hospital under section 19 (3) of the repealed Act is to be taken to be an authorized hospital under the new Act.

Licences for private psychiatric hostels

57. An approval and a licence under Part IIIA of the repealed Act that is in force immediately before the commencement in respect of a private psychiatric hostel —

- (a) is to be taken to be an approval and a licence required by Part IIIB of the *Hospitals and Health Services Act 1927*; and
- (b) after the commencement that Part applies to the approval and the licence as if they had been given or issued under that Part.

Register of psychiatrists

58. (1) The register of psychiatrists in existence under section 89 of the repealed Act immediately before the commencement is to be treated as the register required by section 17 of the new Act.

(2) Subsection (1) does not limit the Medical Board's powers to add names to and remove names from the register under section 17 of the new Act.

Referrals under section 28 (1)

59. (1) A referral which immediately before the commencement has effect under section 28 (1) of the repealed Act may be acted upon as if it were a referral under section 29 (2) (a) of the new Act.

(2) The time limit of 14 days under section 28 (1) of the repealed Act between the examination of the person and reception into an authorized hospital continues to apply for the purposes of the new Act.

Persons under observation, ss. 28 (3) and 34 (1)

60. (1) A person who immediately before the commencement —

- (a) is in an approved hospital for observation under section 28 (3) or 34 (1) of the repealed Act; but
- (b) has not been admitted,

is to be regarded as a person received into an authorized hospital under section 36 of the new Act.

(2) Despite section 36 of the new Act, the person may be detained for the 72 hour period allowed under section 28 (3) or 34 (1) of the repealed Act.

Orders under section 29

61. (1) If immediately before the commencement —

- (a) an order has been made under section 29 of the repealed Act; but
- (b) the person has not been received into an approved hospital,

the order may be carried out despite the repeal of the repealed Act.

(2) Where subsection (1) applies the person is to be received into an authorized hospital under section 36 of the new Act as if there had been a referral under section 29 (2) (a) of the new Act.

(3) Section 37A of the repealed Act, despite its repeal, continues to apply to an order referred to in subsection (1) and for that purpose the reference to the Director in section 37A (2) is to be read as a reference to the Chief Psychiatrist.

Orders under section 30 (1)

- 62.** (1) If immediately before the commencement —
- (a) an order has been made under section 30 (1) of the repealed Act; but
 - (b) the person has not been examined by a medical practitioner,

the order is to be carried out as soon as is practicable despite the repeal of the repealed Act.

- (2) When the person has been examined —
- (a) section 32 of the repealed Act does not apply; and
 - (b) the person may only be received into an authorized hospital in accordance with Division 1 of Part 3 of the new Act.

(3) Subject to subsection (2) (b), the person is to be released following the examination.

Persons in custody under section 30 (2)

- 63.** (1) If immediately before the commencement a person —
- (a) has been apprehended under subsection (2) of section 30 of the repealed Act; but
 - (b) the steps provided for by that subsection have not been completed,

those steps are to be completed as soon as is practicable despite the repeal of the repealed Act.

(2) However, on examination by a medical practitioner under section 30 (3) of the repealed Act —

- (a) section 32 of the repealed Act does not apply; and
- (b) the person may only be received into an authorized hospital in accordance with Division 1 of Part 3 of the new Act.

(3) Subject to subsection (2) (b), the person is to be released following the examination.

Warrants under section 31 (2)

64. (1) If immediately before the commencement —

- (a) a warrant has been issued under subsection (2) of section 31 of the repealed Act; but
- (b) the steps provided for by that subsection have not been completed,

those steps are to be completed as soon as is practicable despite the repeal of the repealed Act.

(2) However, on the execution of the warrant —

- (a) sections 31 (3) and 32 of the repealed Act do not apply; and
- (b) the person may only be received into an authorized hospital in accordance with Division 1 of Part 3 of the new Act.

Persons on remand for examination

65. If immediately before the commencement a person is remanded in custody under an order made under section 36 of the repealed Act, then on the commencement —

- (a) that order continues to have effect as if the repealed Act had not been repealed; and
- (b) when the person under that section is returned to his or her former custody, the *Criminal Law (Mentally Impaired Defendants) Act 1996* applies if necessary.

Patients detained, other than security patients

66. (1) A person who —

- (a) was admitted to an approved hospital under section 28 (4) or 34 (2) of the repealed Act; and
- (b) immediately before the commencement is detained in an approved hospital under section 38 (2) of the repealed Act,

is to be regarded as a person detained in an authorized hospital as an involuntary patient by force of an order under section 43 (2) (a) of the new Act.

(2) The Mental Health Review Board is to review the case of each person to whom subsection (1) applies, and who is still detained, not later than —

- (a) the day on which he or she could have been automatically discharged under section 39 (1) of the repealed Act;
- (b) the day on which the patient's status would have come to an end under section 39 (2) of the repealed Act; or
- (c) the 28th day after the commencement,

whichever is the latest.

(3) The review is to be carried out under Division 2 of Part 6 of the new Act, and after that review periodic reviews are to be carried out under section 139 of that Act.

(4) For the purposes of this section the person in charge of an authorized hospital is to give notice in writing to the Registrar of —

(a) the names of all patients to whom subsection (1) applies; and

(b) particulars of the relevant days under subsection (2).

(5) A notice under subsection (4) is to be given not later than the 28th day after the commencement.

Leave of absence

67. A grant of leave of absence in force under section 42 of the repealed Act immediately before the commencement is to be regarded as leave of absence granted under section 59 of the new Act.

Absence without leave

68. If immediately before the commencement a person is absent without leave in terms of section 42 (4) of the repealed Act the person is to be regarded as being absent without leave in terms of section 57 of the new Act.

Patients discharged to after-care

69. (1) If immediately before the commencement a person is under section 43 or 45 of the repealed Act a patient discharged to after-care, the period of after-care continues under the repealed Act as if it had not been repealed.

(2) The Chief Psychiatrist is to ensure that each person to whom subsection (1) applies is examined by a psychiatrist not later than —

- (a) the day on which he or she could have been automatically discharged under section 39 (1) of the repealed Act;
- (b) the day on which the patient's period of after-care would have come to an end under section 43 or 45 of the repealed Act; or
- (c) the 14th day after the commencement,

whichever is the latest.

(3) A psychiatrist who examines a person under subsection (2) is to determine, having regard to section 26 of the new Act, whether the person —

- (a) should be an involuntary patient under the new Act;
or
- (b) should be discharged from status as a patient.

(4) If the psychiatrist determines that subsection (3) (a) applies, he or she is to make an order under section 43 (2) (b) of the new Act.

(5) If the psychiatrist determines in writing that subclause (3) (b) applies the person is by that determination discharged from any status as a patient.

Security patients

70. (1) If immediately before the commencement a person is in an approved hospital because of —

- (a) a direction made under section 47 (1) of the repealed Act; or

- (b) an order made by the Governor under section 48 of the repealed Act,

on the commencement the person is to be taken —

- (c) to be a mentally impaired defendant under Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*; and
- (d) to be in that hospital because of a decision of the Mentally Impaired Defendants Review Board under that Act,

and Part 5 of that Act applies accordingly.

(2) If immediately before the commencement a person, under an order made by the Governor under section 48 of the repealed Act, is liberated subject to any terms and conditions, on the commencement —

- (a) the person is to be taken to be a mentally impaired defendant (as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*) who has been released on conditions by the Governor under Part 5 of that Act; and
- (b) Part 5 of that Act applies accordingly.

Application to Court

71. (1) If an application under section 55 of the repealed Act has been made but not disposed of before the commencement, the application may be completed after the commencement as if that section had not been repealed.

(2) In determining any such application the Court may make any order relevant to the operation of the new Act that it thinks fit.

Transitional regulations

72. (1) If there is no sufficient provision in this Part for dealing with a matter that needs to be dealt with for the purpose of the transition from the repealed Act to —

- (a) the new Act; or
- (b) the *Hospitals and Health Services Act 1927* as amended by this Act,

regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

(2) Regulations under subsection (1) may provide that specific provisions of the new Act or of subsidiary legislation made under the new Act —

- (a) do not apply; or
- (b) apply with or without specified modifications,

to or in relation to any matter or thing.

(3) Regulations under subsection (1) may have effect before the day on which they are published in the *Gazette*.

(4) To the extent that a regulation under subsection (1) has effect before the day of its publication in the *Gazette*, it does not —

- (a) affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
- (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

No. 69] *Mental Health (Consequential Provisions)*
s. 73 *Act 1996*

PART 13 — *MENTAL HEALTH ACT 1981*

Act repealed

73. The *Mental Health Act 1981* is repealed.

PART 14 — PARLIAMENTARY COMMISSIONER ACT 1971

Schedule amended

74. The *Parliamentary Commissioner Act 1971** is amended in the Schedule by deleting “Every Board of Visitors under the *Mental Health Act 1962*” and substituting the following —

“

Council of Official Visitors established by Part 9 of the *Mental Health Act 1996*.

”.

[* *Reprinted as at 25 May 1995.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 161-2 and Acts Nos. 63 and 75 of 1995 and 7 and 14 of 1996.]

PART 15 — *POLICE ACT 1892*

Section 53 amended

75. Section 53 of the *Police Act 1892** is amended by deleting the definition of “approved hospital” and substituting the following definition —

“**approved hospital**” means a public hospital or private hospital to which the *Hospitals and Health Services Act 1927* applies;”.

[* *Reprinted as at 24 April 1992.*
For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 173-5 and Act No. 14 of 1996.]

PART 16 — PRISONS ACT 1981

Section 27 amended

76. (1) After section 27 (1) of the *Prisons Act 1981** the following subsection is inserted —

“

(1a) In subsection (1) —

“**medical treatment**” includes psychiatric treatment as defined in section 3 of the *Mental Health Act 1996*.

”.

(2) Section 27 (4) of the *Prisons Act 1981** is repealed.

[* Reprinted as at 9 July 1992.

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 178 and Acts Nos. 79 of 1995 and 3 of 1996.]

PART 17 — *PSYCHOLOGISTS REGISTRATION ACT 1976*

Principal Act

77. In this Part the *Psychologists Registration Act 1976** is referred to as the principal Act.

[* *Act No. 141 of 1976.*
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 179.]

Section 3 amended

78. Section 3 of the principal Act is amended by deleting the definition of “psychiatrist”.

Section 9 amended

79. Section 9 (1) (b) of the principal Act is amended by inserting after “psychiatrist” the following —

“ , as defined in section 3 of the *Mental Health Act 1996*, ”.

PART 18 — SECURITIES INDUSTRY ACT 1975

Section 46 amended

80. Section 46 (1) (a) (iii) of the *Securities Industry Act 1975** is amended by deleting “approved hospital within the meaning of the *Mental Health Act 1962*” and substituting the following —

“ authorized hospital under the *Mental Health Act 1996* ”.

[* *Act No. 99 of 1975.*

*For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 199.]*

PART 19 — SENTENCE ADMINISTRATION ACT 1995

Principal Act

81. In this Part the *Sentence Administration act 1995** is referred to as the principal Act.

[* *Act No. 77 of 1995.*
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 201.]

Section 5 repealed

82. Section 5 of the principal Act is repealed.

Section 12 repealed

83. Section 12 of the principal Act is repealed.

Section 13 amended

84. Section 13 (2) of the principal Act is repealed and the following subsection is substituted —

“

(2) Whenever the CEO gets a written request to do so from the Minister, or whenever the CEO thinks there are special circumstances which justify doing so, the CEO must give the Minister a written report on the place or places where a person who is ordered to be detained in strict custody under section 282 of *The Criminal Code* is or should be detained in safe custody.

”.

Section 14 amended

85. Section 14 (1) of the principal Act is amended —

- (a) by deleting the semicolon at the end of paragraph (d) and substituting a full stop; and
- (b) by deleting paragraph (e).

Section 16 amended

86. Section 16 (1) of the principal Act is repealed and the following subsection is substituted —

“

(1) The release by the Governor of a person in strict or safe custody by virtue of an order made under section 282 of *The Criminal Code* may, if the Governor thinks fit, be by means of a parole order made by the Governor.

”.

Transitional provisions

87. (1) If immediately before the commencement of the *Mental Health Act 1996* a person —

- (a) is in custody under an order under section 653 or 693 (4) of *The Criminal Code*; and
- (b) is not in an approved hospital because of an order made by the Governor under section 48 of the *Mental Health Act 1962*,

on that commencement the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

(2) If immediately before the commencement of the *Mental Health Act 1996* a person is subject to a parole order made under section 16 (1) (b) of the *Sentence Administration Act 1995*, on that commencement that Act continues to operate in respect of the order but if under Part 6 of that Act the person is returned to custody because the order is suspended or cancelled, the person is to be taken to be a mentally impaired defendant as defined in Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and that Part applies accordingly.

PART 20 — SUPREME COURT ACT 1935

Principal Act

88. In this Part the *Supreme Court Act 1935** is referred to as the principal Act.

[* *Reprinted as at 23 November 1995.
For subsequent amendments see Act No. 14 of 1996.*]

Section 11E amended

89. Section 11E (2) of the principal Act is amended by deleting paragraph (c).

Section 58 amended

90. Section 58 (1) of the principal Act is amended by deleting paragraph (f).

**PART 21 — UNIVERSITY MEDICAL SCHOOL, TEACHING
HOSPITALS, ACT 1955**

Principal Act

91. In this Part the *University Medical School, Teaching Hospitals, Act 1955** is referred to as the principal Act.

[* Reprinted as at 2 January 1991.
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 230.]

Section 2 amended

92. Section 2 of the principal Act is amended by deleting the definition of “mental health hospital” and substituting the following definition —

“
 “mental health hospital” means a public hospital that
 the regulations provide is to be regarded as a mental
 health hospital for the purposes of this Act;
”.

Section 5 amended

93. Section 5 (2) of the principal Act is amended —

(a) by deleting paragraph (c) and substituting the following paragraph —

“
 (c) the Chief Psychiatrist referred to in section
 8 of the *Mental Health Act 1996* or a person
 nominated by him or her;
”;

and

- (b) in paragraph (d) by deleting “1962” and substituting the following —

“ 1996 ”.

PART 22 — YOUNG OFFENDERS ACT 1994

Section 179 amended

94. Section 179 (1) of the *Young Offenders Act 1994** is amended —

- (a) by deleting the definition of “hospital”;
- (b) in the definition of “medical treatment” by deleting “treatment of a kind that is given in an approved hospital under the *Mental Health Act 1962*” and substituting the following —

“
 psychiatric treatment as defined in section 3 of
 the *Mental Health Act 1996*
 ”.

[* *Act No. 104 of 1994.*
For subsequent amendments see 1995 Index to
Legislation of Western Australia, Table 1, p. 246.]