

MENTAL HEALTH ACT 1981.

(No. 51 of 1981)

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MENTAL HEALTH.

No. 51 of 1981

AN ACT to make provision for the care, treatment, and protection of mentally ill or intellectually handicapped persons and for connected purposes.

[Assented to 25 September 1981.]

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:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Mental Health Act 1981*. Short title.

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

Interpreta-
tion.
Cf. No. 46 of
1962, ss. 5
and 26A.

3. (1) In this Act, unless the contrary intention appears—

“approved hospital” means—

- (a) a building or place, or part of a building or place, or part of a public hospital, for the time being declared by the Governor, under section 10 (2) to be an approved hospital;
- (b) an undertaking and premises for the time being declared by the Minister under section 12 (2) to be an approved hospital;

“attender” means an intellectually handicapped person who attends a private day activity centre or a private sheltered workshop;

“Board” means—

- (a) in relation to hospitals, a Board of Visitors appointed under section 42 (2), and in relation to a particular hospital or a patient means the Board of that hospital or of the hospital of which the patient is a patient;
- (b) in relation to private psychiatric hostels, a Board of Visitors appointed under section 42 (4), and in relation to a particular private psychiatric hostel or a resident thereof means the Board of that hostel or of the hostel in which the resident resides;

“clause” means a clause in a Schedule to this Act;

“corporate trustee” means any duly incorporated company that is authorized by law to administer the estates of deceased persons and other trust estates;

“Court” means the Supreme Court of the State and includes the Master or a Registrar exercising the powers of the Court under this Act;

“Department” means the Mental Health Services continued in existence by section 4;

“Director” means the Director of Mental Health Services and, except in sections 5 and 6, includes the Deputy Director of Mental Health Services;

“Division” means a Division of the Part in which the term is used;

“incapable person” means a person declared, under section 78, to be incapable of managing his affairs;

“intellectually handicapped person” means a person who has a general intellectual functioning which is significantly below average and concurrently has deficits in his adaptive behaviour, such conditions having become manifest during the developmental period;

“manager” means a person, including the Public Trustee and a corporate trustee, appointed by the Court under this Act to have the administration, care and management of the estate of an incapable person;

“Master” means the Master of the Supreme Court and includes an acting Master;

“medical practitioner” means a medical practitioner within the meaning of that term in the Medical Act 1894;

“mental illness” means a psychiatric or other illness or condition that substantially impairs mental health, but does not include a handicap whereby a person is an intellectually handicapped person;

“non-voluntary patient” has the meaning assigned to it by section 27 (a);

“paragraph” means a paragraph of the section or subsection in which the term is used;

“Part” means a Part of this Act;

“patient” means a person who is admitted, within the meaning in section 27, to an approved hospital;

“police officer” means any member of the police force of the State;

“Principal Registrar of the Supreme Court” means the person for the time being holding or acting in the office designated by that name under the Supreme Court Act 1935; and reference to Registrar may include a reference to the Principal Registrar or a deputy Registrar;

“private”, in relation to a hospital, psychiatric hostel, hostel, workshop or centre, means not established or operated by or on behalf of the Department or any agency or instrumentality of the Crown in right of the State or the Commonwealth;

“private day activity centre” means a private non-residential undertaking and premises providing training for intellectually handicapped persons who do not attend private or government sheltered workshops;

“private hostel” means a private undertaking and premises providing hostel or similar residential accommodation and care for intellectually handicapped persons;

“private psychiatric hostel” means a private undertaking and premises in which are lodged 3 or more persons, not being

members of the proprietor's family or staff, who are socially dependent by reason of mental illness or being intellectually handicapped persons;

"private sheltered workshop" means a private undertaking and premises in which intellectually handicapped persons who are unable to obtain employment in the normal work-force are employed;

"psychiatrist" means a medical practitioner whose name is contained in a register of psychiatrists prepared and maintained pursuant to section 100; and in sections 28 and 30, Part VI (except in sections 50 (1) and 53 (1) (a)), and sections 68 and 77 means a psychiatrist employed by the Department, where admission is sought to an approved State hospital or the patient is a patient in such a hospital;

"Public Trustee" means the Public Trustee under the Public Trustee Act 1941;

"Registrar" means a person for the time being holding or acting in an office designated under the Supreme Court Act 1935, "Registrar of the Supreme Court";

"relative" means a spouse, child, step-child, grandchild, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, or grandparent, and the spouse of a child, step-child or grandchild;

"resident", in relation to a private hostel or private psychiatric hostel, means a person who is accommodated or lodged in the hostel, other than the proprietor or his family or staff;

"rules" means the rules of court made under section 98;

“section” means a section of this Act;

“security patient” has the meaning assigned to it by section 27 (b);

“subparagraph” means a subparagraph of the paragraph in which the term is used;

“subsection” means a subsection of the section in which the term is used;

“the superintendent”, in relation to an approved hospital or a patient, means the superintendent of that hospital or the hospital of which the patient is a patient, and includes the deputy superintendent and a delegate of the superintendent acting under section 9;

“training centre” means a place, other than a day centre, established under this Act for the treatment of intellectually handicapped persons;

“treatment” includes medical treatment, special care and supervision; and

“voluntary patient” has the meaning assigned to it by section 27 (a).

(2) Where, in any written law, reference is made, expressly or impliedly—

(a) to the committee of the person of a person, that reference shall, if the person is a patient, be read and construed as a reference to the superintendent of the approved hospital of which the person is a patient; and

(b) to the committee of the estate of a person, that reference shall, if a manager of that person's estate has been appointed, be read and construed as a reference to that

manager, otherwise it shall be read and construed as a reference to the Public Trustee.

(3) Where any written law provides that, in the case of a person under a disability, therein described, not having a committee, some person (other than the Public Trustee) is deemed to be the committee, that provision shall be read and construed as though the reference to the person deemed to be the committee were a reference to the Public Trustee.

E.g., Public Works Act, s. 38.

PART II.—ADMINISTRATION.

4. The Department known as the Mental Health Services established by the Mental Health Act 1962 is continued in existence as if, on the coming into operation of this Act, it had been established under section 21 of the Public Service Act 1978.

Department of Mental Health Services.
Cf. No. 46 of 1962, s. 7.

5. (1) Subject to subsection (3), there shall be appointed under the Public Service Act 1978 a Director of Mental Health Services and such other officers as may be necessary for the due administration of this Act.

Director of Mental Health Services and other officers.
Cf. No. 46 of 1962, ss. 8, 9 and 10.

(2) Other officers appointed under subsection (1) shall include:—

- (a) a Deputy Director of Mental Health Services; and
- (b) a superintendent and a deputy superintendent for each approved hospital, not being a private hospital.

(3) A person shall not be appointed to the office of Director, Deputy Director, superintendent or deputy superintendent, or to act as Director or Deputy Director unless he is a psychiatrist.

(4) In the case of the illness or absence, for any reason, of the Director or vacancy in the office of Director, the Minister may appoint the Deputy

Director or some other officer of the Department to act as Director, and during the time that he so acts that person has all the powers, duties, and immunities of the Director.

(5) Subsection (4) applies, with all necessary modifications, in the case of the illness or absence of the Deputy Director, or vacancy in the office of Deputy Director.

Duties and
powers of
Director etc.
Cr. No. 46
of 1962
ss. 8 and 9.

6. (1) Subject to the control of the Minister, the Director is responsible for the administration of the Department, for the medical care and welfare of every person treated by the Department, and for the proper operation of every approved hospital, not being a private hospital, and every service established under section 10.

(2) A superintendent shall be responsible to the Director for the admission of persons to, and the medical care and welfare of every patient in or person received into the hospital of which he is the superintendent.

(3) The Director and, subject to his control, the Deputy Director each have the powers conferred on a superintendent by, or under, this Act and may review, vary or rescind any order or direction made or given by a superintendent.

Appointment
of other
staff.

7. (1) The Minister may, on the recommendation of the Public Service Board, engage persons as employees.

(2) Subject to any industrial award or agreement that is applicable in relation to a particular case or class of cases, persons engaged as employees shall be employed on such terms and conditions as the Minister, on the recommendation of the Public Service Board, determines.

8. (1) The Director shall, as soon as is reasonably practicable, after the end of every year, furnish to the Minister a report in writing of the administration of the Department, of the medical care and welfare of persons treated under this Act, in general, and of such other matters as he thinks deserving of notice.

Annual
report.
Cf. No. 46
of 1962,
s. 8(6).

(2) A true copy of the Director's report shall be laid before both Houses of Parliament, if it is in session when the report is furnished to the Minister or, if not then in session, within 21 days after the commencement of the next session of Parliament.

9. (1) The Director or a superintendent may, either generally or as otherwise provided by the instrument of delegation, in writing signed by him, delegate any of his powers or duties under this Act other than this power of delegation—

Delegation
by Director
or super-
intendent.

- (a) in the case of the Director, to an officer of the Department who is a psychiatrist approved by the Minister for the purpose; and
- (b) in the case of a superintendent, to an officer of the Department who is a psychiatrist.

(2) For the purposes of this Act, the exercise of a power or the performance of a duty by a delegate under this section shall be deemed to be the exercise of the power or the performance of the duty by the Director or the superintendent, as the case may be.

(3) A delegation under this section may—

- (a) be made subject to such conditions, qualifications, and exceptions as are set out in the instrument of delegation;
- (b) be revoked or amended by instrument in writing signed by the Director or the superintendent, as the case may be.

(4) The Director or a superintendent may exercise a power or perform a duty notwithstanding that he has delegated its exercise or performance under this section.

(5) Where, under this Act, the exercise of a power or the performance of a duty by the Director or a superintendent is dependent upon his opinion, belief or state of mind in relation to a matter, and the power or duty has been delegated under this section, the power or duty may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

PART III.—HOSPITALS AND STATE SERVICES.

Division 1.—State Hospitals and State Services.

Establish-
ment of State
hospitals and
other
services.
Cf. No. 46 of
1962, s. 19.

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

- (a) training centres;
- (b) hospitals or nursing homes for the treatment of mental illness;
- (c) in-patient and out-patient units for children;
- (d) hostels and sheltered workshop units;
- (e) out-patient clinics, day hospitals, and day centres for the welfare, rehabilitation, and occupation of persons who are, or have been, receiving treatment under this Act; and
- (f) any other service that may be necessary or expedient,

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

(2) The Governor may, by Order in Council, from time to time, set aside any building or place, or part of a building or place, provided by the State, or part of a public hospital (within the meaning of that term in the Hospitals Act 1927), for the purpose of any service mentioned in subsection (1), and may in

like manner declare any building or place or part of a building or place or part of a public hospital to be an approved hospital; and may amend or cancel any order made under this subsection.

Division 2.—Private Approved Hospitals.

11. (1) A person shall not conduct or cause or permit to be conducted any undertaking or premises as a private psychiatric hospital in which a person is detained under this Act, unless the undertaking and premises are approved and a permit has been granted therefor under section 12 (2) to that person, and remains in force.

Offence to operate private hospital in which person detained without approval.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence.

Penalty: \$4 000 or one year's imprisonment.

12. (1) Any person may, either on his own behalf or on behalf of any body corporate or unincorporate, apply to the Minister for any undertaking and premises to be approved under this section as a private hospital.

Approval of private hospitals.
Cf. No. 46 of 1962, s. 21.

(2) If the Minister, after considering a report thereon from the Director, together with any other report he may require, is satisfied—

- (a) that the proposed premises are suitable to be approved; and
- (b) that the applicant is a fit and proper person to conduct a hospital; and
- (c) that arrangements for the management, equipment and staffing of the proposed hospital are satisfactory,

he may, subject to any conditions he thinks fit to impose, declare the undertaking and premises to be an approved hospital and grant to an applicant therefor or other person a permit to conduct the same as an approved hospital.

(3) Unless revoked or surrendered, every permit issued under this section is valid for one year and may be renewed annually, until revoked or surrendered.

(4) Where—

(a) a permit issued under this section is revoked or surrendered; or

(b) the permit holder dies or becomes incapable of conducting the hospital,

the Minister may issue a permit to some other person approved by the Minister.

(5) If a permit is not issued under subsection (4) to some other person within one month of the revocation, surrender, or being no longer in operation by reason of the death or incapacity of the permit holder, or within such further period as the Minister may allow, the hospital in respect of which it was issued shall, at the termination of that period, cease to be an approved hospital; and the Director may, thereupon, convey to an approved hospital any patient or other person residing therein under this Act.

(6) An approval and permit under this section shall, unless issued in respect of a private hospital not conducted for profit, be issued only on payment of the prescribed fee.

Revocation
of approval
or permit.
Cf. No. 46 of
1962, s. 22.

13. (1) Where, at any time after considering the report of the Director on a private approved hospital, the Minister is no longer satisfied as mentioned in section 12 (2), he may, subject to subsection (2), revoke the declaration of approval or the permit, in respect of that hospital, as he thinks fit.

(2) A declaration of approval or a permit shall not be revoked, until one month after a copy of the report mentioned in subsection (1) has been delivered to the permit holder, together with a notice of the Minister's intention to consider the revocation at the end of that period.

(3) Notwithstanding subsection (2), the Minister may, with immediate effect, suspend the operation of a declaration of approval or permit at any time after considering the report of the Director as mentioned in subsection (1) if he is satisfied that the continuation in force under subsection (2) of the declaration or permit would be contrary to the public interest.

14. (1) The Governor may, out of moneys appropriated by Parliament, make grants and give annual subsidies towards the cost of the maintenance of a private approved hospital.

Power to make grants or subsidies.
Cf. No. 46 of 1962, s. 23.

(2) Notwithstanding any other Act, the making or giving of a grant or subsidy to a hospital, under this section, does not affect the status of that hospital as a private hospital.

Cf. Health Act 1911, s. 325 and Hospitals Act 1927, s. 2.

(3) A grant or subsidy shall not be made or given to a private approved hospital unless the permit holder agrees to conduct the hospital in accordance with any regulations or conditions prescribed for private approved hospitals and to comply with the directions of the Minister.

(4) A permit holder who fails to comply with a prescribed condition or to comply with a direction of the Minister commits an offence.

Penalty: \$2 000.

15. (1) The treatment of every person admitted to or received into a private approved hospital shall be under the superintendence of a psychiatrist.

Patients to be treated by a psychiatrist.
Cf. No. 46 of 1962, s. 24.

(2) Where the permit holder is a psychiatrist, he is, for the purposes of this Act, the superintendent of the hospital conducted by him; and, where he is not a psychiatrist, the psychiatrist under whose superintendence a person is treated is, as regards that person, the superintendent for the purposes of this Act.

(3) Nothing in this section relieves a permit holder of the responsibility for the proper conduct of the approved hospital in respect of which the permit is issued.

PART IV.—PRIVATE SERVICES OTHER
THAN HOSPITALS.

Offence to
operate
undertakings
or premises
without
approval.
Cf. No. 46 of
1962, s. 26B.

16. (1) A person shall not conduct or cause or permit to be conducted any undertaking or premises as—

- (a) a private psychiatric hostel;
- (b) a private hostel;
- (c) a private day activity centre; or
- (d) a private sheltered workshop,

unless the undertaking and premises are approved for the purpose under this Part and the appropriate class of licence for the conduct of the undertaking and premises has been issued to that person and is in force under this Act.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence.

Penalty: \$4 000 or one year's imprisonment.

Approval of
private
services.
Cf. No. 46
of 1962,
ss. 26D and
26Q.

17. (1) Any person may, either on his own behalf or on behalf of any body corporate or unincorporate, apply to the Minister in a form approved by the Minister for any undertaking and premises to be approved under this section as a private psychiatric hostel, private hostel, private day activity centre or private sheltered workshop.

(2) If the Minister, after considering a report thereon from the Director, together with any other report he may require, is satisfied—

- (a) that the proposed premises are suitable to be approved;

- (b) that the applicant is a fit and proper person to conduct a private psychiatric hostel, private hostel, private day activity centre or private sheltered workshop, as the case may be; and
- (c) that arrangements for the management, equipment and staffing of the undertaking and premises are satisfactory,

he may, subject to any conditions he thinks fit to impose, declare the undertaking and premises to be an approved private psychiatric hostel, private hostel, private day activity centre or private sheltered workshop, as the case may be, and grant to an applicant therefor or other person a licence to conduct the same as an approved private psychiatric hostel, private hostel, private day activity centre or private sheltered workshop.

18. A licence holder under this Part is responsible to the Minister for the proper conduct of the psychiatric hostel, hostel, day activity centre or sheltered workshop for which the licence is granted; but, without limiting that responsibility, the Psychiatrist Superintendent of the Community Psychiatric Division of the Department shall take all reasonable steps to ensure that adequate medical care is available to residents of private psychiatric hostels.

Responsibility for conduct of services.

Cf. No. 46 of 1962, ss. 26G and 26T.

19. Unless revoked or surrendered, every declaration of approval and licence granted under section 17(2) is valid for one year and may be renewed annually until revoked or surrendered.

Duration of licences and approvals.

Cf. No. 46 of 1962, ss. 26D(3) and 26Q(3).

20. (1) Where—

- (a) a licence granted under section 17 (2) is revoked or surrendered; or
- (b) the licence holder dies or becomes incapable of conducting the psychiatric hostel, hostel, day activity centre, or sheltered workshop,

Dealing with licence on revocation, surrender, death or incapacity.

Cf. No. 46 of 1962, ss. 26D(4) and 26Q(4).

the Minister may issue a licence to some other person approved by the Minister.

(2) If a licence is not issued under subsection (1) to some other person within one month of the revocation, surrender, or being no longer in operation by reason of the death or incapacity of the licence holder or within such further period as the Minister may allow, the psychiatric hostel, hostel, day activity centre or sheltered workshop in respect of which it was issued shall, at the termination of that period, cease to be approved for the purposes of this Act; and the Director may thereupon convey any resident or attender therein to another approved private psychiatric hostel, private hostel, day activity centre or sheltered workshop.

Fees.
Cf. No. 46 of
1962,
ss. 26D(5)
and 26Q(5).

21. An approval and licence granted under section 17 (2) shall, unless issued in respect of a psychiatric hostel, hostel, day activity centre or sheltered workshop not conducted for profit, be issued only on the payment of the prescribed fee.

Revocation
of approval
or licence.
Cf. No. 46
of 1962, ss.
26E and 26R.

22. (1) Where at any time after considering the report of the Director on a psychiatric hostel, hostel, day activity centre or sheltered workshop, the Minister is no longer satisfied as mentioned in section 17 (2), he may, subject to subsection (2), revoke the declaration of approval or the licence in respect of that psychiatric hostel, hostel, centre or workshop as he thinks fit.

(2) A declaration of approval or a licence shall not be revoked until one month after a copy of the report mentioned in subsection (1) has been delivered to the licence holder, together with a notice of the Minister's intention to consider the revocation at the end of that period.

(3) Notwithstanding subsection (2), the Minister may, with immediate effect, suspend the operation of a declaration of approval or licence at any time after considering the report of the Director as mentioned in subsection (1) if he is satisfied that the continuation in force under subsection (2) of the declaration or licence would be contrary to the public interest.

23. (1) The Governor may, out of moneys appropriated by Parliament, make grants and give annual subsidies towards the cost of the maintenance of a psychiatric hostel, hostel, day activity centre or sheltered workshop approved under section 17.

Power to make grants or subsidies. Cf. No. 46 of 1962, ss. 26F and 26S.

(2) Notwithstanding any other Act, the making or giving of a grant or subsidy to a psychiatric hostel, hostel, day activity centre or sheltered workshop under this section does not affect its status as a private psychiatric hostel, private hostel, private day activity centre or private sheltered workshop.

24. (1) A grant or subsidy shall not be made or given under section 23 unless the licence holder agrees to conduct the psychiatric hostel, hostel, day activity centre or sheltered workshop in accordance with any regulations or conditions prescribed therefor, and to comply with the directions of the Minister.

Conditions applying to grant and subsidies. Cf. No. 46 of 1962, ss. 26F and 26S.

(2) A licence holder who fails to comply with a prescribed condition or to comply with a direction of the Minister, commits an offence.

Penalty: \$2 000.

PART V.—SAFEGUARDS.

Division 1.—General safeguards against unjustified loss of liberty etc.

25. (1) Except as provided by this Act, a person shall not detain, or assume the custody of, a person who is suffering from a mental illness.

Detention except under this Act prohibited. Cf. No. 46 of 1962, ss. 50 and 91.

(2) Nothing in this Act affects the operation of—

See section 337 of The Criminal Code.

(a) section 54 of the Prisons Act 1903;

(b) section 19 (6a), 652, 653, 662 or 693 (4) of The Criminal Code;

or

(c) any Act authorizing the detention or custody of a person for some reason other than mental illness.

Detention
to be in
approved
hospital
only.

Cr. No. 46
of 1962, s. 25.
See section
337 of The
Criminal
Code.

Meaning of
"admission".

26. A person shall not be detained under this Act in any hospital, other than an approved hospital.

27. For the purposes of this Act, a person may be received into an approved hospital pursuant to Division 1 of Part VI but no person is admitted to an approved hospital as a patient except—

(a) by a psychiatrist acting under section 30 (2) or (4)—

(i) following a request under section 46 or 47 relating to that person (a person so admitted being referred to in this Act as a "voluntary patient");
or

(ii) following a request under section 48 or an order under section 49, 50 or 51 relating to that person (a person so admitted being referred to in this Act as a "non-voluntary patient");
or

(b) by order of the Chief Secretary under section 53 or of the Governor under section 54 (a person so admitted being referred to in this Act as a "security patient").

Criteria for
admission to
approved
hospitals.
See section
337 of The
Criminal
Code.

28. (1) A person shall not, under section 30 (2), be admitted to or detained in an approved hospital as a non-voluntary patient unless a request has been made under section 48 or an order has been made under section 49, 50 (3), or 51 and in the opinion of a psychiatrist—

(a) he is suffering from a mental illness;
(b) that mental illness is of a nature or degree which warrants detention for treatment—

(i) in the interests of his welfare; or
(ii) for the protection of other persons;
and

(c) he does not, by reason of his mental illness, appreciate that he needs treatment for it.

(2) A person shall not under subsection (2) of section 30 be admitted to an approved hospital as a voluntary patient unless a request has been made under section 46 or 47 and, in the opinion of a psychiatrist—

- (a) he is suffering from a mental illness; and
- (b) that mental illness is of a nature or degree which warrants treatment in the interests of his welfare.

(3) Nothing in subsection (1) affects the power to detain a person as mentioned in section 30 (1) (b).

29. (1) A decision under Division 3 of Part VII whether a patient shall leave an approved hospital, be discharged or remain a patient shall be made having regard only to the matters set out in this section.

Criteria for
discharge of
patients.

(2) A person who is a voluntary patient shall not remain in an approved hospital if, in the opinion of the superintendent or the Director (as the case may be)—

- (a) he is no longer suffering from a mental illness;
- (b) his mental illness no longer warrants treatment in the interests of his welfare; or
- (c) he refuses to accept the treatment prescribed for him in the hospital.

(3) A person shall not remain a non-voluntary patient if, in the opinion of the superintendent, Director, Board or Court (as the case may be)—

- (a) (i) he is no longer suffering from a mental illness; or
- (ii) his mental illness no longer warrants detention for treatment as mentioned in section 28(1); and
- (b) where necessary, adequate and satisfactory arrangements have been made for the care of the patient after discharge, including arrangements for him to be in the care of a suitable person.

(4) In the case of a patient under the age of 18 years arrangements for him to be in the care of a suitable person as mentioned in subsection (3)(b) means that he will, after discharge, be in the care of a parent or guardian; but the superintendent, Director, Board or Court may, where satisfied that special circumstances exist, determine that other arrangements for the care of the patient are satisfactory for the purposes of subsection (3) (b).

Persons
received to
be examined
then
admitted or
to leave
hospital.
Cf. No. 46
of 1962,
s. 28 (3), (4)
and (5) and
s. 34 (1), (2)
and (3).

30. (1) Every person whose reception into an approved hospital is requested or ordered under section 46, 47, 48 (1), 49 (1), 50 (3) or 51 (2), and who appears to be suffering from a mental illness, shall be received into the hospital for a period not exceeding 72 hours and during that period—

(a) shall be examined by a psychiatrist as soon as is practicable; and

(b) where section 48, 49, 50 or 51 applies may be detained for that purpose.

(2) If, after his examination, the psychiatrist is of the opinion that the requirements of section 28 which apply to the person are satisfied he shall admit the person to an approved hospital as a patient; otherwise the person shall leave the hospital.

(3) The psychiatrist, after his examination, shall—

(a) whether or not the person is admitted under subsection (2), record his opinion in the prescribed register and record the reasons for his opinion in the appropriate records of the hospital; and

(b) inform a person who is not admitted of his right under section 31.

(4) A person who is ordered under subsection (3) of section 50 to be received into an approved hospital on the grounds of a certificate furnished under subsection (2) of that section by a psychiatrist employed in an approved State hospital need not, on his reception into an approved hospital pursuant to

the order, be further examined under subsection (1) of this section but shall be then admitted to the hospital.

31. A person whose reception into an approved hospital is requested or ordered under section 48, 49, 50, or 51 but who is not admitted following an examination by a psychiatrist under section 30 shall be entitled, upon his request, to a statement in writing signed by the examining psychiatrist or, in his absence, by the superintendent of the hospital, to the general effect that his reception was requested or ordered under this Act but that on an examination he was not found to be suffering from mental illness of a nature or degree described in section 28 (1) (b), or to be otherwise admissible to an approved hospital under section 28 (1) and was not admitted as a patient.

Persons
examined but
not admitted
entitled to
written
statement.

32. A person employed by the Department, who wilfully ill-treats or wilfully neglects any person while that person is in the care of the Department commits an offence.

Offence of
ill-treat-
ment.
Cf. No. 46 of
1962, s. 61.

Penalty: \$4 000 or 2 years' imprisonment.

33. The superintendent shall, from time to time, cause to be entered in any prescribed register the prescribed particulars of every person who is—

Particulars
to be kept as
to reception,
admis-
sion, etc.
Cf. No. 46 of
1962, s. 41.

- (a) received into an approved hospital;
- (b) admitted as a patient;
- (c) discharged from being a patient;
- (d) transferred to another approved hospital;
or
- (e) detained for a further period by order
under section 68(2).

Proceedings
to be *in*
camera.
Cf. No. 46
of 1962, ss.
32 (4) and
33 (1).

34. Every proceeding before a justice under section 49, 56 or 57 and every examination under section 59 shall be held or made *in camera*, unless the person who is the subject of the proceeding or examination waives such requirement, after satisfying the justice that he understands the effect of doing so.

*Division 2.—Safeguards against unjustified
certification of mental illness.*

No request
or certificate
to be signed
without
examination.
Cf. No. 46 of
1962, s. 82.

35. A medical practitioner who signs any request or certificate for the purposes of this Act without having seen and personally examined the person to whom it relates to ascertain the condition of that person to the best of his knowledge and ability, commits an offence.

Penalty: \$1 000 or 6 months' imprisonment.

Persons
prohibited
from signing
request or
certificate.
Cf. No. 46 of
1962, s. 83.

36. (1) A request or certificate relating to any person for the purposes of this Act is not valid, if it is signed by a medical practitioner who—

- (a) is a relative, guardian, partner, principal, employer or employee of the person to whom the request or certificate relates;
- (b) is the justice ordering the person to be examined, or conveyed to or received into an approved hospital;
- (c) is a medical officer appointed to an approved hospital;
- (d) in the case of a request to an approved hospital that is a private hospital or of a certificate which is used for reception or admission into such a hospital, is the permit holder or a relative of the permit holder for that hospital; or
- (e) is a member of the Board of the hospital to which the request is directed or for reception or admission into which the certificate is used.

(2) A medical practitioner, other than such as is mentioned in subsection (1), in the employ of the Department may sign a request for the purposes of section 48 or a certificate under section 49.

37. (1) A medical practitioner signing any request or certificate for the purposes of this Act shall specify therein the facts upon which he has formed his opinion that the person to whom the request or certificate relates is suffering from mental illness, distinguishing, in the request or certificate, facts observed by himself from facts communicated to him by others.

Request or certificate to specify facts upon which opinion of mental condition is formed.
Cf. No. 46 of 1962, s. 81.

(2) A person shall not be received into or ordered to be conveyed to and received into, an approved hospital, by reason of a request or certificate which purports to be founded only on facts communicated by others to the medical practitioner signing it.

Division 3.—Interviews, correspondence, and visits.

38. (1) A patient requiring an interview with a medical officer of the hospital shall be afforded that interview within 72 hours of the request being made; and a patient requiring an interview with the Board shall be afforded that interview, on the occasion of the Board's next attendance at the hospital, after the request is made.

Patients to be afforded interviews.
Cf. No. 46 of 1962, s. 58.

(2) Where a relative, guardian, friend, or legal or medical adviser of a patient requests the Board for an interview, it shall afford the interview as soon as it can reasonably be arranged; and where such a request is directed to the superintendent he shall notify the Board thereof as soon as is practicable.

39. (1) A patient may correspond by post with persons outside the hospital without interference or restriction by the Director, the superintendent or any person employed in the hospital.

Letters of patients.

(2) Every letter or other postal article of a patient which is entrusted for posting to an employee of the hospital authorized to receive it shall, subject to subsection (1), be sent forward for posting without being opened.

(3) Every letter or other postal article addressed to a patient and coming into the possession of the superintendent or an employee of the hospital shall, as soon as is reasonably practicable, be delivered to that patient without being opened.

(4) A person who without reasonable excuse detains or opens any letter or postal article contrary to this section commits an offence.

Penalty: \$500.

Visits by
relatives and
others.
Cf. No. 46 of
1962, s. 60.

40. (1) Subject to subsections (2) and (4), unless the superintendent is of the opinion that it would not be in the interest of a patient, any relative or friend of a patient or any medical or legal practitioner required by a patient or a relative or friend of a patient to be permitted, shall be permitted to visit a patient in an approved hospital—

(a) in the case of a relative or friend, during the hours appointed for the visiting of patients in that hospital; and

(b) in the case of a medical or legal practitioner, at a reasonable time appointed by the superintendent.

(2) The superintendent may permit a visit subject to compliance with specified terms and conditions.

(3) Where permission is withheld by the superintendent under subsection (1) he shall in writing state his reasons for so doing to the person who applied for the permission.

(4) Subsection (1) does not apply to a medical or legal practitioner instructed by a relative of a patient unless—

- (a) the medical or legal practitioner applies in writing for permission to visit the patient; and
- (b) the patient consents in writing to the visit or, where in the opinion of the superintendent he is not capable of doing so, the superintendent is satisfied that the visit is in the interest of the patient.

41. In this Division the term “patient” includes a person received into an approved hospital under Division 1 of Part VI.

Meaning of “patient”.
Cf. No. 46 of 1962, s. 60 (2).

Division 4.—Boards of Visitors.

42. (1) There shall be a Board of Visitors for every approved hospital, but one Board may be appointed for 2 or more hospitals and a person may be a member of more than one Board.

Boards of Visitors.
Cf. No. 46 of 1962, ss. 11 and 26H.

(2) A Board of an approved hospital shall consist of 5 members, including the chairman, all appointed by the Minister and of those members—

- (a) one shall be a legal practitioner;
- (b) 2 shall be medical practitioners; and
- (c) 2 shall be persons of whom at least one is a woman and neither is a member of either the legal or the medical profession.

(3) There shall be a Board of Visitors for every approved private psychiatric hostel, but—

- (a) one Board may be appointed for any number of hostels not exceeding 10; and
- (b) a person may be a member of more than one Board.

(4) A Board of an approved private psychiatric hostel shall consist of 5 members, including the chairman, all appointed by the Minister, and of those members—

- (a) one shall be a representative of MIND, the Western Australian Association for Mental Health Incorporated;
- (b) one shall be a person who is a member of a voluntary community service organization; and
- (c) one shall represent the interests of the municipality or municipalities (within the meaning of the Local Government Act 1960) in which the hostel or hostels is or are situated.

(5) A person who is an officer of the Department or who is directly or indirectly interested in an approved hospital or private psychiatric hostel shall not be a member of a Board.

(6) The provisions of Schedule 1 to this Act shall have effect in relation to the Board.

Board
subject to
Minister
only.
Cf. No. 46 of
1962, ss. 17
and 26N.

43. (1) A Board is responsible to and subject to the control of the Minister and no other person.

(2) Every Board shall as soon as is reasonably practicable after the end of each year, furnish to the Minister a report in writing of its activities during that year; and a true copy of the report shall be laid before both Houses of Parliament, if it is in session when the report is furnished to the Minister or, if it is not then in session, within 21 days after the commencement of the next session of Parliament.

Duties of
Board.
Cf. No. 46 of
1962, ss. 18
and 26P.

44. (1) A Board of an approved hospital or a majority of the members shall—

- (a) visit that hospital, at least once in every month and at such other times as the Minister may direct;

- (b) be present at the hospital, at least once in every month, for the purpose of interviewing such of the patients there as may wish to see the Board and of receiving complaints or recommendations affecting the welfare of patients;
 - (c) at least once in every 3 months, inspect every part of the hospital where patients are accommodated or that appertains to the welfare of patients;
 - (d) enter in its minutes a record of the proceedings and transactions of every meeting of, and inspection by, the Board and shall transmit a copy of its minutes to the Minister.
- (2) A Board of an approved private psychiatric hostel or a majority of the members shall—
- (a) visit that hostel at least once in every 2 months and at such other times as the Minister may direct;
 - (b) be present at the hostel at least once in every 2 months for the purpose of interviewing such of the residents there as may wish to see the Board and of receiving complaints or recommendations affecting the welfare of residents;
 - (c) at least once in every 4 months, inspect every part of the hostel where residents are accommodated or that appertains to the welfare of residents;
 - (d) enter in its minutes a record of the proceedings and transactions of every meeting of, and inspection by, the Board and shall transmit a copy of its minutes to the Minister.
45. (1) A Board may—
- (a) interview a patient or resident at any time;
 - (b) make such inquiries, examinations and inspections as it may from time to time think necessary in the interests of patients

Powers of
Board.
Cf. No. 46 of
1962, ss. 18
and 26F.

or residents and, in particular, in the case of a hospital, in order to ascertain whether any patient ought to continue to be a patient.

(2) A Board may, with or without previous notice and at such hours of the day or night and for such length of time as it thinks fit, but so as not unduly to interfere with the administration thereof, enter and examine any hospital or hostel for which it is appointed.

(3) A Board may make recommendations to the Minister as to the welfare (other than the medical treatment) of patients or residents or the management of a hospital or hostel.

(4) A Board may order a patient or resident to be examined by a psychiatrist selected by it and that psychiatrist is thereupon authorized to carry out the examination and shall, as soon as is practicable, submit a report of the result thereof to the Board which shall furnish a copy of the report to the Minister and the Director.

PART VI.—RECEPTION AND ADMISSION.

Division 1.—Reception into approved hospitals.

Reception at
person's own
request.
Cf. No. 46 of
1962, s. 27.

46. A person of or over the age of 18 years who in the opinion of a psychiatrist is, or appears to be, suffering from mental illness of a nature or degree described in section 28 (2) (b) may be received into an approved hospital at his own request.

Reception of
person
under 18 at
request of
parent or
guardian.
Cf. No. 46 of
1962, s. 27.

47. A person under the age of 18 years who in the opinion of a psychiatrist is, or appears to be, suffering from mental illness of a nature or degree described in section 28(2)(b) may be received into an approved hospital at the request of one of his parents or of his guardian.

48. (1) A person who, in the opinion of 2 medical practitioners is, or appears to be, a person who comes within paragraphs (a), (b) and (c) of section 28 (1) may, upon the request of each of those medical practitioners, be received into an approved hospital.

Reception
into hospital
at request of
two medical
practitioners.
Cf. No. 46
of 1962,
s. 28.

(2) A person shall not be received into an approved hospital under subsection (1) unless the requests referred to therein are—

(a) in the prescribed form; and

(b) based on personal examinations of the person made by the medical practitioners within 72 hours before the presentation of the person to the hospital.

(3) Notwithstanding subsections (1) and (2), a person may be received into an approved hospital under and in accordance with those subsections but upon the request of only one medical practitioner if that medical practitioner certifies in writing to the superintendent of the hospital that to the best of his knowledge no other medical practitioner was, at the time he made his examination, in practice and present within 30 kilometres of the place where the examination was made.

49. (1) If, upon the application of any person made in the prescribed manner, a justice is satisfied that a person is, or appears to be, a person who comes within paragraphs (a), (b) and (c) of section 28 (1), the justice may, by order under his hand in the prescribed form, order that the person be apprehended (except where he is already detained under section 56 or 57), conveyed to and received into an approved hospital.

Reception
into hospital
by order of
justice.
Cf. No. 46 of
1962, s. 29.

(2) The justice shall not make an order under subsection (1) unless—

(a) he has himself seen the person for the purpose of determining whether the order applied for should be made; and

- (b) a medical practitioner is of the opinion that the person is, or appears to be, a person who comes within paragraphs (a), (b) and (c) of section 28 (1) and such opinion is—
 - (i) evidenced by a certificate in the prescribed form; and
 - (ii) based on a personal examination of the person made by the medical practitioner within 72 hours before the application to the justice is lodged.

(3) An order made under this section shall be accompanied by the certificate referred to in subsection (2), or a copy thereof, and shall be presented at the approved hospital to which the person is conveyed.

Reception
into hospital
of defendant
following
examination
ordered by
court.
Cf. No. 46 of
1962, s. 36.

50. (1) Where it appears to a court of summary jurisdiction before which a person stands charged with an offence that the defendant is, or may be, a person who comes within paragraphs (a), (b) and (c) of section 28 (1), the court may, by order in the prescribed form, order that the defendant be remanded for any period not exceeding 7 days either—

- (a) on bail, for examination by a psychiatrist;
or
- (b) in custody at such place as the court may specify for observation and examination by a psychiatrist,

as the court thinks fit.

(2) If the psychiatrist examining a defendant pursuant to an order made under subsection (1) is of the opinion that the defendant is or appears to be a person who comes within paragraphs (a), (b) and (c) of section 28 (1), he shall furnish to the court a certificate as to such opinion in the prescribed form.

(3) Upon such a certificate being furnished, the court may, by order in the prescribed form, order that the person be conveyed to and received into an approved hospital.

(4) If a defendant who has been received into an approved hospital under subsection (3), is not admitted under section 30(2) the superintendent shall discharge the defendant into his former custody.

(5) When a defendant who has been admitted under section 30(2) following an order under subsection (3) is to be discharged, the superintendent shall, unless the court which made the order otherwise directs, inform that court of the proposed discharge and shall, if so required by the court, discharge the defendant into his former custody.

51. (1) The Minister may, on behalf of the State, agree with the Government of another state or territory of the Commonwealth for the taking, reception, care, treatment, maintenance, burial, or payment of expenses, under this Act, of an intellectually handicapped person or a person suffering from a mental illness who is discharged by that other state or territory to this State.

Persons
discharged
from outside
State.

Cf. No. 46
of 1962, s. 57.

(2) Where pursuant to an agreement referred to in subsection (1) a person is discharged to this State he may, if he is, or appears to be, a person who comes within paragraphs (a), (b) and (c) of section 28 (1), be received into an approved hospital on the order of the Minister.

52. This Division does not apply to a prisoner under conviction and sentence or under conviction and awaiting sentence.

This Division
not
applicable
to prisoners.
Cf. No. 46 of
1962, s. 50.

*Division 2.—Admission of persons
arising out of criminal trials.*

Persons
found unfit
to stand trial
may be
admitted.
Cf. No. 46
of 1962, s. 47.

53. (1) Where a person, being committed to stand trial for any offence—

- (a) is found by 2 psychiatrists to be suffering from mental illness to the extent that he ought not to stand trial; or
- (b) is found, under section 652 of The Criminal Code, not to be of sound mind,

the Chief Secretary may direct, by order under his hand, that he be admitted as a patient to an approved hospital and there be detained until a psychiatrist certifies that he is fit to be discharged; and the Chief Secretary shall, thereupon, order that the patient be removed to the place whence he came prior to admission as a patient.

(2) The fact of a person being a patient under this section does not operate as a bar to his subsequent indictment and trial.

Governor
may order
admission in
certain cases.
Cf. No. 46
of 1962, s. 48.
See sections
19(6a)(a) and
653 of The
Criminal
Code.

54. (1) Where any person, not being a person under conviction and sentence, is ordered to be kept in custody until Her Majesty's pleasure is known or during the Governor's pleasure, the Governor may, from time to time, order that the person be admitted as a patient to an approved hospital and may thereafter—

- (a) order that the person be liberated, upon such terms and conditions as he thinks fit; or
- (b) revoke the order for admission as a patient whereupon the person shall be returned to his former custody.

(2) Where a person liberated by the Governor under this section, subject to any terms or conditions, commits a breach of any term or condition, he may be re-taken and returned to the hospital or any other approved hospital as the Governor may order.

55. Where a security patient escapes from an approved hospital, he may be apprehended, without any authority other than this section.

Apprehension
of escaped
security
patients.
Cf. No. 46
of 1982,
s. 49(2).

*Division 3.—Apprehension and examination
in certain cases.*

56. (1) Where a complaint on oath is made before a justice that a person—

Apprehension
and examina-
tion where
person
may be a
danger.
Cf. No. 46 of
1982, s. 30.

(a) appears to be a person who comes within paragraphs (a), (b) and (c) of section 28 (1); and

(b) is or appears likely to be a danger to himself or to other persons,

the justice may, by order in the prescribed form under his hand, require a police officer, or an officer of the Department authorized in that regard by the Minister, to apprehend the person in respect of whom the complaint was made and forthwith cause him to be examined by a medical practitioner.

(2) A police officer finding a person to whom subsection (1) applies may, without an order, apprehend him; but, in such event, the police officer shall forthwith make a complaint on oath before a justice as to the condition of the person and the circumstances under which he was found; and the justice may thereupon, by order in the prescribed form under his hand, require the police officer forthwith to cause the person to be examined by a medical practitioner.

(3) If the medical practitioner examining a person pursuant to this section is of the opinion that the person is or appears to be a person who comes within paragraphs (a), (b) and (c) of section 28 (1), he shall complete a certificate to that effect in the prescribed form and hand that form to the police officer.

Apprehension
of persons
not taken
care of,
cruelly
treated or
wrongfully
detained.
Cf. No. 46
of 1962, s. 31.

57. (1) The Director, or any other officer of the Department or a police officer, on learning or having reason to suspect that a person appears to be a person who comes within paragraphs (a), (b) and (c) of section 28 (1) and that he—

- (a) is not under proper care and control;
- (b) is cruelly treated or neglected by any person having or assuming the charge of him; or
- (c) is detained in contravention of any provision of this Act,

shall forthwith make a complaint on oath thereof, before a justice; and any person having reason to suspect as mentioned in this subsection may make such a complaint.

(2) A justice, upon the making of such a complaint may, by order under his hand in the prescribed form—

- (a) require any police officer to enter, with a medical practitioner and with such assistance as may be found necessary, into the place where the person in respect of whom the complaint was made lives or is detained; and
- (b) authorize the police officer to use force, if necessary, for making that entry, whether by breaking down doors or otherwise.

(3) If, upon entry made under this section, any person is, in the opinion of the police officer carrying out the order, found in any of the circumstances mentioned in subsection (1) and the medical practitioner is of the opinion that the person appears to be a person who comes within paragraphs (a), (b) and (c) of section 28 (1), the medical practitioner shall inform the police officer of his opinion and as soon as is practicable complete a certificate evidencing his opinion in the prescribed form and hand that form to the police officer.

(4) Upon being informed by the medical practitioner as mentioned in subsection (3), the police officer shall apprehend the person.

58. (1) Subject to subsection (2), every police officer or officer of the Department apprehending any person under section 56 or 57 shall, within 24 hours thereafter or after the examination of that person by a medical practitioner (whichever is the later), make an application to a justice under section 49 which shall apply as if the prescribed form of certificate referred to in sections 56 (3) and 57 (3) were the form of certificate prescribed for the purposes of section 49 (2) (b) (i).

Action following apprehension and examination. Cf. No. 46 of 1962, s. 32.

(2) Subsection (1) does not apply where the medical practitioner who examines a person under section 56 or 57 is not of the opinion that the person is a person who comes within paragraphs (a), (b) and (c) of section 28 (1); and in that event the person shall, subject to any requirement that he be in custody for some other reason, be entitled to be released.

Division 4.—Supplementary provisions as to orders and requests under Division 1 and proceedings under Division 3.

59. (1) A justice before whom an application is made under section 49 or to whom a complaint is made under section 56 or 57 may, himself, examine the person who is apparently suffering from mental illness, and may examine him and any witness in the matter, at any convenient place.

Additional powers of justice. Cf. No. 46 of 1962, s. 33.

(2) The justice may, by order in the prescribed form, suspend the execution of any order made under section 49, 56 or 57 for any period not exceeding 7 days, and may give such directions or make such arrangements for the proper care and control of the person to whom the order relates, as he considers necessary.

(3) Where any relative or friend of a person who is the subject of an application under section 49 or of a complaint under section 56 or 57 satisfies the justice before whom the application or complaint is made that the person will be under proper care

and control, the justice may suspend the proceedings, for such period as he thinks fit, and permit the relative or friend to take the person under his own care.

Order of
court or
justice
valid for 72
hours.
Cf. No. 46
of 1962, s. 37.

60. (1) An order made under section 49 (1) or 50 (3) for the conveyance of a person to, and reception into, an approved hospital, shall be executed within 72 hours after it is made and, unless executed in that period, is no longer of effect; but the court or the justice that made the order may extend it for a further period of 72 hours.

(2) A person who is ordered to be conveyed to, and received into, an approved hospital under section 49 (1) or 50 (3) may be detained, until such time as proper arrangements have been made for his conveyance.

(3) Subsection (1) does not bar a fresh application and order being made under section 49 (1) or a fresh order being made under section 50 (3) in respect of a person who was subject to an order that has lapsed.

Force may
be used in
carrying out
order.
Cf. No. 46
of 1962,
s. 37A.

61. (1) An order made under section 49 (1) or 50 (3), for the conveyance of a person to, and reception into, an approved hospital—

- (a) shall have effect according to its tenor;
- (b) authorizes the use of such force as may be necessary to carry it into complete effect; and
- (c) may require any police officer, and any medical practitioner or other person to whom it is directed, to assist in the execution of the order.

(2) Where force is used in the conveyance of a person to, or reception into, an approved hospital, pursuant to such an order, this fact, and particulars of the type and degree of force used, shall

be reported in writing within 24 hours thereafter to the Director by the senior police officer and any medical practitioner assisting in the execution of the order.

62. (1) Any order under section 49 (1) or 50 (3) or a request under section 48 by virtue of which a person has been conveyed to and received into an approved hospital and that is incorrect or defective in any material particular may be amended, within 72 hours after the reception of the person, by, and on the sole authority of, the person who signed it.

Orders and requests may be amended. Cf. No. 46 of 1962, s. 85.

(2) If an order or request requiring amendment is not amended, within the period of 72 hours after the reception of a person to an approved hospital by virtue thereof, the Director may order that the person leave the hospital; or the Director may direct the superintendent to require a new order or request which, if obtained, shall be effectual for all purposes, as if it had been made or executed prior to the reception of the person into the hospital.

PART VII.—DETENTION, LEAVE OF ABSENCE AND DISCHARGE OF PATIENTS.

Division 1.—General.

63. (1) Except for section 64 (1), this Part does not apply to a security patient unless, in the case of a patient admitted under section 53, the Chief Secretary or, in the case of a patient admitted under section 54, the Governor, otherwise orders.

Application of this Part. Cf. No. 46 of 1962, s. 49.

(2) Except for sections 64 (2) and 67, this Part does not apply to voluntary patients.

64. (1) Non-voluntary patients and security patients are detained.

Detention. Cf. No. 46 of 1962, s. 38.

(2) Voluntary patients are not detained.

Division 2.—Leave of Absence.

Leave of
absence.
Cf. No. 46 of
1962, ss. 42
and 44.

65. (1) Subject to subsection (2), the superintendent may grant to a patient leave to absent himself from hospital, upon such conditions as to treatment, custody, conduct or behaviour as he thinks fit.

(2) Leave of absence shall not be granted—

- (a) to a patient admitted following an order under section 50 unless every charge that was preferred against him has been withdrawn or dismissed; or
- (b) to any patient so that the leave period extends beyond the period or any extended period, applicable under section 68.

(3) The superintendent may rescind any leave of absence granted under this section, and thereupon require the return forthwith of the patient to hospital or to any other approved hospital.

Absence
without
leave.
Cf. No. 46 of
1962, s. 42.

66. (1) A patient who—

- (a) quits the precincts of an approved hospital without first obtaining the permission of a medical officer of that hospital; or
- (b) fails to return to the hospital at the termination of the period of, or upon the rescission of, his leave of absence,

is absent without leave.

(2) A patient who is absent without leave may be apprehended at any time by the superintendent, any medical officer of the hospital or other person authorized by the superintendent, or by any police officer, and conveyed to the hospital or to any other approved hospital.

Division 3.—Discharge.

67. (1) A voluntary patient shall, subject to subsection (2), leave the hospital—

When
voluntary
patient to
leave
hospital.
Cf. No. 46 of
1962, s. 51.

- (a) on the order of the superintendent or the Director made in accordance with section 29;
- (b) in the case of a voluntary patient under the age of 18 years, as soon as is practicable after the parent or guardian at whose request the patient was admitted states in writing to the superintendent that he wishes the patient to leave the hospital; or
- (c) in the case of any other voluntary patient, as soon as is practicable after he states in writing to the superintendent that he wishes to leave the hospital.

(2) Where, in the case of a voluntary patient under the age of 18 years, a statement in writing under subsection (1) (b) is made by a parent or guardian other than the parent or guardian at whose request the patient was admitted, the statement shall be referred to the Director who shall, after giving the parent or guardian an opportunity of being heard, decide whether or not, in the patient's interest, the patient should leave the hospital; and the patient shall leave the hospital if the Director so orders.

68. (1) A patient shall be discharged by operation of this subsection after the expiration of 28 days commencing on the day of his admission as a patient, unless the period of his detention is extended under subsection (2) or he is sooner discharged under some other provision of this Part.

Automatic
discharge of
non-
voluntary
patients
after 28
days.
Cf. No. 46
of 1962, s. 39.

(2) If the superintendent, on the advice in writing of another psychiatrist and after giving the patient an opportunity of being heard, is of the opinion that in accordance with section 29 the patient should not be discharged, he may order that the period of detention be extended for a period not exceeding 6

months commencing on the day after the expiry of the former period; and may, subject to this subsection, on the expiry of any extended period, from time to time, so order.

(3) A patient shall be discharged by operation of this subsection on the expiration of any period of detention ordered under subsection (2) unless that period is further extended or he is sooner discharged under some other provision of this Part.

(4) In computing the period of a patient's detention any period during which he was absent without leave shall be taken into account.

Patients may
be
transferred.
Cf. No. 46 of
1962, s. 40.

69. (1) A patient may, by order of the Director, be transferred from an approved hospital to another approved hospital, but, for the purposes of section 68, the period spent by a patient in any approved hospital is cumulative on that spent in another approved hospital.

(2) Before he makes an order under subsection (1) the Director shall give the patient an opportunity of being heard either by the Director or the superintendent.

Discharge by
order.
Cf. No. 46 of
1962, s. 52 (1).

70. (1) A patient shall be discharged on the order of—

- (a) the superintendent or the Director, at any time;
- (b) the superintendent or the Director acting under section 71;
- (c) the Board acting under section 72;
- (d) the Court acting under section 73; or
- (e) the Minister acting under section 74.

(2) An order under subsection (1) (a) shall be made in accordance with section 29.

71. (1) Any person (including the patient himself) who is of or over the age of 18 years may at any time apply in the prescribed form for the discharge of a patient, and the superintendent shall, in accordance with section 29 and after giving the patient an opportunity of being heard, either refuse the application or by order discharge the patient within 72 hours of receiving the application.

Discharge on application to superintendent.
Cf. No. 46 of 1962, s. 52(2) and (3).

(2) Where the superintendent refuses the application, he shall, within the period mentioned in subsection (1), state in writing to the applicant his reasons for doing so.

(3) Where the applicant notifies the superintendent in writing that he is dissatisfied with the decision of the superintendent, the question of the discharge of the patient shall be referred by the superintendent to the Director.

(4) The Director shall thereupon inquire into the application and, after giving the applicant an opportunity of being heard, decide, in accordance with section 29, whether or not the application ought to be granted; and, if it is granted, he shall order the patient to be discharged.

(5) If the application is refused by the Director he shall state in writing to the applicant his reasons for doing so.

72. (1) The Board may after considering the case of any patient, in accordance with section 29, order that the patient be discharged; and the Director shall thereupon discharge the patient.

Board may order discharge.
Cf. No. 46 of 1962, s. 54.

(2) Notwithstanding clause 5 (1) (c) of Schedule 1—

- (a) any question whether a Board should order the discharge of a patient under subsection (1) shall be resolved in the negative unless the majority of votes includes the vote of a medical practitioner;

- (b) where the Board is equally divided on any question relating to a patient, it shall report thereon to the Minister and the Minister shall decide the question.

(3) An order of the Board under subsection (1) may confirm, reverse, or vary a decision of the superintendent or the Director on an application under section 71; but the Board shall forthwith inform the Minister and the Director of any such decision.

Court may
order
discharge.
Cf. No. 46 of
1962, s. 55.

73. (1) Any person (including the patient himself) may make application to the Court, by way of originating summons, for an order that a patient be discharged, on the ground that, in accordance with section 29, the patient should be discharged; and the Director, and any other person that the Court directs, shall be made a defendant to such an application.

(2) For the purposes of determining an application made under this section, the Court may—

- (a) summon the superintendent and any medical or other witness to testify;
- (b) order the superintendent to bring the patient in respect of whom the application is made, and any records or documents relating to that patient, before the Court or to have the patient examined by a psychiatrist appointed by it;
- (c) examine, or require the Master to examine, any persons, records or documents, or make, or cause to be made, any other inquiries or investigation which the Court thinks fit; and
- (d) order that a sufficient sum be made available out of any moneys or property of the patient, for the purposes of an application under this section.

(3) An application under this section may be brought by way of an original proceeding or by way of appeal against a decision made under any other provision of this Part; and shall be heard *in camera*.

(4) The Court, in accordance with section 29, may refuse the application or order that the patient be discharged unconditionally or subject to such conditions as to the care, maintenance and treatment of the patient as it thinks fit to impose.

74. (1) The Minister may, on behalf of the State, from time to time, agree with the Government of another state or a territory of the Commonwealth for the taking, reception, admission, care, treatment, maintenance, burial and payment of expenses, under the laws of that other state or that territory of a patient discharged to that state or territory.

Discharge of patients to other parts of the Commonwealth.
Cf. No. 46 of 1962, s. 57.

(2) Where a patient is discharged to another state or territory pursuant to an agreement referred to in subsection (1) he shall be so discharged on the order of the Minister.

75. Where it is made to appear that any patient who, in accordance with section 29, is fit to be discharged—

Court may authorize removal of patient from State.
Cf. No. 46 of 1962, s. 52 (4).

- (a) has relations or friends in any place outside the State who are willing to undertake the care and charge of the patient; and
- (b) it would be to the patient's benefit that he be removed to that place,

the Court may by order authorize the removal of that patient from the State, when discharged; and may make such order touching the safe custody and maintenance, and for the giving of security for the safe custody and maintenance, of the patient after his discharge, as it thinks fit.

PART VIII.—CARE AND MANAGEMENT OF ESTATES
OF INCAPABLE PERSONS.

Management
of estates
of patients.
Cf. No. 46 of
1962, s. 62.

76. (1) A person shall not, by reason only of his being a patient, be deemed to be incapable of managing his affairs.

(2) Subject to this Part, the estates of patients incapable of managing their affairs shall be managed in accordance with the provisions of the Public Trustee Act 1941.

Reporting
incapacity
of patients.
Cf. No. 46 of
1962, s. 63.

77. (1) The superintendent shall, on the request of the Public Trustee or of any other person and, in any event, within one month commencing on the day of the admission of a person as a patient, cause the patient to be examined by a psychiatrist for the purpose of ascertaining whether or not the patient is capable of managing his affairs; and where, in the opinion of the examining psychiatrist, the patient is incapable of managing his affairs, the superintendent shall furnish the Public Trustee with a report of that fact, in the prescribed form.

(2) When a patient in respect of whom a report has been furnished pursuant to subsection (1)—

- (a) is, in the opinion of the superintendent or another psychiatrist, recovered of his incapacity;
- (b) is discharged or granted leave of absence;
- (c) is recalled to hospital, on the rescission of his leave of absence; or
- (d) dies,

the superintendent shall furnish the Public Trustee with a report of that event, in the prescribed form.

(3) For the purposes of section 24 (4) of the Public Trustee Act 1941, the superintendent shall, when reporting the discharge of a patient under subsection (2) (b), also report whether, in his opinion or that of another psychiatrist, the patient is capable of managing his affairs.

(4) In this section “patient” does not include a voluntary patient.

78. (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, intellectual handicap, or other mental defect or infirmity however occasioned, of managing his affairs, the Court may—

Person may
be declared
incapable
and a
manager
appointed.
Cf. No. 46
of 1962, s. 64.

- (a) make a declaration to that effect; and
- (b) appoint the applicant or some other person or persons or appoint the applicant and some other person or persons—
 - (i) with or without security; and
 - (ii) 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 Principal Registrar of the Supreme Court 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 authorize 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 authorized 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, intellectual handicap, or other mental 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 82, 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 82 as may be necessary for enabling that provision to be made.

Supervision
of managers.
Cf. No. 46
of 1962, s. 65.

79. (1) The management of the estates of incapable persons shall be under the general supervision of the Principal Registrar of the Supreme Court.

(2) For the purposes of this section, the Principal Registrar may summon any person before him and administer oaths and take evidence, either orally or by affidavit or partly orally and partly by affidavit and may take recognizances and require the production of books, papers, accounts and documents.

(3) The Principal Registrar shall approve of the security to be given by a manager, pursuant to any order made under this Part; and it is the duty of the Principal Registrar to see that the conditions of any bond or recognizance, given or entered into before or after the coming into operation of this Act by a manager or other person, are faithfully and regularly observed and performed; and the Principal Registrar

shall, on learning of any breach or non-performance of the conditions of a bond or recognizance, thereupon report that fact to a judge.

(4) A judge, on receipt of a report from the Principal Registrar under subsection (3), may cause a bond or recognizance to be forfeited or estreated and that forfeiture or estreat shall, thereupon, be enforced and effected in the manner provided by law.

(5) Subject to the rules, the powers and authority conferred on the Principal Registrar by this Act, or by an order made under this Part, may be exercised by a Registrar.

80. (1) Where, on the application of any person, it is proved to the satisfaction of the Court that an incapable person is recovered from his incapacity and is capable of managing his affairs, the Court may make a declaration to that effect and may make all proper orders to give effect to that declaration, to release the estate of the incapable person from the control of the Court and to discharge the manager of the estate.

Superseding
orders when
incapable
person has
recovered.
Cf. No. 46
of 1962, s. 66.

(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.

81. (1) A person appointed the manager of an estate under section 78 has, in respect of the estate, such of the powers set out in section 82, as the Court, by the order appointing the manager, or by any subsequent order or orders, may direct.

Powers of
manager.
Cf. No. 46
of 1962, s. 67.

(2) Without limiting the powers conferred on a manager by any order made pursuant to this section, the manager may, from time to time, apply to the Court for directions with respect to the exercise of any of those powers; and the Court may, thereupon, make such order as it thinks fit.

(3) On the application of the manager or any other person, the Court may vary or rescind any order made under section 78 or section 82 relating to the management of the affairs of an incapable person.

Powers
conferrable
on managers.
Cr. No. 46
of 1962, s. 68.

82. (1) The Court may, subject to such conditions and limitations it thinks fit to impose, by order, authorize or direct the manager of the estate of an incapable person to do all or any of the following, that is to say—

- (a) take possession of all or any of the property of the incapable person;
- (b) demand, receive and recover income of, and moneys due or that become due to, and any compensation or damages for injury to the estate or the person of, the incapable person;
- (c) pay any debts of, and settle or compromise, any demand made by, or against, the incapable person or against the estate and discharge any encumbrance on the estate;
- (d) invest any moneys forming part of the estate in any securities in which trustees may by law invest;
- (e) sell, or grant an option to purchase, any property of the incapable person, by public auction or private contract, in such manner and on such terms or conditions and for such purposes as the Court, or, if the Court so orders, the manager, thinks fit;
- (f) grant or concur in granting a lease of any property of the incapable person for such term and on such covenants, including, without limitation, an option or options of renewal, as the Court or, if the Court so orders, the manager thinks fit;
- (g) surrender, or concur in surrendering, any lease, accept any lease, accept the surrender of any lease or renew any lease;

- (h) execute any power of leasing vested in the incapable person where he has a limited estate only in the property over which the power extends;
- (i) repair, and effect any insurance necessary for the protection of, any of the property of the incapable person;
- (j) expend money in the improvement of any property of the incapable person by way of building or otherwise;
- (k) make exchange or partition of any property of the incapable person, or in which he is interested, and give or receive money for equality of exchange or partition;
- (l) carry on, or join in carrying on, any trade or business of the incapable person or in which he is interested and raise and employ in the trade or business any additional capital to that then employed therein;
- (m) agree to the alteration of the conditions of, or to a dissolution of and the distribution of the assets of, any partnership that the incapable person has entered into or sell any partnership interest of that person;
- (n) complete any contract for the performance of which the incapable person is liable or enter into any agreement terminating his liability thereunder;
- (o) bring, and defend, actions, suits and other legal proceedings in the name of the incapable person;
- (p) exercise any power, or give any consent required for the exercise of any power, where the power is vested in the incapable person for his own benefit or the power of consent is in the nature of a beneficial interest in him;
- (q) surrender, assign, or otherwise dispose of, with or without consideration, any onerous property of the incapable person;

- (r) sequester the estate of the incapable person, under the provisions of the bankruptcy laws;
- (s) bring lands of the incapable person under the operation of the Transfer of Land Act 1893;
- (t) surrender any policy of life assurance of the incapable person;
- (u) apply or expend moneys of the incapable person, whether arising from real or personal property and whether income or capital, for the maintenance of that person, of the husband or wife of that person or of any person wholly or partially dependent on that person, or for the maintenance, education and advancement of the children, grandchildren or any infant relative of that person, in such manner and to such extent as the Court, having regard to the circumstances and the value of the estate of that person, considers proper and reasonable;
- (v) expend moneys of the incapable person in the purchase of a home for that person, or for the wife, husband or children of that person; and
- (w) mortgage, charge (with or without power of sale and on such terms as the Court thinks fit), deal with or dispose of, as the Court thinks most expedient, any property of the incapable person, for the purpose of raising, securing or repaying, with or without interest, money that is to be, or that has been, applied to, or for, the carrying into effect of all or any of the things authorized by the Court under this Part.

(2) The Court, in making an order under this Part, may—

- (a) direct that any property taken in exchange, and any renewed lease accepted, on behalf of the incapable person shall be subject to the same trusts, charges, encumbrances,

dispositions, devises and conditions as the property given in exchange or the surrendered lease was, or would, but for the exchange or surrender, have been subject.

- (b) direct that any fine, premium or other payment made on the renewal of a lease be paid out of the estate of the incapable person or be charged with interest on the leasehold property;
- (c) where capital moneys are to be raised for the purposes of the administration of the estate, direct the manner in which those moneys are to be raised and how the incidence of those moneys shall be borne;
- (d) direct the manner in which any surplus out of capital moneys raised for the purposes of the administration of the estate is to be held or applied;
- (e) make such orders as it thinks fit for the purpose of preserving the nature, quality, tenure or devolution of any property forming part of the estate of the incapable person and direct that any money be carried to a separate account and declare the notional character which the money in that account bears;
- (f) where, in its opinion, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, retention, expenditure or other transaction is expedient in the management or administration of the estate of the incapable person, or would be in that person's best interest, confer upon the manager the necessary power for the purpose on such terms and subject to such provisions and conditions (if any) as the Court thinks fit; and
- (g) order the costs and expenses of, and relating to, the applications, orders, directions, conveyances, and transfers to be

made pursuant to this section to be paid and raised out of or from the estate of the incapable person or out of or from the property, rents, income or profits in respect of which they are made, in such manner as the Court thinks fit.

(3) Notwithstanding, but without limiting, the provisions of subsections (1) and (2), 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.

Manager may exercise power vested in an incapable person in character of guardian, etc.
Cf. No. 46 of 1962, s. 69.

83. Where power is vested in an incapable person in the character of a trustee or guardian, or the consent of an incapable person to the exercise of a power is necessary in a similar character or as a check upon the undue exercise of the power, and if it appears to the Court to be expedient or desirable that the power should be exercised or the consent given (as the case may be), the manager may, in the name and on behalf of the incapable person, under an order of the Court made upon the application of any person interested in the exercise of the power, exercise the power or give the consent in such manner as the Court may direct.

Power of Court to appoint new or additional managers.
Cf. No. 46 of 1962, s. 70.

84. Whenever a manager—

- (a) dies;
- (b) wishes to be discharged;
- (c) has been guilty of such neglect or 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,

or whenever it appears to the Court, for any other reason, necessary or expedient, the Court may, on the application of any person or of its own motion, make an order—

- (h) appointing a new or additional manager or managers; or
- (i) discharging the manager and appointing, or discharging the manager without appointing, a new manager or managers.

85. (1) Without limiting the rights that a foreign curator may have at law, where the Court is satisfied that a person has been found, by any commission or other legal inquiry in England, Scotland, Ireland or in any part of Her Majesty's Dominions (other than this State) or in any British possession, to be suffering from mental illness, intellectual handicap, or other mental defect or infirmity (however described), the Court may—

Court may act on findings in certain other jurisdictions. Cf. No. 46 of 1962, s. 71.

- (a) direct that a copy of the inquisition or finding of the commission or inquiry, duly certified by the proper officer of the court into which the inquisition or finding has been returned, be filed of record in the Court; and
- (b) thereupon, appoint the Public Trustee or, with or without security, any other person, including a corporate trustee, manager of the person's estate within the State; and
- (c) make such orders with respect to the management of that estate, not inconsistent with the provisions of this Part, as it thinks fit,

and the manager so appointed shall have the same duties, powers and liabilities as if he were the manager of the estate of a person proved to be an incapable person under this Part.

(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 described) that the other person is incapable, by reason of mental illness, intellectual handicap, or other mental defect or infirmity 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—

- (a) 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
- (b) give such directions as it thinks fit with respect to any accrued dividends of that stock.

(3) In subsection (2) the expression “stock” includes shares and any fund, annuity or security that is transferable in the books kept by any body corporate or unincorporate or transferable by an instrument of transfer either alone or accompanied by other formalities; and the expression, “dividends”, shall be construed accordingly.

Examination
of accounts
of managers
being natural
persons.
Cf. No. 46
of 1962, s. 72.

86. (1) Every manager, being a natural person, shall, unless the Court dispenses with the requirement, lodge with the Principal Registrar of the Supreme Court full and true accounts of his administration, in the prescribed manner, on such occasions, and as often, as may be prescribed by the rules.

(2) When a manager dies, a person having possession of any books, papers or documents relating to the estate of an incapable person that was being administered by the deceased manager shall deliver them to the Court; and those books, papers or documents shall there be examined and disposed of in accordance with the rules.

(3) The Principal Registrar shall examine any accounts lodged or taken pursuant to this section and (having regard to the powers conferred upon the manager by any order or orders of the Court) may allow them; but, where he is of the opinion that any item of the accounts ought to be disallowed, or that the manager has exceeded the powers conferred on him, the Principal Registrar may disallow any item of the accounts; and the manager or his estate is liable for the amount of every item so disallowed.

(4) Any accounts that have been examined, pursuant to this section, and allowed by the Principal Registrar are, in the absence of fraud, conclusive.

(5) Where a manager, being a natural person, seeks any remuneration for his administration of an estate, he may make application therefor, to the Master, showing cause why that remuneration should be allowed; and the Master, on being satisfied that the remuneration ought to be allowed, may, on payment of the prescribed fee, allow such remuneration as he thinks fit, to be paid out of the estate.

(6) There shall be taken by the Court, on the examination of accounts, such fees as may be prescribed by the rules.

87. (1) Every manager, being a corporate trustee, shall keep full and true accounts of its administration and those accounts shall be audited by an independent auditor, on such occasions and as often as may be prescribed by the rules, and shall thereafter be kept in safe custody by the manager and preserved for a period of not less than 12 years.

Accounts and
payment of
corporate
trustees.
Cf. No. 46
of 1962, s. 73.

(2) Any person, being one of the next of kin, a spouse or a creditor of an incapable person whose estate is administered by a corporate trustee as manager, may—

- (a) on payment of the prescribed fee, inspect the accounts of that administration when audited; and

- (b) apply to the Court and be entitled to be heard on any question arising out of that administration,

and the Court may, on any application under this subsection or of its own motion and whether or not making any other order, order the accounts to be produced to, and examined by, the Principal Registrar of the Supreme Court who may disallow any item thereof; and the manager is liable for the amount of every item so disallowed.

(3) A manager that is a corporate trustee may pay to itself, out of the estate of an incapable person administered by it, its proper commission and fees with respect to the income accruing to that estate, as appearing in any audited account thereof.

(4) Whenever a corporate trustee that is the manager of the estate of an incapable person requires payment of commission with respect to the capital of that estate, it shall produce to the Master audited accounts of the estate; and the Master may, on payment of the prescribed fees and on his being satisfied with the accounts, allow such amount of the proper commission with respect to the capital of the estate as he thinks fit to be paid out of the estate.

Manager may execute assurance; protection of persons dealing with manager.
Cf. No. 46 of 1962, s. 74.

88. (1) A manager may, in the name and on behalf of an incapable person, execute and do all such assurances and things as may be necessary for effectuating any of the powers conferred by order of the Court; and all assurances and things so executed or done have the same force and effect as if executed or done by the incapable person had he not been under a disability.

(2) Nothing in this Part—

- (a) vests in the manager thereof the estate of an incapable person; or

- (b) shall be construed as authorizing or requiring a manager to pay, out of the estate of an incapable person, without an order of the Court, any debt or demand that the person would not be obliged to pay at law.

(3) Persons dealing with the manager, in respect of the estate of an incapable person, are as fully protected as if the owner of the estate were, although he is not in fact then, an incapable person; and a purchaser or mortgagee, from the manager of any real or personal estate of an incapable person, is not bound to inquire as to the powers of the manager or as to the application of the purchase or mortgage moneys.

89. (1) Subject to subsection (2), where—

- (a) a person within the period of one month before being declared an incapable person; or

- (b) an incapable person, before being declared recovered from his incapacity and being capable of managing his affairs,

has made or executed any transfer, sale, alienation, charge or lease of any property, real or personal, the Court may, on the application of the Public Trustee, where no manager has been appointed or, where appointed, the manager of that person's estate and on notice to such persons as the Court may direct, set aside the transaction or not, as it thinks fit, and the Court may, in either case, make such other order as it thinks fit.

(2) The Court shall not set aside any transaction pursuant to this section, where—

- (a) the application is not brought within the period of 2 years commencing on the day of the completion of the transaction; or

Transaction
by incapable
person may
be set aside.
Cf. No. 46
of 1962, s. 75.

(b) the Court is satisfied that—

- (i) the transaction was a *bona fide* transaction entered into by the transferee, purchaser, alienee, chargee or lessee, without notice of the disability to which the other party was, or may have been, then subject; and
- (ii) the consideration for the transfer, sale, alienation, charge or lease was, having regard to the value of the property at the time that consideration was paid, given or agreed to, adequate.

(3) For the purposes of an application under this section, the incapable person shall be deemed to have been incapable of managing his affairs, at the time that he made or executed the transfer, sale, alienation, charge or lease, until the contrary is shown.

Summary
proceedings
for the
protection of
property of
incapable
persons.
Cf. No. 46 of
1962, s. 76.

90. (1) Where any real or personal property of an incapable person is wrongly held, detained, converted or injured, or where any sum of money is due and owing to an incapable person, the manager may claim and recover possession of that property or damages for its conversion or injury, or payment of that sum due and owing by summary proceedings, as prescribed by the rules, on complaint before a judge who, on proof to his satisfaction of the cause of complaint, may make an order requiring the person against whom the complaint is made to give up possession of the property, or to pay reasonable damages, to be fixed by the order, for the conversion or injury of the property, or to pay the sum found to be due and owing and, in default of compliance by the person so ordered, to order in and by the same or any subsequent order that the person so ordered be committed to prison for any period not exceeding 6 months.

(2) A judge may, on any complaint under this section, make such order as to costs as he thinks fit, and every order made under this section has the

same effect, and may be enforced in like manner, as any judgment, decree or order of the Court in its ordinary jurisdiction.

91. (1) When an incapable person is recovered and declared to be capable of managing his affairs, or dies, the manager may pay over all moneys standing to the credit of that person and hand over all other property and documents forming part of, or relating to, his estate, to that person or (as the case may be) to his personal representative.

Payments to recovered incapable persons or the personal representative of deceased incapable persons.
Cf. No. 46 of 1962, s. 77.

(2) The receipt of the incapable person, notwithstanding any informality in the declaration of his recovery, or of his personal representative, is a discharge for the moneys, property and documents paid or handed over by the manager, under this section.

92. Where any law of the State provides that a person may be appointed a committee of the estate of a person under a disability therein described, that person may be appointed a manager under the provisions of this Part.

Power to appoint committees includes power to appoint managers.
Cf. No. 46 of 1962, s. 78.

PART IX.—MISCELLANEOUS.

93. Where, by this Act, power is given to the Minister to decide any question, the Minister may make such order as may be necessary to give effect to that decision.

Ministerial orders.
Cf. No. 46 of 1962, s. 53.

94. (1) Subject to subsection (2), civil or criminal proceedings shall not lie against any person for anything done in reliance on any request, certificate, order or other document apparently given or made in accordance with the requirements of this Act; or for any act, matter or thing done, or

Immunity of persons acting in good faith.
Cf. No. 46 of 1962, ss. 37A(3) and 80

commanded to be done, by a person and purporting to be done for the purpose of carrying out the provisions of this Act, or for any act, matter or thing omitted to be done, unless that act, matter or thing was done, commanded to be done or omitted to be done maliciously or without reasonable and probable cause.

(2) Nothing in this section affects—

- (a) any claim in negligence for damages for personal injury or damage to property which arises in the course of the conveyance of a person to, or his reception into, an approved hospital pursuant to an order under section 49 (1) or 50 (3) or in the course of the apprehension or conveyance of a person pursuant to Division 3 of Part VI; or
- (b) any right that a person may have to proceed by way of prerogative writ.

Fees to
medical prac-
titioners
required to
examine
persons.
Cf. No. 46
of 1962, s. 84.

95. Whenever a medical practitioner (not being a practitioner in the service of the Crown or any department or agency of the Crown) examines a person at the order or on the request of the Court, a justice, a magistrate, the Director or a Board, or in any case or class of cases approved by the Minister, the practitioner is entitled, upon production of a certificate from the Court, person or Board ordering or requesting the examination, to receive from the Department a fee as determined by the Minister.

Lost
documents.
Cf. No. 46
of 1962, s. 86.

96. Whenever it appears to the Court, a judge or a magistrate that any order or certificate has been lost or mislaid, the Court or a judge or magistrate may order that any document purporting to be a copy of the document lost or mislaid, or of the contents thereof, and verified by such evidence as

appears sufficient to the Court, judge or magistrate, be received and be admissible, in any proceeding before it or him, in lieu of the original.

97. Where any article or thing has been left, deposited or placed in the custody or control of the Director, or in any approved State hospital, whether for safe keeping or otherwise, by any person (other than an officer or employee of the Department) for the time being resident in that hospital and, after that person has ceased to be so resident, no claim has been made by or lawfully on behalf of that person for the return or delivery of that article or thing within a period of 6 months of the date when that person ceased to be resident, the Director—

Disposal of
unclaimed
property.
Cf. No. 46
of 1962, s. 57A

- (a) may, subject to his giving such notices as may be prescribed, dispose of that article or thing as he deems necessary either by destruction or sale; and
- (b) shall deal with the net proceeds of any such sale in such manner as is prescribed.

98. (1) The Judges, or a majority of them, may make rules—

Rules of
Court.
Cf. No. 46
of 1962, s. 87.

- (a) for regulating and prescribing the procedure, practice and forms to be followed or used in proceedings commenced under this Act or Division 4 of Part II of the Public Trustee Act 1941;
- (b) for prescribing the business that may be transacted before and the jurisdiction that may be exercised by a Judge in chambers, the Master, or a Registrar respectively and for regulating appeals from them;
- (c) for regulating any matters relating to the costs of any proceedings mentioned in paragraph (a);
- (d) fixing the fees and percentages payable in respect of proceedings under this Act or any former Act, and prescribing the manner in which those percentages and fees shall be ascertained; and

- (e) generally, for regulating the conduct and despatch of all business, matters and things to be done by, or before, the Court in relation to this Act and to Division 4 of Part II of the Public Trustee Act 1941.

(2) In subsection (1) "former Act" means the Mental Health Act 1962 and any Act repealed thereby.

Regulations.
CF. No. 46 of
1962, ss. 26,
26U and 88.

99. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

(2) Without limiting the generality of subsection (1), regulations may be made for, or in respect of—

- (a) the control and discipline of officers and other employees of the Department and appeals by employees, or a class of employees, against disciplinary action; but any regulation made under this paragraph shall not, so far as it applies to officers employed under the Public Service Act 1978, be inconsistent with that Act or any regulations or administrative instructions made or issued thereunder;
- (b) the management and operation of approved hospitals and any other service established under this Act;
- (c) the records to be kept by the Department or any approved hospital or other service for the purposes of this Act;
- (d) the forms and procedures to be used or followed under this Act;
- (e) the payment and recovery of fees for treatment under this Act; and
- (f) the circumstances under which any specified treatment or class of treatment may be given or administered under this Act and the authority or consents to be

obtained before the giving or administering of any specified treatment or class of treatment.

(3) Without limiting the generality of subsection (1) or restricting the exercise of the powers in subsection (2), regulations made for giving effect to Part IV may—

- (a) make provision for the payment and recovery of fees;
- (b) prescribe standards of construction and hygiene of, and the fittings and equipment to be provided in, premises approved or for which approval is sought under that Part;
- (c) provide for the safety, health and welfare of residents in, and attenders at, premises approved under that Part, and in particular, and without limiting the generality of the foregoing, may so provide by—
 - (i) ensuring proper supervision of the conduct of such premises;
 - (ii) requiring persons supervising the conduct of such premises to be approved by the Director;
 - (iii) requiring persons employed to supervise the conduct of such premises and staff of such premises to undergo prescribed courses of training;
 - (iv) prescribing minimum nutritional standards for food supplied to residents at such premises;
 - (v) prescribing, in relation to residents at approved private psychiatric hostels or approved private hostels who are in receipt of pension payable under laws of the Commonwealth, the minimum proportion of such pension that is to be paid or remitted to the resident for his own use;

- (d) prescribe returns and other particulars to be furnished to the Director.
- (4) Regulations made under this Act may—
 - (a) be made to apply to all services or to any service or to a limited class of services established under this Act;
 - (b) be of general or specially limited application, according to time, place or circumstances;
 - (c) impose duties on the Board, the Director or other persons employed in, or by, the Department; and
 - (d) provide that a contravention or failure to comply with a regulation constitutes an offence, and provide for penalties not exceeding a fine of \$1 000 for offences against the regulations.

Medical Board to maintain register of psychiatrists. Cf. No. 46 of 1962, s. 89.

100. (1) The Medical Board appointed under the Medical Act 1894, shall, for the purposes of this Act, prepare and maintain a register of psychiatrists, containing the names of every medical practitioner practising in the State who has made a special study of, or who has gained and maintained special skill in the practice of, psychiatry and who is recognised by the Medical Board as a specialist in psychiatry.

(2) Where the Medical Board is of the opinion that a medical practitioner, whose name is contained in the register of psychiatrists prepared and maintained pursuant to this section, has ceased to be a specialist in psychiatry, the Board shall remove his name from that register.

Agreements between the State and Commonwealth not affected by this Act. Cf. No. 46 of 1962, s. 90.

101. Nothing in this Act affects any agreement entered into, or precludes the entering into of any agreement, between the State and the Commonwealth or any authority of the Commonwealth, for the reception, admission, and treatment of persons as patients; but the provisions of this Act apply to

the reception and admission of those persons and to every person received into, or admitted to, an approved hospital under those provisions.

102. (1) The Mental Health Act 1962 is repealed.

Repeal.

(2) Without affecting the operation of the Interpretation Act 1918, the transitional provisions set out in Schedule 2 to this Act shall have effect for the purpose of the transition to the provisions of this Act from those of the Mental Health Act 1962 (in Schedule 2 referred to as "the repealed Act").

SCHEDULES.

SCHEDULE 1.

(Section 42)

Boards of Visitors.

1. (1) Subject to subclause (2) of this clause and clause 2, a person appointed a member of a Board holds office for a term of 3 years but is eligible for re-appointment.

Tenure of
office.
Cf. No. 46
of 1962, s. 12.

(2) A person appointed to fill a vacancy, caused otherwise than by the retirement of a member on the expiration of his term of office, holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed.

2. (1) A casual vacancy in the office of member of a Board occurs if a member—

Casual
vacancies.
Cf. No. 46
of 1962, s. 13.

(a) dies;

(b) tenders his resignation from the office, in writing addressed to the Minister;

(c) absents himself from 3 consecutive meetings of that Board, without having obtained leave of absence from the Board;

(d) is removed from office by the Minister; or

(e) becomes incapable of performing his duties as a member.

(2) The Minister may appoint a member to fill any casual vacancy.

(3) The Board may grant leave of absence to a member for such term and upon such conditions as the Board determines.

(4) A Board may act notwithstanding there being a vacancy or vacancies in its membership or there being any irregularity in, or in connection with, the appointment of a member; but a meeting of the Board is not valid unless there is a quorum present as provided by clause 5.

Temporary
members.

3. (1) Where a member is unable to act by reason of sickness, absence or other cause, the Minister may appoint another person to act temporarily in his place, and while so acting according to the tenor of his appointment that other person is deemed to be a member of the Board.

(2) No act or omission of a temporary member shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

Chairman.
Cf. No. 46
of 1962, s. 14.

4. (1) The Minister may appoint one of the members of a Board to be chairman.

(2) The member so appointed holds office as chairman for the term of this office as member, unless the appointment is sooner determined by the Minister.

(3) Where a member ceases to hold office as chairman before the expiration of the term for which he is appointed, another member may be appointed chairman by the Minister for the unexpired portion of the term of office of the latter appointee.

(4) The chairman of a Board may, in writing addressed to the Minister, resign his office as chairman; and where at any time the chairman ceases to be a member he ceases to be chairman.

(5) Where the chairman is absent from any meeting, the members present at the meeting shall elect a member from among those present to preside at the meeting and the person so elected has, during the absence of the chairman, all the powers of the chairman.

Proceedings
of Board.
Cf. No. 46
of 1962, s. 15.

5. (1) A Board shall conduct its proceedings in such manner as may be prescribed and, until prescribed, as the Board determines, but in any case—

(a) 3 members constitute a quorum for the conduct of business;

(b) each member, including the person presiding at a meeting, is entitled to one vote only on the determination of any question; and

- (c) subject to section 72, the majority of the votes of the members present determines any question and, in the event of there being an equality of the votes in favour of, and against, any proposal, the question shall be resolved in the negative.

(2) A meeting of a Board may be summoned by the chairman or any 3 members.

6. A member of a Board shall be paid out of moneys appropriated by Parliament, such remuneration and travelling and other allowances as are determined in his case by the Minister, on the recommendation of the Public Service Board.

Remuneration of members.
Cf. No. 46 of 1962, s. 16.

SCHEDULE 2.

(Section 102)

Transitional Provisions.

1. Each person holding an office provided for by a provision in Part II of the Mental Health Act 1962 immediately before the coming into operation of this Act shall continue in office, subject to this Act and the terms of his appointment, as if he had been appointed under the corresponding provision of Part II of this Act.

2. Each person holding office as a member of a Board of Visitors of a hospital immediately before the coming into operation of this Act shall continue to hold office, subject to this Act and the terms of his appointment, as if he had been appointed by the Minister under section 42 (2) of this Act.

3. All persons who immediately before the coming into operation of this Act were patients admitted under sections 27 (1) (a) and 27 (1) (b) of the repealed Act as suffering from a mental illness are deemed, after the coming into operation of this Act, to be voluntary patients admitted as suffering from a mental illness following requests under sections 47 and 46 respectively of this Act.

4. All persons who immediately before the coming into operation of this Act were patients admitted under section 28 of the repealed Act as suffering from a mental illness are deemed, after the coming into operation of this Act, to be non-voluntary patients admitted as suffering from a mental illness following a request under section 48 of this Act.

5. All persons who immediately before the coming into operation of this Act were patients admitted under section 34 of the repealed Act as suffering from a mental illness following an order under section 29 (1) or 32 (1) thereof are

deemed, after the coming into operation of this Act, to be non-voluntary patients admitted as suffering from a mental illness following an order under section 49(1) of this Act.

6. All persons who immediately before the coming into operation of this Act were patients admitted under section 34 of the repealed Act as suffering from a mental illness following an order under section 36(2) thereof or admitted under section 36(3) thereof as suffering from a mental illness are deemed, after the coming into operation of this Act, to be non-voluntary patients admitted as suffering from a mental illness following an order under section 50(3) of this Act.

7. All persons who immediately before the coming into operation of this Act have been received into an approved hospital as suffering from a mental illness for examination under section 28 or 34 of the repealed Act but who have not been admitted are deemed to be persons received into an approved hospital for examination under section 30 (1) of this Act following a request under section 48 or an order under section 49 of this Act.

8. A person who immediately before the coming into operation of this Act is in an approved hospital as mentioned in section 36 (3) of the repealed Act may, if he is a person who comes within paragraphs (a), (b) and (c) of section 28 (1), be admitted to an approved hospital under the said section 36 (3) without an order of the court under section 50 (3) of this Act.

9. All persons who immediately before the coming into operation of this Act were patients admitted under sections 47 and 48 of the repealed Act are, after the coming into operation of this Act, security patients admitted under sections 53 and 54 respectively of this Act.

10. All persons who immediately before the coming into operation of this Act were patients admitted as suffering from a mental illness under section 57 (2) (b) of the repealed Act are, after the coming into operation of this Act, deemed to be non-voluntary patients admitted as suffering from a mental illness following an order under section 51 (2) of this Act.

11. (1) All patients who immediately before the coming into operation of this Act are discharged to aftercare but not discharged from status as a patient, shall upon the coming into operation of this Act be discharged from status as a patient by virtue of this subclause and without any formality.

(2) For the purposes of section 24 (3) of the Public Trustee Act 1941, the superintendent shall as soon as is reasonably practicable after this Act comes into operation notify the Public Trustee of the names of all patients who are discharged from status as a patient by operation of subclause (1) of this clause and, subject to subclause (3) of this clause, the powers and duties, if any, of the Public Trustee cease in relation to a patient when his name is so notified to the Public Trustee.

(3) The superintendent shall, when notifying the Public Trustee under subclause (2) of this clause, report to the Public Trustee whether or not, in his opinion or that of another psychiatrist, the patient is capable of managing his affairs, and where the patient is reported as being incapable of managing his affairs section 24 (4) (a) and (b) of the Public Trustee Act 1941 shall apply to him.

12. A person whom immediately before the coming into operation of this Act was a patient admitted under a provision of the repealed Act as suffering from a mental disorder, not being a mental illness within the meaning of this Act, is deemed, after the coming into operation of this Act, to be a non-voluntary patient as if he had been admitted as suffering from a mental illness under the corresponding provision of this Act; but in the application of this Act to him, section 29 (3) shall be read as if references therein to mental illness were references to mental disorder within the meaning of the repealed Act.

13. For the purposes of section 68 (1) a person who on the coming into operation of this Act is a non-voluntary patient shall be discharged by operation of that subsection, but without limiting the operation of subsection (2) of that section or any other provision of Part VII, after the expiration—

(a) of the period applicable to him immediately before the coming into operation of this Act under subsection (1) or (2) of section 39 of the repealed Act; or

(b) where section 39 (1) so applied to him, of the period of 28 days, or where section 39(2) so applied to him, of the period of 6 months commencing on the day on which this Act comes into operation,

whichever is the lesser period.

14. The superintendent of an approved hospital shall, as soon as is reasonably practicable after this Act comes into operation, notify the Public Trustee of the names of all voluntary patients in that approved hospital or on leave of absence therefrom at the time when this Act comes into operation, and, notwithstanding section 77 of this Act,

the powers and duties of the Public Trustee cease in relation to a voluntary patient who, when this Act comes into operation, is an incapable patient under the Public Trustee Act 1941 when his name is so notified to the Public Trustee.

15. Section 29 of this Act shall apply to a decision on the discharge of a non-voluntary patient where, before this Act came into operation, a request or application had been made to the superintendent, the Director, a Board or the Court for the discharge of a non-voluntary patient under Division 7 of Part IV of the repealed Act but had not been disposed of.

16. A referral which immediately before the coming into operation of this Act has effect for the purposes of section 28 (1) of the repealed Act is deemed to be a request for the purposes of section 48 (1) of this Act but shall cease to have effect, for the purposes of the reception of a person into an approved hospital, if the examination took place before the time specified by section 28 (1) of the repealed Act.

17. A referral which immediately before the coming into operation of this Act has effect for the purposes of section 29(2) of the repealed Act is deemed to be a certificate for the purposes of section 49 (2) of this Act, but shall cease to have effect for the purposes of the making of an order under subsection (1) of that section if the examination took place before the time specified by section 29(2) of the repealed Act.

18. A referral which immediately before the coming into operation of this Act has effect for the purposes of section 30 (3), 31 (3), or 36 (2) of the repealed Act is deemed to be a certificate under section 56 (3), 57 (3) or 50 (2) of this Act, as the case may require.

19. A warrant which immediately before the coming into operation of this Act has effect for the purposes of section 31 (2) of the repealed Act is deemed to be an order under section 57 (2) of this Act.

20. An order which immediately before the coming into operation of this Act has effect for the purposes of section 36 (1) (a) of the repealed Act is deemed to be an order under section 50 (1) (a) of this Act, notwithstanding that the order may specify that the person be examined by a medical practitioner and not a psychiatrist.

21. An order which immediately before the coming into operation of this Act has effect for the purposes of section 36 (1) (b) of the repealed Act is deemed to be an order under section 50 (1) (b) of this Act as if the court had specified under the latter section that the person be in custody in an approved hospital.

22. An order referred to in section 37 (1) of the repealed Act which is in effect immediately before the coming into operation of this Act shall be executed within the period referred to in the said section 37 (1) or within 72 hours after this Act comes into operation whichever is the lesser period.

23. (1) An incorrect or defective order or referral which, immediately before the coming into operation of this Act, may be amended under section 85 of the repealed Act is deemed to be an incorrect or defective order or request for the purposes of section 62 of this Act, but may be amended within the period allowed by the said section 85 or within 72 hours after this Act comes into operation whichever is the lesser period.

(2) If subclause (1) of this clause is not complied with, the Director may exercise the powers set out in section 62 (2) of this Act.
