



Western Australia

## **Mental Health (Consequential Provisions) Act 1996**

Compare between:

[03 Nov 2014, 00-b0-04] and [30 Nov 2015, 00-c0-01]



Western Australia

## **Mental Health (Consequential Provisions) Act 1996**

AN ACT —

- to amend various Acts;
  - to repeal the Mental Health Act 1962 and the Mental Health Act 1981; and
  - to enact transitional provisions,
- as a consequence of the enactment of the Mental Health Act 1996 and the Criminal Law (Mentally Impaired Defendants) Act 1996.

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

**1. Short title**

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

**2. Commencement**

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

*[Parts 2 and 3 omitted; see endnote 2.]*

## **Part 4 — The Criminal Code**

### **5. The Code**

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

*[Sections 6-19 omitted; see endnote 2.]*

### **20. Transitional provision**

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

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

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

*[Parts 5-8 omitted; see endnote 2.]*

**Part 9 — *Health Legislation Administration Act 1984***

**38. Section 6 amended and transitional provision**

*[(1) Omitted; see endnote 2.]*

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

*[Parts 10 and 11 omitted; see endnote 2.]*

## **Part 12 — Mental Health Act 1962**

*[Division 1 omitted; see endnote 2.]*

### **Division 2 — Transitional**

#### **53. Interpretation**

In this Division —

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

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

**repealed Act** means the *Mental Health Act 1962*.

#### **54. Interpretation Act 1984 not affected**

The provisions of this Division do not affect the application of the *Interpretation Act 1989* to and in relation to the repeal effected by section 51.

#### **55. Investigations under section 7**

Any investigation under section 7 of the repealed Act —

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

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

#### **56. Authorized hospitals**

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

**57. Licences for private psychiatric hostels**

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

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

**58. Register of psychiatrists**

- (1) The register of psychiatrists in existence under section 89 of the repealed Act immediately before the commencement is to be treated as the register required by section 17 of the new Act.
- (2) Subsection (1) does not limit the Medical Board's powers to add names to and remove names from the register under section 17 of the new Act.

**59. Referrals under section 28 (1)**

- (1) A referral which immediately before the commencement has effect under section 28(1) of the repealed Act may be acted upon as if it were a referral under section 29(2)(a) of the new Act.
- (2) The time limit of 14 days under section 28 (1) of the repealed Act between the examination of the person and reception into an authorized hospital continues to apply for the purposes of the new Act.

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

- (1) A person who immediately before the commencement —
  - (a) is in an approved hospital for observation under section 28(3) or 34(1) of the repealed Act; but



(b) has not been admitted,

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

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

**61. Orders under section 29**

(1) If immediately before the commencement —

- (a) an order has been made under section 29 of the repealed Act; but
- (b) the person has not been received into an approved hospital,
- (c) the order may be carried out despite the repeal of the repealed Act.

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

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

**62. Orders under section 30 (1)**

(1) If immediately before the commencement —

- (a) an order has been made under section 30 (1) of the repealed Act; but
- (b) the person has not been examined by a medical practitioner,

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

(2) When the person has been examined —

- (a) section 32 of the repealed Act does not apply; and
  - (b) the person may only be received into an authorized hospital in accordance with Division 1 of Part 3 of the new Act.
- (3) Subject to subsection (2) (b), the person is to be released following the examination.

**63. Persons in custody under section 30 (2)**

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

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

- (2) However, on examination by a medical practitioner under section 30(3) of the repealed Act —
- (a) section 32 of the repealed Act does not apply; and
  - (b) the person may only be received into an authorized hospital in accordance with Division 1 of Part 3 of the new Act.
- (3) Subject to subsection (2)(b), the person is to be released following the examination.

**64. Warrants under section 31 (2)**

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

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

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

**65. Persons on remand for examination**

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

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

**66. Patients detained, other than security patients**

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

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

- (2) The Mental Health Review Board is to review the case of each person to whom subsection (1) applies, and who is still detained, not later than —
- (a) the day on which he or she could have been automatically discharged under section 39(1) of the repealed Act;

- (b) the day on which the patient's status would have come to an end under section 39(2) of the repealed Act; or
    - (c) the 28th day after the commencement,
- whichever is the latest.
- (3) The review is to be carried out under Division 2 of Part 6 of the new Act, and after that review periodic reviews are to be carried out under section 139 of that Act.
  - (4) For the purposes of this section the person in charge of an authorized hospital is to give notice in writing to the Registrar of —
    - (a) the names of all patients to whom subsection (1) applies; and
    - (b) particulars of the relevant days under subsection (2).
  - (5) A notice under subsection (4) is to be given not later than the 28th day after the commencement.

**67. Leave of absence**

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

**68. Absence without leave**

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

**69. Patients discharged to after-care**

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

- (2) The Chief Psychiatrist is to ensure that each person to whom subsection (1) applies is examined by a psychiatrist not later than —
- (a) the day on which he or she could have been automatically discharged under section 39 (1) of the repealed Act;
  - (b) the day on which the patient's period of after-care would have come to an end under section 43 or 45 of the repealed Act; or
  - (c) the 14th day after the commencement, whichever is the latest.
- (3) A psychiatrist who examines a person under subsection (2) is to determine, having regard to section 26 of the new Act, whether the person —
- (a) should be an involuntary patient under the new Act; or
  - (b) should be discharged from status as a patient.
- (4) If the psychiatrist determines that subsection (3) (a) applies, he or she is to make an order under section 43 (2) (b) of the new Act.
- (5) If the psychiatrist determines in writing that subclause (3)(b) applies the person is by that determination discharged from any status as a patient.

**70. Security patients**

- (1) If immediately before the commencement a person is in an approved hospital because of —
- (a) a direction made under section 47 (1) of the repealed Act; or
  - (b) an order made by the Governor under section 48 of the repealed Act,
- on the commencement the person is to be taken —

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

and Part 5 of that Act applies accordingly.

- (2) If immediately before the commencement a person, under an order made by the Governor under section 48 of the repealed Act, is liberated subject to any terms and conditions, on the commencement —
  - (a) the person is to be taken to be a mentally impaired defendant (as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*) who has been released on conditions by the Governor under Part 5 of that Act; and
  - (b) Part 5 of that Act applies accordingly.

**71. Application to Court**

- (1) If an application under section 55 of the repealed Act has been made but not disposed of before the commencement, the application may be completed after the commencement as if that section had not been repealed.
- (2) In determining any such application the Court may make any order relevant to the operation of the new Act that it thinks fit.

**72. Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a matter that needs to be dealt with for the purpose of the transition from the repealed Act to —
  - (a) the new Act; or
  - (b) the *Hospitals and Health Services Act 1927* as amended by this Act,

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

- (2) Regulations under subsection (1) may provide that specific provisions of the new Act or of subsidiary legislation made under the new Act —
  - (a) do not apply; or
  - (b) apply with or without specified modifications,to or in relation to any matter or thing.
- (3) Regulations under subsection (1) may have effect before the day on which they are published in the Gazette.
- (4) To the extent that a regulation under subsection (1) has effect before the day of its publication in the Gazette, it does not —
  - (a) affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
  - (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

*[Parts 13-18 omitted; see endnote 2.]*

**Part 19 — Sentence Administration Act 1995**

[Sections 81-86 omitted; see endnote 2.]

**87. Transitional provisions**

- (1) If immediately before the commencement of the *Mental Health Act 1996* a person —
  - (a) is in custody under an order under section 653 or 693(4) of *The Criminal Code*; and
  - (b) is not in an approved hospital because of an order made by the Governor under section 48 of the *Mental Health Act 1962*,

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

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

[Parts 20 and 21 omitted; see endnote 2.]



**Notes**

<sup>1</sup> This is a compilation of the *Mental Health (Consequential Provisions) Act 1996*. The following table contains information about that Act<sup>1a</sup>.

**Compilation table**

Short title	Number and year	Assent	Commencement
<i>Mental Health (Consequential Provisions) Act 1996</i>	69 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2)

<sup>1a</sup> ~~On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<del><a href="#">This Act was repealed by the <i>Mental Health Act 2014</i> s. 588(b)<sup>3</sup> as at 30 Nov 2015 (see s. 2(b) and <i>Gazette</i> 13 Nov 2015 p. 4632)</a></del>	<del>24 of 2014 (as amended by 25 of 2014 s. 9)</del>	<del>3 Nov 2014</del>	<del>To be proclaimed (see s. 2(b) and s. 9 of 25 of 2014)</del>

<sup>2</sup> Pts. 2-3, s. 6-19, Pts. 5-8, s. 38(1), Pts. 10-11, Pt. 12 Div. 1, Pts. 13-18, s. 81-86 and Pts. 20-21 of this Act, which repeal the *Mental Act 1962* and the *Mental Health Act 1981* and amend other Acts as a consequence of those repeals and the enactment of the *Mental Health Act 1996* and the *Criminal Law (Mentally Impaired Accused) Act 1996*, have had effect and have been omitted from this consolidation.

**Defined Terms**

---

~~<sup>3</sup>—On the date as at which this compilation was prepared, the *Mental Health Act 2014* s. 588(b) (as amended by the *Mental Health Legislation Amendment Act 2014* s. 9) had not come into operation. It reads as follows:~~

~~**588. Acts repealed**~~

~~—These Acts are repealed:~~

~~—(b) the *Mental Health (Consequential Provisions) Act 1996*.~~