

Approved for reprint 8th July, 1966.

WESTERN AUSTRALIA.

MENTAL HEALTH.

11° Elizabeth II., No. XLVI.

(Affected by Act No. 113 of 1965.)

No. 46 of 1962.¹

[As amended by Acts:

No. 92¹ of 1964, assented to 14th December, 1964;

No. 37¹ of 1965, assented to 8th November, 1965;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to consolidate and amend the Law relating to the Treatment of Mental Disorder and for incidental and other purposes.

[Assented to 1st November, 1962.]

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, 1962-1965*.

Short title amended by No. 37 of 1965, s. 1.

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

Commencement.

¹ Proclaimed to come into operation on the 1st day of July, 1966, see *Government Gazette* 11/3/66, p. 702.

Arrangement.

3. This Act is divided into Parts as follows—

PART I.—PRELIMINARY, ss. 1-5.

PART II.—ADMINISTRATION, ss. 6-18.

PART III.—SERVICES AND HOSPITALS.

*Division 1—State Services and Hospitals, ss. 19-20.**Division 2—Private Hospitals, ss. 21-24.**Division 3—General Provisions as to Hospitals, ss. 25-26.*

PART IV.—ADMISSION, DETENTION AND DISCHARGE OF PATIENTS.

*Division 1—Informal Admissions, s. 27.**Division 2—Admission by Referral, s. 28.**Division 3—Admissions following Reception Order, ss. 29-37.**Division 4—Detention of Patients, ss. 38-41.**Division 5—Leave of Absence and After-care, ss. 42-46.**Division 6—Security Patients, ss. 47-50.**Division 7—Discharge of Patients, ss. 51-57.*

PART V.—PROTECTION OF PATIENTS, ss. 58-61.

PART VI.—CARE AND MANAGEMENT OF ESTATES OF INCAPABLE PERSONS, ss. 62-78.

PART VII.—MISCELLANEOUS, ss. 79-91.

Repeal and
transition.
Schedules.

4. (1) The Acts mentioned in the First Schedule (in this Act called "the repealed Acts") are repealed.

(2) The transitional provisions set out in the Second Schedule to this Act shall have effect for the purpose of the transition to the provisions of this Act from the law in force before the coming into operation of this Act.

5. In this Act, unless the context otherwise requires,—

Interpre-
tation.
Amended by
No. 92 of 1964,
s. 3;
No. 37 of 1965,
s. 3.

“after-care” means any treatment, other than treatment as an in-patient of an approved hospital, to which a patient may be subject under this Act;

“approved hospital” means a reception home, hospital or other institution in which a person may be detained for treatment, under the provisions of this Act;

“Board” means a Board of Visitors appointed under this Act and “the Board”, in relation to a hospital or a patient, means the Board of Visitors of that hospital or the hospital of which the patient is a patient;

“corporate trustee” means any duly incorporated company that is authorised 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 exercising the powers of the Court under this Act;

“Department” means the Mental Health Services established by this Act;

“Director” means the Director of Mental Health Services appointed under this Act and includes the Deputy Director;

“Division”, when used without reference to a Part, means a Division of the Part in which the word appears;

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

“intellectually defective” means to be suffering from arrested or incomplete development of mind;

“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 of the State and includes any duly appointed acting or Deputy Master;
- “medical practitioner” means a medical practitioner within the meaning of the Medical Act, 1894;
- “mental disorder” means any illness or intellectual defect that substantially impairs mental health;
- “mental illness” means a psychiatric or other illness that substantially impairs mental health;
- “Minister” means the Minister of Public Health;
- “Part” means a Part of this Act;
- “patient” means any person admitted to an approved hospital under Division 1, 2, 3 or 6 of Part IV; but does not include a person received into an approved hospital for observation while under observation;
- “police officer” means any member of the police force of the State;
- “psychiatrist” means a medical practitioner whose name is contained in a register of psychiatrists prepared and maintained pursuant to the provisions of section eighty-nine;
- “Public Trustee” means the Public Trustee under the Public Trustee Act, 1941;
- “reception home” means a place established for the reception, assessment and early treatment of persons, under the provisions of this Act; and includes a reception home established under any of the repealed Acts;
- “referral” means the written submission of a medical practitioner, in the prescribed form, that a person be admitted to an approved hospital; and to “refer” a person shall be construed accordingly;

“relative” means a spouse, father or father-in-law, mother or mother-in-law, son or son-in-law, daughter or daughter-in-law, brother or brother-in-law, sister or sister-in-law;

“rules” means the rules of court made under this Act;

“section” means a section of this Act;

“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;

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

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

(2) Where, by any law having application within the State, 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 law of the State 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

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

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.

PART II.—ADMINISTRATION.

Minister.

6. The general administration of this Act is under the control of the Minister.

Department
of Mental
Health
Services.

7. A department known as the Mental Health Services is established by this Act.

Administra-
tion of
Department.

8. (1) Subject to the control of the Minister, the Department shall be administered by the Director, who shall be a psychiatrist appointed by the Governor.

(2) The Director is responsible to the Minister for the medical care and welfare of every person treated by the Department and for the proper operation of every approved hospital and every service established under section nineteen.

(3) The Director may, from time to time, delegate to a permanent medical officer of the Department, approved by the Minister for the purpose, any of his duties and when carrying out those duties at the direction of the Director that medical officer has all the powers and immunities that are conferred on the Director by, or under, this Act.

(4) The Director has any of the powers conferred on a superintendent by, or under, this Act and may review, vary or rescind any order or direction made by a superintendent.

(5) 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 some other permanent medical officer of the Department being a psychiatrist, to act as Director and, during the time that he so acts, that person has all the powers, duties, and immunities, of the Director.

(6) 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; and a true copy of that report shall be laid before both Houses of Parliament, if then in session or, if not then in session, within twenty-one days after the commencement of the next session of Parliament.

(7) Notwithstanding, and without limiting, any other provisions of this section, the Governor may appoint a psychiatrist to be the Deputy Director.

9. (1) The Governor may appoint a psychiatrist to be the superintendent and a psychiatrist to be the deputy superintendent of any approved hospital, not being a private hospital. Super-intendents.

(2) A superintendent appointed under this section is responsible to the Director for the admission to, and the physical welfare and medical and psychiatric care and treatment of every patient in, the hospital of which he is the superintendent.

10. The Governor may appoint any medical practitioner to be a permanent medical officer of the Department; and may, except as otherwise provided by section nine, appoint any permanent medical officer to be the medical officer in charge of any service of the Department. Medical officers.

11. (1) There shall be a Board of Visitors for every approved hospital declared under Division 1 of Part III; but one board may be appointed for two or more hospitals and a person may be a member of two or more boards. Board of Visitors.

(2) A Board shall consist of five members, including the chairman, all appointed by the Governor and of those members—

(a) one shall be a legal practitioner;

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

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

Tenure of office.

12. (1) Subject to subsection (2) of this section, and section thirteen, a person appointed a member of a Board holds office for a term of three years but is eligible for re-appointment.

(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.

Casual vacancies.

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

- (a) dies;
- (b) tenders his resignation from the office, in writing addressed to the Governor in Council, and the resignation is accepted;
- (c) absents himself from three consecutive meetings of that Board, without having obtained leave of absence from the Board;
- (d) is removed from office by the Governor; or
- (e) is incapable of performing his duties as a member.

(2) The Governor 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 section fifteen.

14. (1) The Governor may appoint one of the Chairman. members of a Board to be chairman.

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

(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 Governor for the unexpired portion of the term of office of the latter appointee.

(4) The chairman of a Board may, by notice in writing addressed to the Governor in Council 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.

15. (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— Proceedings of Board.

- (a) three 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 fifty-four, 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 three members.

Remuneration of members.

16. The members of a Board shall receive, out of moneys appropriated by Parliament, such fees as may be prescribed; and every member is entitled to recover any travelling and other expenses incurred by him in the performance of his duties.

Board subject to Minister only.

17. A Board is responsible to, and subject to the control of, the Minister and no other person.

Powers and duties of Board.

18. (1) The Board of an approved hospital or a majority of the members—

- (a) shall visit that hospital, at least once in every month and at such other times as the Minister may direct;
- (b) shall 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) may, from time to time, interview any patient;
- (d) may make such inquiries, examinations and inspections as it may from time to time think necessary in the interests of patients and, in particular, in order to ascertain whether any patient ought to continue to be a patient; and
- (e) shall, at least once in every three months, inspect every part of the hospital where patients are accommodated or that appertains to the welfare of patients.

(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 for which it is appointed.

(3) A Board shall enter in its minutes a record of the proceedings and transactions of every meeting of, and inspection by, the Board and may, whenever it thinks fit, and shall whenever required so to do by the Minister, transmit a copy of its minutes, and may make any recommendations in so far as the welfare (other than the medical treatment) of patients or the management of a hospital is concerned, to the Minister.

(4) A Board may order a patient to be examined by a psychiatrist selected by it and that psychiatrist is thereupon authorised to carry out the examination and shall 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 III.—SERVICES AND HOSPITALS.

Division 1—State Services and Hospitals.

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

- (a) reception homes;
- (b) training centres;
- (c) hospitals for the treatment of mental illness;
- (d) in-patient units for children;
- (e) geriatric centres for patients and for persons discharged from an approved hospital or other institution established under this section;
- (f) hostels and sheltered workshop units;
- (g) centres to provide for the institutional care and treatment of inebriates and drug addicts;
- (h) day hospitals, and day centres for the welfare, rehabilitation and occupation of persons who are, or have been, receiving treatment under the Act;
- (i) outpatient and child guidance clinics;

Establishment of hospitals and other services.
Repealed and re-enacted by No. 37 of 1965, s. 4.

- (j) any other service that may be necessary or expedient,

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

(2) Notwithstanding the repeals effected by section four, every reception home established before the coming into operation of this Act is, and continues to be, a reception home of the same nature, standing and function as it was when so established.

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

Power of Director as to nature of service provided. Repealed and re-enacted by No. 92 of 1964, s. 5. Amended by No. 37 of 1965, s. 5.

20. The Director shall make the final determination as to the nature of the service to be provided for any person requiring treatment under this Act, but a person shall not be admitted to, or detained in, a training centre, unless he is an intellectually defective person.

Division 2—Private Hospitals.

Approval of private hospitals. Amended by No. 92 of 1964, s. 6.

21. (1) Any person may, either on his own behalf or on behalf of any body corporate or unincorporate, apply to the Minister, for a private hospital or any building of or part of a private hospital, to be approved under this Division.

(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 an approved hospital; and
- (c) that arrangements for the management, equipment and staffing of the hospital are satisfactory,

he may, subject to any conditions he thinks fit to impose, declare a private hospital to be an approved hospital and grant to an applicant therefor or other person (in this Division called "the permit holder") a permit to conduct the hospital 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 permit issued under this section is revoked or surrendered, or 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; but, unless a permit is issued 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, transfer and convey any patient therein to any approved hospital.

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

22. (1) Where, at any time after considering the report of the Director, the Minister is satisfied that the hospital is no longer suited to be a hospital approved under this Division or that the person to whom a permit is issued is no longer a fit person,

Revocation of approval or permit.

or able, to conduct an approved hospital, he may, subject to subsection (2) of this section, 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) of this section 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.

Power to
make grants
or subsidies.

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 private hospital approved under this Division.

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

(2) Notwithstanding the provisions of 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.

(3) A grant or subsidy shall not be made or given to a hospital approved under this Division, unless the permit holder agrees to conduct the hospital in accordance with any regulations or conditions prescribed for approved private 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 is guilty of an offence against this Act.

Patients to
be treated
by a
psychiatrist.

24. (1) The treatment of every patient admitted to an approved private hospital shall be under the superintendence of a psychiatrist.

(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 patient is treated is, as regards that patient, 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.

(4) A reference to a patient in this Division is a reference to a patient under this Act.

Division 3—General Provisions as to Hospitals.

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

Patients to be detained in approved hospitals only.
Amended by No. 37 of 1965, s. 6.

26. (1) The Governor may make such regulations as he thinks fit for the carrying out and giving effect to this Part.

Regulations.
Amended by No. 113 of 1965, s. 8.¹

(2) Any regulation made under this section may make provision for the payment of fees and may provide a penalty for the breach of any regulation not exceeding two hundred dollars.

PART IV.—ADMISSION, DETENTION AND DISCHARGE OF PATIENTS.

Division 1—Informal Admissions.

27. (1) A person who, in the opinion of the superintendent or another psychiatrist, is, or appears to be, suffering from mental disorder may, subject to subsection (2) of this section, be admitted into an approved hospital—

Admission.

- (a) if under the age of eighteen years, on the request in writing, in the prescribed form, of one of his parents or of his guardian; and
- (b) if not less than eighteen years of age, on his own request in writing in the prescribed form.

(2) A person, being not less than eighteen years of age, shall not be admitted under this section, unless the superintendent or another psychiatrist is of the opinion that he is able to understand the nature and effect of the request.

¹ Decimal Currency Act, 1965.

Division 2—Admission by Referral.

Reception
and
admission.

28. (1) A person may be received into, and admitted to, an approved hospital upon the production of a referral, in the prescribed form, by a medical practitioner, based upon a personal examination of that person made by that medical practitioner not more than fourteen clear days before the presentation of that person to hospital.

(2) A medical practitioner shall not refer any person under this section to an approved hospital unless, after he has personally examined that person, he is of the opinion that the person appears to be suffering from mental disorder and that he should be admitted for treatment to an approved hospital.

(3) Every person referred under this section may be received into an approved hospital for observation, for a period not exceeding seventy-two hours; and during that period he shall be examined by the superintendent or another psychiatrist.

(4) If, after his examination, the superintendent or other psychiatrist is of the opinion that the referred person needs to be treated, in an approved hospital, he shall admit him as a patient; otherwise the person shall leave the hospital.

(5) The superintendent or other psychiatrist shall, whether or not admitting a referred person as a patient, endorse his opinion on the referral and enter it in the prescribed register.

Division 3—Admissions following Reception Order.

Order for
conveyance
to hospital.

29. (1) If, upon the application of any person, made in the prescribed manner, a justice is satisfied that a person is suffering from mental disorder and that it is in the interest of that person or of the public that he should be admitted to an approved hospital for treatment under this Act, the justice may, by order in the prescribed form under his hand, order that the person be taken, conveyed to and received into an approved hospital.

(2) The justice shall not make such an order as is mentioned in subsection (1) of this section, unless it appears from the referral of a medical practitioner, in the prescribed form, that he has, during the space of fourteen days immediately prior to the application, personally examined the person in respect of whom the application is made and that he is of the opinion that the person is suffering from mental disorder.

(3) Any order made under this section shall be accompanied by the referral and be presented at the approved hospital to which the person is conveyed.

30. (1) Where a complaint on oath is made before a justice that a person who appears to be suffering from mental disorder—

Apprehension and examination in certain cases.

- (a) is without sufficient means of support; or
- (b) is wandering at large; or
- (c) has been discovered under circumstances that denote a purpose of committing an offence against the law,

the justice may, by order in the prescribed form under his hand, require a police officer or some person duly authorised 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) Any police officer finding a person who appears to be suffering from mental disorder in any of the circumstances mentioned in subsection (1) of this section may, without 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 appears to be suffering from mental

disorder, he shall refer him to an approved hospital, in the prescribed form and hand that form to the police officer.

Examination
of persons
not taken
care of,
cruelly
treated or
wrongfully
detained.

31. (1) The Director, or any other officer of the Department or a police officer, on learning or having reason to suspect that a person who appears to be suffering from mental disorder—

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

shall forthwith make a complaint on oath thereof, before a justice.

(2) A justice, upon the making of such a complaint as is mentioned in subsection (1) of this section or upon the complaint on oath of any person whomsoever to the like effect, may, by special warrant under his hand in the prescribed form, 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 authorise 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 found in any of the circumstances mentioned in subsection (1) of this section and the medical practitioner is of opinion that the person appears to be suffering from mental disorder and refers him to an approved hospital, in the prescribed form, the police officer executing the warrant shall apprehend the person.

Action
following
apprehension
and exam-
ination.

32. (1) Every police officer or officer of the Department apprehending any person under the provisions of section thirty or thirty-one shall, within twenty-four hours thereafter or after the

referral of that person (whichever is the later), make an application to a justice under the provisions of section twenty-nine and the justice, on being satisfied—

- (a) that the person was found under any of the circumstances mentioned in section thirty or thirty-one; and
- (b) from the referral of a medical practitioner, that the medical practitioner is of opinion that the person appears to be suffering from mental disorder; and
- (c) that it is in the interest of the person or of the public that the person be admitted to an approved hospital,

may by order, in the prescribed form under his hand, order that the person be conveyed to and received into an approved hospital.

(2) Any order made under the provisions of subsection (1) of this section shall be accompanied by the referral and be presented at the approved hospital to which the person is conveyed.

(3) Where a medical practitioner examining a person under the provisions of section thirty does not refer that person, the person shall, subject to any charge that may be preferred against him, be released.

(4) Every proceeding following a referral under this Division shall be held in camera.

33. (1) A justice before whom a complaint is made under this Division may, himself, examine the person who is apparently suffering from mental disorder and may examine him and any witness in the matter, at any convenient place; but any such examination shall be held in camera.

Additional
powers of
justice.

(2) The justice may, by order in the prescribed form, suspend the execution of any order made under this Division, for any period not exceeding seven 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 this Division satisfies the justice before whom the application 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.

Reception
and
admission.

34. (1) Every person conveyed to an approved hospital under this Division may be received into the hospital for observation, for a period not exceeding seventy-two hours; and during that period he shall be examined by the superintendent or another psychiatrist.

(2) If, after his examination, the superintendent or other psychiatrist is of the opinion that the person conveyed to, and received into, hospital needs to be treated, as an in-patient, under this Act, he shall admit him as a patient.

(3) The superintendent or other psychiatrist shall, whether or not admitting a person received into hospital, endorse his opinion on the order and the referral and enter it in any prescribed register.

Release.

35. Any person who, on being conveyed to an approved hospital under this Division, is examined by the superintendent or another psychiatrist and not admitted shall forthwith leave the hospital, but without prejudice to any charge that may be preferred against him.

Remand of
person
charged with
offence for
examination.

36. (1) Where it appears to a court of summary jurisdiction before which a person stands charged with an offence that the person charged is, or may be, suffering from mental disorder, the court may, by order in the prescribed form, order that the person be remanded for any period not exceeding twenty-eight days either—

(a) on bail, for examination by a medical practitioner; or

(b) in custody, for reception into, and observation in, an approved hospital,
as the court thinks fit.

(2) If the medical practitioner examining a person pursuant to an order made under paragraph (a) of subsection (1) of this section is of the opinion that the person appears to be suffering from mental disorder, he shall refer him to an approved hospital, in the prescribed form, and the court may, upon the production of the referral, by order in the prescribed form, order the person to be conveyed to, and received into, an approved hospital; and the provisions of section thirty-four shall thereupon apply to that person.

(3) If the superintendent of the approved hospital into which a person is received for observation, pursuant to an order made under paragraph (b) of subsection (1) of this section, is of the opinion that the person is suffering from mental disorder, he shall admit him as a patient and inform the court of that fact; otherwise the person shall be returned to his former custody.

(4) When a person to whom this section applies, having been admitted as a patient to an approved hospital, is to be discharged, the superintendent shall, unless the court otherwise directs, inform the court that ordered the person to be examined or received into the hospital, of that fact and shall, if so required by the court, discharge the person into his former custody.

37. (1) The order of a court or of a justice, made under this Division, for the conveyance of a person to, and reception into, an approved hospital, shall be executed within twenty-eight days 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 twenty-eight days.

Order of
Court or
justice
valid for
28 days.

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

(3) The provisions of subsection (1) of this section do not bar a fresh application and order being made in respect of a person who was subject to an order that has lapsed.

Division 4—Detention of Patients.

Status of patients.

38. (1) For the purposes of this Act, a patient has a status according to whether he is admitted as such under Division 1, 2 or 3, or 6.

(2) A patient received into, or admitted to, an approved hospital under Division 2, 3 or 6 is detained.

Period of operation of compulsory power.

39. (1) A patient having a status under Division 2 or 3 shall, unless the period of his status is extended under the provisions of subsection (2) of this section or of section forty-five, be discharged from status as a patient by the operation of this subsection, after the period of six months commencing on the day of his admission as a patient.

(2) Notwithstanding the provisions of subsection (1) of this section, if the superintendent, on the advice in writing of another psychiatrist, is of the opinion that it is in the interest of a patient that the period of his status under Division 2 or 3 should be extended for a period exceeding that mentioned in that subsection, he may, subject to the provisions of section forty-five, order that the period be extended for a period not exceeding twelve months commencing on the day after the expiry of the former period; and may, subject to the provisions of this subsection, on the expiry of any extended period, from time to time, so order.

(3) Where an order is made under subsection (2) of this section, the patient shall continue, for the period ordered, to have the status then applying to him, unless he is sooner discharged.

(4) In computing the period of a patient's status under Division 2 or 3, any period during which a patient was absent without leave shall not be taken into account.

40. Subject to section twenty, a patient may, by order of the Director, be transferred from an approved hospital to another approved hospital, but, for the purposes of section thirty-nine, the period spent by a patient in any approved hospital is cumulative on that spent in another approved hospital.

Patients may be transferred. Amended by No. 37 of 1935, s. 7.

41. The superintendent shall, from time to time, cause to be entered in any prescribed register the prescribed particulars of every patient—

Particulars to be kept as to patients' admission, discharge or continued status.

- (a) who is admitted; or
- (b) who is discharged; or
- (c) who is transferred to another approved hospital; or
- (d) whose status as a patient, under Division 2 or 3, has been ordered to be extended, under the provisions of section thirty-nine.

Division 5—Leave of Absence and After-care.

42. (1) Subject to the provisions of subsection (2) of this section, the superintendent may grant to a patient, having a status under Division 2 or 3, leave to absent himself from hospital, upon such conditions as to treatment, custody, conduct or behaviour as he thinks fit.

Leave of absence.

(2) Leave of absence shall not be granted under this section so that the leave period extends beyond the period, or any extended period, during which the patient has a status under Division 2 or 3.

(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.

(4) A patient who, having a status under Division 2 or 3,—

- (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.

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

Discharge to after-care.

43. (1) The superintendent may order that any patient having a status under Division 2 or 3 be discharged to after-care—

- (a) under the supervision of the superintendent or any other medical officer of the Department; or
- (b) under the supervision of a medical practitioner, or other suitable person, willing to undertake it; or
- (c) at the superintendent's discretion, without supervision,

for the balance of the period, or extended period, during which the patient has that status.

(2) The superintendent may, at any time during its currency, rescind the discharge of a patient to after-care and, thereupon, recall the patient to hospital or to any other approved hospital; and a patient failing to return when so recalled is absent without leave and may be taken as provided by section forty-two.

(3) The status of a patient continues during the period of his discharge to after-care; but, unless that period is extended under the provisions of section forty-five, he shall, at the expiration thereof, be discharged from status as a patient.

Sections 42 and 43 not to apply in certain cases.

44. The provisions of sections forty-two and forty-three do not apply to a patient admitted under section thirty-six, unless every charge that was preferred against him has been withdrawn or dismissed.

45. (1) If, in the opinion of the superintendent or other medical officer of the Department having the supervision of a patient discharged to after-care, it is, or may be, in the interest of the patient that he should continue as a patient, beyond the period, or any extended period, of his status under Division 2 or 3, he shall, at least one month before the expiry of that period, require the patient to attend a medical practitioner, nominated by the superintendent or other medical officer, for examination.

Extension of after-care.

(2) The medical practitioner examining a patient pursuant to this section shall report to the superintendent or other medical officer requiring the examination whether or not the patient should, in his opinion, continue as a patient discharged to after-care.

(3) If the medical practitioner mentioned in subsection (2) of this section is of the opinion that the patient should continue as a patient discharged to after-care, the superintendent may extend the period of the patient's after-care, for a further period not exceeding twelve months from the day when his status under Division 2 or 3 would, by operation of section thirty-nine, have expired; otherwise the patient shall be discharged from status as a patient.

(4) The period of a patient's after-care may, from time to time, be further extended under the provisions of this section; but where a patient's discharge to after-care is rescinded, the provisions of section thirty-nine apply to that patient.

46. (1) Any patient who is aggrieved by the extension, under section forty-five, of the period of his after-care, may apply to the stipendiary magistrate nearest to his place of residence to make an inquiry into the extension.

Patient aggrieved by extension of after-care.

(2) A stipendiary magistrate to whom an application is made under this section shall inquire into the question of the extension and report his finding to the Minister who shall, subject to the rights of

a person upon section fifty-five, decide the question of whether or not the period of after-care should be extended and, if extended, for what period.

(3) For the purposes of his inquiry under this section, a stipendiary magistrate has all the powers of inquiry conferred, by section eighteen, on a Board.

Division 6—Security Patients.

Persons found unfit to stand trial may be admitted.

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

(a) is found by two medical practitioners to be suffering from mental disorder to the extent that he ought not to stand trial; or

(b) is found, under section six hundred and fifty-two 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 the superintendent or another 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.

48. (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 that person be admitted as a patient to an approved hospital and may thereafter order that the person be liberated, upon such terms and conditions as he thinks fit.

(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 or to strict custody, as the Governor may order.

49. (1) The provisions of section thirty-nine and Divisions 5 and 7 do not apply to a patient admitted under this Division unless, in the case of a patient admitted under section forty-seven, the Chief Secretary, or, in the case of a patient admitted under section forty-eight, the Governor, otherwise orders.

Certain provisions not to apply to patients under this Division.

(2) Where a patient admitted under this Division escapes from an approved hospital, he may be re-taken, without any authority other than that of this subsection.

50. Nothing in this Act affects the operation of section fifty-four of the Prisons Act, 1903, and the provisions of Divisions 1, 2 and 3 do not apply to a prisoner under conviction and sentence or under conviction and awaiting sentence.

S. 54 of the Prisons Act, 1903, not affected by this Act. Amended by No. 92 of 1964, s. 7.

Division 7—Discharge of Patients.

51. (1) A patient having a status under Division 1 shall, subject to the provisions of subsection (2) of this section, be discharged—

Discharge of patients having status under Div. 1.

- (a) on the order of the superintendent;
- (b) on the order of the Director, from any approved hospital; or
- (c) within seventy-two hours after the receipt by the superintendent of the application in writing of the patient for his discharge; or, in the case of a patient under the age of eighteen years, the application in writing of the parent or guardian at whose request the patient was admitted, for his discharge.

(2) Where, in the case of a patient under the age of eighteen years, the application for his discharge is made by a parent or guardian other than the

parent or guardian at whose request the patient was admitted, the application shall be referred to the Director who shall, after giving the applicant an opportunity of being heard, decide whether or not, in the patient's interest, the application should be granted and, if granted, shall order the patient to be discharged.

Discharge
of patients
having
status under
Divs. 2 or 3.

52. (1) A patient having a status under Division 2 or 3 shall, subject to the provisions of subsection (2) of this section, be discharged—

- (a) on the order of the superintendent or the Board;
- (b) on the order of the Director, from any approved hospital; or
- (c) within seventy-two hours after the receipt by the superintendent of an application in writing in the prescribed form, by any person over the age of twenty-one years, for the discharge of the patient.

(2) Notwithstanding the provisions of subsection (1) of this section, if, on any application being made under paragraph (c) of that subsection, the superintendent is of the opinion that—

- (a) the discharge of the patient would be to the serious detriment of the patient or of the public;
- (b) adequate and satisfactory arrangements have not been made for the care, after discharge, of the patient;
- (c) the applicant is not a suitable person to exercise the care of the patient; or
- (d) in the case of a patient under the age of eighteen years, the applicant is not the parent, guardian or other person who has the legal custody of the patient,

then, he shall refuse the application, stating to the applicant his reasons for so doing.

(3) Where, notwithstanding the reasons stated by the superintendent, under the provisions of subsection (2) of this section, the applicant insists on the discharge of the patient, the question shall be referred, by the superintendent, to the Director who shall thereupon inquire into the application and, after giving the applicant an opportunity of being heard, decide whether or not the application ought to be granted and, if granted, shall order the patient to be discharged.

(4) Where it is made to appear to the Court that a patient, being a patient over the age of eighteen years for whose discharge application has been made pursuant to the provisions of paragraph (c) of subsection (1) of this section, has relations or friends in any place outside the State who are willing to undertake the care and charge of the patient, and that it would be to the patient's benefit that he be removed to that place, the Court may by order authorise 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.

53. 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.

54. (1) The Board may, after considering the case of any patient having a status under Division 2 or 3, require that patient to be discharged from status as a patient; and the Director shall thereupon discharge the patient.

Board may discharge patients following inquiry.

(2) A Board may, of its own motion, exercise any of the powers conferred on it by this Act.

(3) The question of the exercise by a Board of any power conferred upon it shall be decided by a majority of the Board; but, where the question

relates to the exercise of any power conferred by subsection (1) of this section the question shall, unless the majority includes a medical practitioner, be resolved in the negative.

(4) Subject to subsection (3) of this section, 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.

(5) A decision of the Board may countermand an order of, or the refusal of an application by, the superintendent; but the Board shall forthwith inform the Minister and the Director of any such decision.

Application
to the Court.

55. (1) Any person may make application to the Court, by way of originating summons, for an order that a person, who—

- (a) is detained as a patient in any approved hospital; or
- (b) is discharged, or continues as a patient discharged, to after-care,

be discharged from status as a patient, on the ground that the patient is not suffering from mental disorder or that, in all the circumstances of the case, it is in the patient's interest and proper that he 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 as 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 purpose of enabling the patient or some other person to make 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 Division; and shall be heard in camera.

(4) The Court may, upon the determination of an application under this section, 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.

56. The provisions of section fifty-five do not apply to, and the Court shall not entertain any application with respect to, a person admitted as a patient under Division 6.

No applica-
tion to the
Court in
certain cases.

57. (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, care, treatment, maintenance, burial and payment of expenses,—

Discharge of
patients to
other parts of
the Common-
wealth or to
this State.

(a) under the laws of that other state or that territory of a patient discharged to that state or territory; or

(b) under this Act, of a person suffering from mental disorder and discharged by that other state or territory to this State.

(2) Where, pursuant to an agreement authorised to be made by this section,—

(a) a patient is discharged to another state or a territory, he shall be so discharged on the order of the Minister; and

- (b) a person suffering from mental disorder is discharged to this State by another state or a territory, he shall be admitted to an approved hospital, on the order of the Minister, and shall, thereupon, have the status of a patient under Division 3.

PART V.—PROTECTION OF PATIENTS.

Patients and others to be afforded interviews.

58. (1) A patient requiring an interview with a medical officer of the hospital shall be afforded that interview, within three days 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.

(2) A person, being a relative or (in the case of a patient under the age of eighteen years) the guardian of a patient, requiring an interview with the Board shall, as soon as the Board can reasonably arrange it, be afforded that interview.

Letters of patients.

59. (1) Every letter, written by a patient and addressed to—

- (a) the Governor; or
- (b) the Minister; or
- (c) a member of the Parliament of the State; or
- (d) a judge or the Court; or
- (e) the Board or a member of the Board; or
- (f) the Director; or
- (g) a legal practitioner,

shall be sent forward by the superintendent, without being opened, to the person to whom it is addressed.

(2) Every letter, written by a patient and addressed to a person, other than such as is mentioned in subsection (1) of this section, may be opened by the superintendent but shall be sent

forward by him, and every letter addressed to a patient shall be delivered to that patient, unless the superintendent is of the opinion that the letter ought not to be sent forward or delivered, in which case he shall endorse the letter to that effect and lay it before the Director.

(3) A superintendent who fails to comply with, and every person detaining any letter contrary to, the provisions of this section commits an offence.

60. (1) 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 relative or friend of a patient to be permitted, shall be permitted to visit a patient in an approved hospital, in the case of a relative or friend, during the hours appointed for the visiting of patients in that hospital and, in the case of a medical or legal practitioner, at a time appointed by the superintendent.

Visits by relatives and others.

(2) This section does not apply to a patient having a status under Division 6 of Part IV and, in every other case, the superintendent may allow a visit subject to such terms and conditions as he thinks fit.

61. (1) Every person employed by the Department, who strikes, wounds, ill-treats or wilfully neglects a patient or any person received into an approved hospital, is guilty of a misdemeanour and is liable to imprisonment with hard labour for three years.

Penalty for ill-treatment of patients.

(2) Nothing in this section prejudices or affects the civil or criminal responsibilities (if any) of the offender, or any defence available to a person, under any other law of the State.

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

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

Management of estates of patients.

(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. Amended by No. 92 of 1964, s. 8.

63. (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) of this section—

- (a) is, in the opinion of the superintendent or another psychiatrist, recovered of his incapacity;
- (b) is discharged from status as a patient or discharged to after-care;
- (c) is recalled to hospital, on the rescission of his discharge to after-care; or
- (d) dies,

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

Incapable persons. Repealed and re-enacted by No. 92 of 1964, s. 9.

64. (1) Where, on the application of the Public Trustee, a corporate trustee or a natural person, the Court is satisfied that a person, whether resident or domiciled within or outside the jurisdiction, is incapable, by reason of any mental illness, defect or infirmity, however occasioned, of managing his affairs, the Court may make a declaration to that effect and may appoint the applicant or some other person or persons or appoint the applicant and some other person or persons, with or without security

and subject to such conditions and limitations as it may impose, to be the manager or managers of the estate of the incapable person, under the order and direction of the Court and subject to the rules.

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

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

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

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

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

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

affairs, the Court may exercise such of the powers conferred on it by this section and by section sixty-eight as may be necessary for enabling that provision to be made.

Supervision
of managers.
Amended by
No. 92 of
1964, s. 10.

65. (1) The management of the estates of incapable persons shall be under the general supervision of the Master.

(2) For the purposes of this section, the Master 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 recognisances and require the production of books, papers, accounts and documents.

(3) The Master 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 Master to see that the conditions of any bond or recognisance, 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 Master shall, on learning of any breach or non-performance of the conditions of a bond or recognisance, thereupon report that fact to a judge.

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

Superseding
orders when
incapable
person has
recovered.
Amended by
No. 92 of
1964, s. 11.

66. (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.

(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.

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

Powers of manager. Amended by No. 92 of 1964, s. 12.

(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 sixty-four or section sixty-eight, relating to the management of the affairs of an incapable person.

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

Powers conferrable on managers. Amended by No. 92 of 1964, s. 13.

- (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) sequestrate 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 authorised by the Court, under this Part.

(2) The Court, in making an order under the provisions of 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) of this section, the Court may make any other order (whether or not of the same nature as those mentioned in those subsections) that it thinks necessary or expedient for administering the affairs of the incapable person.

Manager may exercise power vested in an incapable person in character of guardian, etc.

69. 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. Repealed and re-enacted by No. 92 of 1964, s. 14. Amended by No. 37 of 1965, s. 8.

70. 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.

71. (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 disorder or infirmity of mind (however described), the Court may 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, to be filed of record in the Court; and the Court may, 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 may give 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.

Court may act on findings in certain other jurisdictions. Amended by No. 92 of 1964, s. 15.

(2) Where the Court is satisfied that a person has, under the law prevailing in a place outside the State, been appointed to exercise powers with respect to the property or affairs of some other person, on the ground (however formulated) that the other person is incapable, by reason of mental disorder, of managing and administering his property and affairs, the Court may, if, having regard to the nature of the appointment and the circumstances of the case, it thinks it expedient, direct that any stock standing in the name of the latter person or the right to receive the dividends thereof be transferred into the name of the person so appointed or be otherwise dealt with as he may require and may give such directions as it thinks fit with respect to any accrued dividends of that stock.

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

Examination
of accounts
of managers
being natural
persons.
Amended by
No. 92 of
1964, s. 16.

72. (1) Every manager, being a natural person, shall, unless the Court dispenses with the requirement, lodge with the Master 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 Master 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 Master 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 Master 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.

Accounts
and payment
of corporate
trustees.
Amended by
No. 92 of
1964, s. 17.

73. (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 twelve years.

(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 Master 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.

74. (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

Manager may execute assurance; protection of persons dealing with manager.

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 authorising 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.

Transaction by incapable person may be set aside.
Amended by No. 92 of 1964, s. 18.

75. (1) Subject to subsection (2) of this section, 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 two years commencing on the day of the completion of the transaction; or

(b) the Court is satisfied that—

(i) the transaction was a *bona fide* one, 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.

76. (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

Summary proceedings for the protection of property of incapable persons.

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 six 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.

Payments to recovered incapable persons or the personal representative of deceased incapable persons.

77. (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.

(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.

Power to appoint committees includes power to appoint managers.

78. 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.

PART VII.—MISCELLANEOUS.

Person under eighteen years in need of, and not receiving, treatment to be a neglected child.

79. For the purposes of this Act, a person under the age of eighteen years, who is suffering from mental disorder necessitating treatment in his own or the public interest and who is not receiving treatment, is a neglected child, within the meaning of the Child Welfare Act, 1947.

80. (1) Civil or criminal proceedings shall not lie against any person for anything done in reliance on any referral, 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 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.

Immunity of persons acting in good faith.

(2) Nothing in this section affects any right that a person may have to proceed by way of prerogative writ.

81. (1) Every medical practitioner signing any referral, in connection with the reception or admission of any person as a patient to an approved hospital, shall specify therein the facts upon which he has formed his opinion that the person to whom the referral relates is suffering from mental disorder, distinguishing, in the referral, facts observed by himself from facts communicated to him by others.

Referral to specify facts upon which opinion of mental condition is formed.

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

(3) Notwithstanding any other provision of this Act, a medical practitioner may, where he thinks it expedient or desirable so to do, refer a person as, in his opinion, suffering from nervous disorder; and a referral so made is a valid referral for the purposes of this Act.

82. Every medical practitioner who signs any referral or authority under, or for the purposes of, this Act, without having seen and personally examined the person to whom it relates, for the

No referral to be signed without examination. Amended by No. 113 of 1965, s. 8.1

purpose of ascertaining the condition of that person, to the best of his knowledge and ability, is guilty of an offence.

Penalty: Four hundred dollars or six months' imprisonment.

Persons prohibited from signing referrals.

83. (1) A referral is not valid, if it is signed by a medical practitioner who—

- (a) is a relative, guardian, partner, principal or assistant of the referred person;
- (b) is the justice ordering a person to be examined or to be conveyed to an approved hospital;
- (c) is a medical officer of an approved hospital;
- (d) in the case of a referral to an approved hospital that is a private hospital, is the permit holder or a relative of the permit holder in respect of that hospital; or
- (e) is a member of the Board.

(2) A medical practitioner, other than such as is mentioned in subsection (1) of this section, in the employ of the Department may refer a person under the provisions of Division 2 or 3 of Part IV.

Fees to medical practitioners required to examine persons.

84. 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 the prescribed fee, payable by the Department.

Orders and referrals may be amended.

85. (1) Any order or referral 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 fourteen days after the admission of the person, by, and on the sole authority of, the person who signed it.

(2) If an order or referral requiring amendment is not amended, within the period of fourteen days after the admission of a person to an approved hospital by virtue thereof, the Director may order that the person be discharged from status as a patient; or the Director may direct the superintendent to require a new order or referral which, if obtained, shall be effectual for all purposes, as if it had been made or executed prior to the admission of the person as a patient.

86. Whenever it appears to the Court, a judge or a magistrate that any order or referral has been lost or mislaid, the Court, 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.

Lost documents.

87. The judges, or a majority of them, may make rules—

Rules of Court.
Amended by
No. 92 of
1964, s. 19.

- (a) for regulating and prescribing the procedure, practice and forms to be followed or used in proceedings commenced under this Act, the repealed Acts or Division 4 of Part II of the Public Trustee Act, 1941, and prescribing the extent to which orders made, or directions given, under the repealed Acts are to continue to be of force and effect;
- (b) for prescribing the business that may be transacted before, and the jurisdiction that may be exercised by, a judge in chambers or the Master and for regulating appeals from either of them;
- (c) for regulating any matters relating to the costs of any proceedings mentioned in paragraph (a) of this section;
- (d) fixing the fees and percentages payable in respect of proceedings under this Act or the repealed Acts 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.

Regulations.

88. (1) The Governor may make such regulations as he thinks fit for the carrying out and giving effect to this Act.

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

- (a) the control, employment and discipline of medical officers, officers and other employees of the Department and appeals by employees, or a class of employees, against disciplinary action;
 - (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) 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; and

- (c) impose duties on the Board, the Director or other persons employed in, or by, the Department.

89. (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.

Medical Board to maintain register of psychiatrists.

(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.

90. 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 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.

Agreements between the State and Commonwealth not affected by this Act.

91. Except as provided by this Act, a person shall not detain, or assume the custody of, a person suffering from mental disorder.

No detention of persons suffering from mental disorder except under this Act.

92. Every person who contravenes, or fails to comply with, any provision of this Act or the Regulations is guilty of an offence against this Act and is liable, if no penalty is expressly provided by this Act or the Criminal Code, to a penalty of one hundred dollars and to a further penalty of ten dollars for each day that the offence continues after conviction.

General penalty. Amended by No. 113 of 1965, s. 8.¹

¹ Decimal Currency Act, 1965.

Mental Health.

SCHEDULES.

FIRST SCHEDULE.

Section 4.

No. of Act.	Short Title.
15 of 1903	Lunacy Act, 1903.
28 of 1915	Lunacy Act Amendment Act, 1914.
42 of 1920	Lunacy Act Amendment Act, 1920.
46 of 1926	Lunacy Act Amendment Act, 1926.
74 of 1950	Lunacy Act Amendment Act, 1950.
47 of 1912	Inebriates Act, 1912.
29 of 1919	Inebriates Act Amendment Act, 1919.
9 of 1917	Mental Treatment Act, 1917.
16 of 1919	Mental Treatment Act Amendment Act, 1919.
13 of 1927	Mental Treatment Act, 1927.
40 of 1940	Mental Treatment Act Amendment Act, 1940.
46 of 1956	Mental Treatment Act Amendment Act, 1956.
6 of 1941	Mental Treatment (War Service Patients) Act, 1941.

Section 4 (2).
Amended by
No. 92 of
1964, s. 20.

SECOND SCHEDULE.

Transitional Provisions.

1. Every person who, on the day of the coming into operation of this Act, is in a hospital or a reception house, having been there received—

- (a) under section twenty of the Lunacy Act, 1903; or
- (b) under section three of the Mental Treatment Act, 1927; or
- (c) pursuant to an order made, on his own application or on the application of some other person authorised by him in writing in that behalf, under section six of the Inebriates Act, 1912,

shall, on that day, have the status of a patient under Division 1 of Part IV.

2. Every person who, on the day of the coming into operation of this Act, is in a hospital or reception house, having been there received and detained—

- (a) under section ten of the Lunacy Act, 1903; or
- (b) under section four of the Mental Treatment Act, 1927; or
- (c) pursuant to an order made under section six of the Inebriates Act, 1912, on an application other than such as is mentioned in paragraph (c) of clause one of this Schedule,

shall, on that day, have the status of a patient under Division 2 of Part IV.

3. Every person who, on the day of the coming into operation of this Act, is in a hospital or a reception house, having been there received and detained under section seven or seventeen of the Lunacy Act, 1903, shall, on that day, have the status of a patient under Division 3 of Part IV.

4. Every person who, on the day of the coming into operation of this Act, is in a hospital for the criminal insane, having been there received and detained under section seventy-five or seventy-six of the Lunacy Act, 1903, shall, on that day, have the status of a patient under Division 6 of Part IV.

5. (1) Subject to the provisions of subclause (2) of this clause, section thirty-nine applies to every person who, by operation of this Schedule, has the status of a patient under Division 2 or 3 of Part IV.

(2) For the purposes of section thirty-nine of this Act, a person to whom this clause applies is deemed to have had the status of a patient under one or other of Division 2 or 3 of Part IV, for the period that he was detained under any of the repealed Acts; except, where a person has been so detained for any period exceeding five months, he is deemed to have been so detained for a period of five months, only.

6. Every person who, on the day of the coming into operation of this Act, is, under the provisions of any of the repealed Acts, absent from hospital upon trial or on license shall, on that day, be deemed to be discharged to after-care and the provisions of clause five of this Schedule and of sections forty-three and forty-five shall apply to every such person.

7. (1) Where a person has, under the provisions of section one hundred and ten or one hundred and eleven of the Lunacy Act, 1903, been declared or found to be incapable of managing his affairs and the declaration or finding is, immediately before the coming into operation of this Act, still of full force and effect, the person so declared or found is deemed to be an incapable person under, and for the purposes of, this Act; and all proceedings relating to the care and management of his estate commenced under the former Act shall be continued and be dealt with under this Act, in accordance with the rules.

Mental Health.

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