

MENTAL HEALTH AMENDMENT ACT

No. 68 of 1990

AN ACT to amend the *Mental Health Act 1962*.

[Assented to 17 December 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Mental Health Amendment Act 1990*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Principal Act

3. In this Act the *Mental Health Act 1962** is referred to as the principal Act.

*[*Reprinted as approved 24 August 1979 and amended by Acts Nos. 67 of 1979, 28 of 1984 and 69 of 1985.]*

Sections 7, 7A, 7B, 7C and 7D inserted

4. After section 6 of the principal Act the following sections are inserted—

Holding of investigations

“ 7. (1) The Minister, or any person or persons appointed by the Minister by instrument in writing, may conduct an investigation into any matter or matters concerning any approved hospital or any other service established under section 19 (1).

(2) The Minister shall, when appointing any person or persons under subsection (1), specify in the instrument of appointment, the matter or matters to be investigated and the appointment may be made subject to such conditions or limitations as may be specified in the instrument of appointment.

(3) The Minister may, by instrument in writing, revoke an appointment made under subsection (1).

(4) Production of a copy of the instrument of appointment of a person under this section shall be *prima facie* evidence of the appointment of the person and, subject to any condition or limitation that may be specified in the instrument of appointment, of the authority of that person to exercise the powers conferred by section 7A.

(5) A person or persons appointed under subsection (1) to conduct an investigation shall, not later than the day specified in the instrument of appointment or if no day is specified in that instrument as soon as is practicable, report

to the Minister the results of the investigation and may make such recommendations with respect to those results, as the person or persons think fit.

Powers of investigation

7A. For the purpose of conducting an investigation under section 7, the Minister or a person or persons appointed under that section—

- (a) may by notice in writing require the attendance of any person at a place and time specified in the notice;
- (b) may by notice in writing require any person to produce at a place and time specified in the notice any book, document, or record that is in the possession or under the control of that person;
- (c) may inspect any book, document, or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;
- (d) may require any person to take an oath or make an affirmation and may administer an oath or affirmation to any person;
- (e) may require any person to answer any question put to that person;
- (f) may take statements and receive affidavits;
- (g) shall have access to all books, documents, and records held by any approved hospital or any other service established under section 19 (1);
- (h) may, where it appears requisite to the investigation, enter and inspect any building, premises or place that forms part of any approved hospital or other service established under section 19 (1) or any hospital (as defined in section 2 of the *Hospitals Act 1927*); and

- (i) may do such other things as are necessary or expedient for the conduct of the investigation.

Obstruction

7B. A person shall not hinder or obstruct the Minister or any other person conducting an investigation under section 7.

Penalty: \$1 000.

False statements

7C. A person shall not make a statement or give an answer to the Minister or any other person conducting an investigation under section 7, that that person knows to be false or misleading in a material particular.

Penalty: \$1 000.

Failure to attend, take oath, etc.

7D. (1) A person shall not, without lawful excuse, refuse or fail—

- (a) to attend; or
- (b) to produce a book, document, or record,

as required by a notice under section 7A.

Penalty: \$1 000.

(2) A person shall not, without lawful excuse, refuse or fail—

- (a) to be sworn or make an affirmation;
- (b) to answer a question,

when required to do so under section 7A.

Penalty: \$1 000.

(3) It is not a lawful excuse for the purposes of subsection (1) or (2) for a person to refuse to answer a question or produce a book, document or record on the grounds that the answer or the book, document or record might tend to incriminate the person, or make the person liable to a penalty.

(4) Notwithstanding subsection (3), an answer given or any statement made in the course of an investigation under section 7 is not, except in proceedings under this section or sections 7B or 7C, admissible in evidence in any civil or criminal proceedings (including any disciplinary proceedings under regulations made under this Act) against the person giving the answer or making the statement. ”.

Section 18 amended

5. Section 18 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections—

“ (1a) A Board may by resolution delegate either generally or as otherwise provided by the resolution, its powers of inquiry, examination and inspection under section (1) (d) to a person approved by the Minister.

(1b) A delegation under subsection (1a) shall not be made to a person who is, or has been within the 12 months prior to the delegation, employed at an approved hospital in relation to which the Board is appointed.

(1c) A person to whom a delegation is made under subsection (1a) shall not act upon the findings of his or her inquiry, examination or inspection, but shall report those findings to the Board which may then act upon them. ”;

and

(b) in subsection (3) by inserting after “concerned” the following—

“ or as to the need for an investigation under section 7 into any matter that it considers requires such an investigation ”.

**Application to matters arising
before commencement**

6. An investigation under section 7 of the principal Act (as inserted by section 4 of this Act) may be conducted into any matter notwithstanding that the matter arose or occurred before the commencement of this Act.
