

CONCURRENCE COPY

MENTAL HEALTH BILL, 1983

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:—

Crimes (Mental Disorder) Amendment Bill, 1983;

Miscellaneous Acts (Mental Health) Repeal and Amendment Bill, 1983.

1. The object of this Bill is to make provision with respect to the care, treatment and control of persons who are mentally ill.

2. Part I of the Bill contains the usual preliminary provisions—the short title and the commencement, arrangement and interpretation provisions (clauses 1–6). Clause 5 indicates the meaning for the purposes of the proposed Act of the expression “mentally ill person”.

3. Part II of the Bill provides for the establishment and administration of hospitals for the care, treatment and control of patients within the meaning of the proposed Act.

Division 1 deals with premises declared to be a hospital by order of the Secretary of the Department of Health and provides for the appointment of medical superintendents and deputy medical superintendents of those hospitals (clauses 7–9).

Division 2 provides for the licensing of persons, including persons conducting private hospitals within the meaning of the Private Health Establishments Act, 1982, to keep authorised hospitals for the admission, care and treatment of patients, for medical supervision of those hospitals and for the appointment of medical superintendents and deputy medical superintendents (clauses 10–21).

Division 3 enables the Minister to appoint certain persons as a Principal official visitor or official visitor to inspect hospitals and make inquiries with regard to the care, treatment and control of patients (clauses 22–26).

Division 4 enables the Secretary to appoint officers of the Department of Health as authorised officers to visit and inspect hospitals and specifies the functions and powers of those officers (clauses 27–31).

Division 5 enables the Secretary to appoint welfare officers and specifies their functions with respect to patients (clauses 32, 33).

Division 6 provides for the determination, payment and recovery of fees for services provided by certain hospitals (clauses 34, 35).

Division 7 requires the Secretary to prepare an annual report regarding hospitals (clause 36).

4. Part III of the Bill establishes a Mental Health Review Tribunal ("the Tribunal").

Division 1 provides for the constitution of the Tribunal, its composition when exercising functions relating to forensic patients and its composition when exercising functions relating to other patients, specifies its functions and provides for delegation of the functions of the President of the Tribunal (clauses 37-42).

Division 2 provides for the conduct of meetings of the Tribunal and for the making of rules relating to the conduct of the business of the Tribunal. Provision is made for the holding of proceedings of the Tribunal, unless the Tribunal otherwise determines, in public, for protection of the privacy of persons involved in proceedings, rights of appearance and representation before the Tribunal, inspection of medical records, the exercise by the Tribunal of certain functions of the Supreme Court with respect to production, discovery and inspection of documents and compellability of witnesses and for recording of proceedings of the Tribunal. Provision is also made with respect to the form and effect of decisions of the Tribunal (clauses 43-60).

Division 3 nominates a Registrar of the Tribunal and provides for the appointment of other officers of the Tribunal, the authentication of documents, judicial notice of certain signatures, the protection of members and officers of the Tribunal from personal liability arising from execution of the proposed Act and for biennial reports by the President of the Tribunal (clauses 61-66).

5. Part IV provides for the informal admission of a person to a hospital on voluntary application by that person to the medical superintendent of the hospital. The Part requires the medical superintendent to notify certain persons of the application in some cases and specifies the circumstances where the medical superintendent may refuse to admit, or alternatively, may or shall discharge such a person from the hospital (clauses 67-73).

6. Part V provides for the involuntary admission of persons (other than forensic patients) to hospitals. The Part specifies the requirements that are to be satisfied before a person can be admitted on the certificate of a medical practitioner (clause 75), at the request of a relative or friend (clause 76), upon the information of a member of the police force (clause 77) or upon the information of a welfare officer (clause 78). The medical superintendent is empowered to refuse the admission of a person (clause 79). Clauses 80-84 specify the procedures to be observed following the involuntary admission of a person to a hospital, including the carrying out of medical examinations and the notification of friends and relatives of the person of his admission. Clauses 85-87 provide for the holding of an inquiry before a magistrate for the purpose of determining whether a person involuntarily admitted to a hospital is, beyond a reasonable doubt, a mentally ill person and the course of action to be taken in respect of him. Clauses 88-94 deal with the classification, treatment and periodic review of persons who are found at an inquiry to be mentally ill persons requiring detention.

7. Part VI provides for the medical examination of, the periodic review by the Tribunal of and the care and treatment of patients (other than forensic patients). The Part provides for the reclassification of patients, the discharge of patients, the granting of leave of absence to patients and the transfer of patients between hospitals (clauses 95-111).

8. Part VII provides for the detention of, the periodic review by the Tribunal of and the care and treatment of forensic patients (that is, persons detained in a hospital pursuant to an order under s. 428i (2) (b), 428L (1) (b) (i) or 428s of the Crimes Act, 1900, persons detained in hospital pending their trial for an offence or persons transferred to a hospital while serving a sentence of imprisonment) (clauses 112–127). The Part includes provisions relating to the transfer between prisons and hospitals of forensic patients, the circumstances in which a classification as a forensic patient ceases, the granting of special leave of absence in emergencies, the granting of absences for emergency medical treatment and the retaking of escapees.

9. Part VIII provides for the establishment and administration of certain funds and accounts, including Patients Trust Funds into which money held on behalf of patients is to be paid and Patients Amenities Accounts into which amounts received to provide goods, services and amenities for patients generally are to be paid (clauses 128–132). The Part also enables the collective investment of money standing to the credit of patients' accounts and for the distribution of income from the investment through an Interest Account.

10. Part IX regulates the carrying out of certain medical or therapeutic treatments.

Division 1 establishes a Psychosurgery Review Board ("the Board") to regulate the performance of psychosurgery upon patients and to advance research into psychosurgery. The Division provides for the constitution, membership and meetings of the Board. The Division provides that a person shall not perform psychosurgery upon a patient, except in accordance with a consent of the Board and procedures are specified in the Division to enable the granting of that consent. The Division provides that a person shall not perform psychosurgery upon a patient who is capable of giving a free, voluntary and informed consent, except where the patient has given that consent and with the consent of the Board. Where the Board is not satisfied that a patient is capable of giving a free, voluntary and informed consent, it may state a case for the determination of the Supreme Court as to whether the Court should give that consent on behalf of the patient. Where a patient who is capable of giving a free, voluntary and informed consent fails or refuses to give that consent, the Board is directed to refuse an application for its consent to the carrying out of psychosurgery on the patient. The Board is also directed to refuse an application where it is not satisfied as to the appropriateness of the treatment and on other grounds.

Division 2 regulates the administration of electro convulsive therapy and certain other prescribed medical or therapeutic treatments and in particular specifies the circumstances in which those treatments may be administered without the necessity for the patient's consent or only with that consent. Provision is made for the recording of information in relation to the administration of treatments to which the Division applies in a register (clauses 148–157).

Division 3 regulates the performance of certain surgical operations. The Division provides that certain prescribed persons may, in cases of emergency, consent to the performance of a surgical operation on a patient where the patient is incapable of giving, or fails or refuses to give consent. Provision is made, in other cases, for the medical superintendent to apply, after the giving of notice to certain persons, to an authorised officer or the Tribunal for consent to perform surgical operations (clauses 158–163).

Division 4 prohibits the administration of electro narcosis therapy, insulin shock or certain other prescribed operations or treatments and provides for the regulation of the administration of psychoactive drugs (clauses 164, 165).

11. Part X creates certain offences, provides for the amendment of certain documents and empowers the Governor to make regulations (clauses 166-171).

12. Schedule 1 provides for the appointment, term of office, remuneration, removal from office and vacation of office of the Principal official visitor and official visitors.

13. Schedule 2 provides for the membership of the Tribunal.

14. Schedules 3 and 4 contain certain forms.

15. Schedule 5 provides for the constitution, membership and meetings of the Board.

MENTAL HEALTH BILL, 1983

No. , 1983.

A BILL FOR

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill.

[MR BRERETON—24 *November*, 1982.]

See also Crimes (Mental Disorder) Amendment Bill, 1983; Miscellaneous Acts (Mental Health) Repeal and Amendment Bill, 1983.

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Mental Health Act, 1983".

Commencement.

- 10 2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 Arrangement.

3. This Act is divided as follows:—

PART I.—PRELIMINARY—ss. 1–6.

PART II.—ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS—ss. 7–36.

- 20 DIVISION 1.—*Hospitals other than authorised hospitals*—ss. 7–9.

DIVISION 2.—*Authorised hospitals*—ss. 10–21.

DIVISION 3.—*Official visitors*—ss. 22–26.

DIVISION 4.—*Authorised officers*—ss. 27–31.

DIVISION 5.—*Welfare officers*—ss. 32, 33.

- 25 DIVISION 6.—*Fees*—ss. 34, 35.

DIVISION 7.—*Miscellaneous*—s. 36.

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- PART III.—MENTAL HEALTH REVIEW TRIBUNAL—*ss.* 37–66.
DIVISION 1.—*Constitution and functions*—*ss.* 37–42.
DIVISION 2.—*Conduct of meetings*—*ss.* 43–60.
DIVISION 3.—*Miscellaneous*—*ss.* 61–66.
- 5 PART IV.—INFORMAL ADMISSION OF PERSONS TO HOSPITALS—*ss.* 67–73.
- PART V.—INVOLUNTARY ADMISSION OF PERSONS (OTHER THAN FORENSIC PATIENTS) TO HOSPITALS—*ss.* 74–94.
- 10 PART VI.—REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PATIENTS (OTHER THAN FORENSIC PATIENTS)—*ss.* 95–111.
- PART VII.—FORENSIC PATIENTS—*ss.* 112–127.
- PART VIII.—PATIENTS FUNDS AND ACCOUNTS—*ss.* 128–132.
- PART IX.—CARRYING OUT OF CERTAIN MEDICAL OR THERAPEUTIC TREATMENTS—*ss.* 133–165.
- 15 DIVISION 1.—*Psychosurgery*—*ss.* 133–147.
DIVISION 2.—*Electro convulsive therapy and certain prescribed treatments*—*ss.* 148–157.
DIVISION 3.—*Surgical operations*—*ss.* 158–163.
DIVISION 4.—*Prohibited and restricted treatments*—*ss.* 164, 165.
- 20 PART X.—MISCELLANEOUS—*ss.* 166–171.
- SCHEDULE 1.—PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND OFFICIAL VISITORS.
- SCHEDULE 2.—PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.
- 25 SCHEDULE 3.—MEDICAL CERTIFICATE AS TO EXAMINATION OF PERSON.
- SCHEDULE 4.—MEDICAL CERTIFICATE AS TO EXAMINATION OF PRISONER.
- 30 SCHEDULE 5.—CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD.

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Interpretation.

4. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

5 “authorised hospital” means premises in respect of which a licence granted to any person under Division 2 of Part II is for the time being in force;

10 “authorised officer”, in relation to any function conferred or imposed upon an authorised officer by this Act, means a person appointed under section 27 to be an authorised officer and who is entitled to exercise that function;

“barrister” means a barrister admitted by the Court;

“Chief Medical Officer” means the Chief Medical Officer of the Department of Health;

15 “continued treatment patient” means a temporary patient who is classified as a continued treatment patient under section 90 (2) (a) or 92 (2);

“Court” means the Supreme Court of New South Wales;

“forensic patient” means—

20 (a) a person who is detained in a hospital pursuant to an order under section 428I (2) (b), 428L (1) (b) (i) or 428s of the Crimes Act, 1900;

(b) a person who is detained in a hospital pending his trial for an offence; or

25 (c) a person who has been transferred to a hospital while serving a sentence of imprisonment;

“hospital” means—

(a) any premises the subject of an order in force under section 7 (2) by which the premises are declared to be a hospital; or

30 (b) an authorised hospital;

“imprisonment” includes penal servitude;

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“informal patient” means—

(a) a person who has been admitted to a hospital under section 67; or

5 (b) a person who has been classified as an informal patient under section 99;

“intellectually handicapped person under guardianship” has the meaning ascribed thereto in section 258 of the Community Welfare Act, 1982;

“justice” means a justice of the peace;

10 “Master” means such Master of the Court as is prescribed by rules of Court;

“medical superintendent”, in relation to—

15 (a) a hospital, other than an authorised hospital, means the medical practitioner appointed, under section 8, as medical superintendent of the hospital; and

(b) an authorised hospital, means the medical practitioner appointed, under section 18, as medical superintendent of the authorised hospital;

20 “near relative”, in relation to a person, means a parent, brother, sister or child or the spouse of the person and such other person or persons as may be prescribed as a near relative of the person;

25 “patient” means, except in Division 1 of Part IX, a person admitted to a hospital and detained, following his admission, in a hospital in accordance with this Act, and includes a person so admitted while absent from a hospital either with or without leave of absence;

“premises” includes any land, building and part of any building;

“prison” means a prison as defined in section 4 of the Prisons Act, 1952;

“regulations” means regulations made under this Act;

30 “responsible medical officer”, in relation to a patient, means a medical practitioner responsible for the clinical care of the patient at the time the clinical care is given;

“Secretary” means the Secretary of the Department of Health;

“solicitor” means a solicitor of the Court;

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“temporary patient” means a person in respect of whom a direction given under section 87 (1) (b) or a determination made under section 90 (2) (b) is in force;

5 “Tribunal” means the Mental Health Review Tribunal constituted under section 38;

“welfare officer” means a person appointed to be a welfare officer under section 32.

(2) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
10 (b) the exercise of a function includes, where that function is a duty, a reference to the performance of that duty.

(3) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter
15 of the Schedule.

Mentally ill person.

5. (1) A reference in this Act to a mentally ill person is a reference to a person who, owing to mental illness, requires care, treatment or control—

- (a) for his own protection by reason that—
20 (i) he has recently attempted to kill himself or to cause serious bodily harm to himself; or
(ii) there are reasonable grounds for believing that it is probable that he will, by act or neglect, attempt to kill himself or to cause serious bodily harm to himself; or
25 (b) for the protection of others by reason that—
(i) he has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
30 (ii) he has recently performed or attempted to perform an act of violence which indicates that it is probable that he will inflict serious bodily harm upon another person;

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- (iii) he has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement likely to result in the infliction of serious bodily harm upon another person; or
- 5 (iv) he has repeatedly engaged in a course of behaviour of nuisance or harassment directed at one or more persons which would be reasonably likely to lead to a breach of the peace and which is of a degree so far beyond the normal limits of social behaviour that a reasonable person would
- 10 consider it intolerable.

(2) A person is not a mentally ill person by reason only of any one or more of the following:—

- (a) that the person expresses or has expressed a particular political opinion;
- 15 (b) that the person expresses or has expressed a particular religious opinion;
- (c) that the person expresses or has expressed a particular sexual preference or sexual orientation or is or has been sexually promiscuous;
- 20 (d) that the person engages in or has engaged in immoral conduct;
- (e) that the person engages in or has engaged in illegal conduct;
- (f) that the person has developmental disability of mind;
- (g) that the person takes or has taken drugs, including alcohol.

(3) Nothing in subsection (2) prevents, in relation to a person who

25 takes or has taken drugs, the physiological, biochemical or psychological effects of drug taking from being regarded as an indication that the person is mentally ill.

Exercise of functions by certain persons.

6. The functions conferred or imposed by or under this Act on a medical

30 superintendent, deputy medical superintendent, responsible medical officer or official visitor, other than the Principal official visitor, shall be exercised by the medical superintendent, deputy medical superintendent, responsible

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medical officer or official visitor only in relation to the hospital in respect of which he is the medical superintendent, deputy medical superintendent, responsible medical officer or official visitor, as the case may be, and the patients and other persons under detention in that hospital.

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PART II.

ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS.

DIVISION 1.—*Hospitals other than authorised hospitals.***Establishment of hospitals other than authorised hospitals.**

7. (1) Premises to which this section applies are—
- 10 (a) premises which belong to or are under the control of the Crown or a person acting on behalf of the Crown;
- (b) an incorporated hospital within the meaning of the Public Hospitals Act, 1929, or a separate institution within the meaning of that Act; and
- 15 (c) where the person to whom premises belong or who has control of premises, by an instrument in writing given to the Secretary, agrees to the premises being premises to which this section applies—those premises.
- (2) The Secretary, by order published in the Gazette—
- 20 (a) may declare any premises specified or described in the order, being premises to which this section applies by virtue of subsection (1), to be a hospital; and
- (b) may, in the same or another order so published, assign a name to the premises so specified or described.

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(3) The Secretary may, by order published in the Gazette, change the name assigned to any premises specified or described in an order under subsection (2).

Appointment of medical superintendents.

5 **8.** The Secretary may, by instrument in writing, appoint a medical practitioner as medical superintendent of a hospital, other than an authorised hospital.

Appointment of deputy medical superintendents.

10 **9. (1)** The Secretary may, by instrument in writing, appoint a medical practitioner as deputy medical superintendent of a hospital, other than an authorised hospital.

15 **(2)** The deputy medical superintendent of a hospital, other than an authorised hospital, shall have and may exercise the functions of the medical superintendent of the hospital during the absence, for any cause whatsoever, of the medical superintendent or during a vacancy in the office of medical superintendent.

DIVISION 2.—Authorised hospitals.**Application for licence.**

20 **10. (1)** A person may apply to the Secretary for a licence to keep premises as a hospital for the admission, care and treatment of patients.

(2) An application under subsection (1) shall be—

(a) in or to the effect of the prescribed form; and

(b) accompanied by—

- 25 (i) a plan of the premises in respect of which the licence is sought; and
- (ii) the prescribed fee.

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Grant or refusal of licence.

11. (1) The Secretary—

(a) may grant an application under section 10 (1) and, where he does so, shall specify—

- 5 (i) the maximum number of patients who may be kept or treated at the hospital; and
- (ii) such other terms or conditions, if any, to which the licence shall be subject, as he thinks fit; or

(b) may refuse to grant the application.

10 (2) Where the Secretary grants an application under section 10 (1), he shall issue to the applicant a licence in or to the effect of the prescribed form.

(3) A licence remains in force until it is cancelled in accordance with section 14 or 15.

15 Annual statement and licence fee.

12. A licensee shall, on or before 1st July in each year—

- (a) forward to the Secretary a statement in or to the effect of the prescribed form relating to the conduct of the premises to which the licence relates and the admission to and care and treatment of patients on those premises; and
- 20

(b) pay to the Secretary such annual licence fee as may be prescribed.

Duplicate licence.

13. If the Secretary is satisfied that a licence has been lost, destroyed or damaged, he may, on payment of the prescribed fee, issue a duplicate licence 25 to the licensee.

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Cancellation of licences—generally.

14. The Secretary may cancel a licence—
- (a) if the annual licence fee payable under section 12 in respect of the licence has not been paid by the due date;
 - 5 (b) if the licensee requests the Secretary, in writing, to cancel the licence; or
 - (c) if the premises to which the licence relates have ceased to be kept as a hospital for the admission, care and treatment of patients.

Cancellation of licences—failure to show cause.

- 10 15. (1) The Secretary may, by notice in writing served on the holder of a licence granted under section 11 (1), require him to show cause, by a date and time specified in the notice (being a date not less than 1 month after the date of service of the notice), why his licence should not be cancelled.
- (2) Where, by the date and time referred to in the notice under
15 subsection (1), the holder of the licence has not shown sufficient cause why his licence should not be cancelled, the Secretary may cancel the licence.

Variation of licence.

16. (1) The holder of a licence granted under section 11 (1) may, at any time, apply to the Secretary for the variation of any term or condition
20 to which his licence is subject.
- (2) The Secretary, pursuant to an application under subsection
(1)—
- (a) may vary any term or condition to which a licence is subject; or
 - (b) may refuse to grant the application.
- 25 (3) Where the Secretary varies any term or condition to which a licence is subject, the variation shall have effect according to its tenor.

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Medical supervision.

17. (1) The holder of a licence granted under section 11 (1) shall, where the authorised hospital in respect of which he holds the licence has—

- 5 (a) more than 100 patients—have a medical practitioner resident in the hospital at all times;
- (b) more than 50 but not more than 100 patients—cause a medical practitioner to attend the hospital daily;
- 10 (c) 50 or less patients—except as provided by paragraph (d), cause a medical practitioner to attend the hospital at least twice a week; or
- (d) less than 10 patients and the Secretary authorises the holder of the licence to cause a medical practitioner to attend the hospital at specified intervals less frequently than twice a week—cause a medical practitioner to attend in accordance with the Secretary's
- 15 authorisation.

(2) Without affecting subsection (1), the holder of a licence granted under section 11 (1) shall, where the authorised hospital in respect of which he holds the licence has 100 or less patients, make such arrangements as may be approved by the Secretary for the provision of emergency medical

20 services to those patients.

Appointment of medical superintendent.

18. (1) The holder of a licence granted under section 11 (1) in respect of an authorised hospital shall appoint a medical practitioner as medical superintendent of the hospital.

25 (2) The medical superintendent of an authorised hospital shall cause to be kept such records and furnish to the Secretary such particulars as are prescribed in respect of the admission, treatment, discharge, removal, absence with or without leave or death of each patient admitted to the hospital.

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Appointment of deputy medical superintendent.

19. (1) The holder of a licence granted under section 11 (1) in respect of an authorised hospital shall appoint a medical practitioner as deputy medical superintendent of the hospital.

- 5 (2) The deputy medical superintendent of an authorised hospital shall have and may exercise the functions of the medical superintendent of the hospital during the absence, for any cause whatsoever, of the medical superintendent or during a vacancy in the office of medical superintendent.

Offence where hospital no longer authorised.

- 10 20. Where, at any time after the expiration of 2 months from the date on which a licence ceases to be in force, there is in or on any premises in respect of which the licence was issued any person who was, immediately before the licence ceased to be in force, a patient, the person keeping those premises shall be guilty of an offence against this Act.

15 Certain private hospitals to be licensed.

21. A person shall not conduct a private hospital within the meaning of the Private Health Establishments Act, 1982, at which a person is being treated for a mental illness, unless the firstmentioned person is the holder, in addition to any licence required under that Act, in respect of that private hospital, of a licence granted under section 11 (1).

DIVISION 3.—Official visitors.**Appointment of Principal official visitor.**

22. The Minister may, by instrument in writing, appoint a person, being a medical practitioner, barrister or solicitor, to be the Principal official
25 visitor.

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Functions of Principal official visitor.

23. The Principal official visitor—

- (a) shall co-ordinate the exercise by official visitors of the functions conferred or imposed on them by or under this Act;
- 5 (b) may, in relation to any hospital, exercise any such function; and
- (c) shall, in accordance with such directions as are given to him by the Minister, report to the Minister as to the exercise of his functions and the functions of official visitors.

Appointment of official visitors.

- 10 24. Except where, by reason of the unavailability of suitably qualified persons, it is not, in his opinion, appropriate to do so, the Minister shall, by instrument in writing, appoint, for each hospital, 2 or more official visitors, one of whom shall be a medical practitioner and one of whom shall be a barrister or solicitor.

15 General provisions relating to the Principal official visitor and official visitors.

25. Schedule 1 has effect generally with respect to the Principal official visitor and official visitors.

Functions of official visitors.

20 26. (1) Any 2 or more official visitors, one being a medical practitioner, shall visit the hospital at least once each month, with or without any previous notice, at such time of the day or night and for such length of time as they think fit, and at such other times as the Principal official visitor may direct.

25 (2) The official visitors, when visiting the hospital, shall, so far as practicable, inspect every part of the hospital and make such inquiries as they think necessary as to the care, treatment and control of the patients or other persons detained in the hospital.

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(3) The medical superintendent shall—

- (a) allow the official visitors to have access to and to inspect every part of the hospital;
- 5 (b) permit the official visitors to see and to interview each patient or other person detained in the hospital;
- (c) give full and true answers to the best of his knowledge to all questions which the official visitors may ask him in relation to the hospital, the patients and those other persons;
- 10 (d) produce to the official visitors such registers, books, records, orders, certificates, papers and other documents relating to the admission, care, treatment and control of the patients and those other persons and the discharge of persons from the hospital as may be required by the official visitors; and
- 15 (e) furnish all such returns relating to any matter referred to in paragraph (d) as may be required by the official visitors.

(4) The official visitors shall—

- (a) examine and sign the registers, books and records produced to them in accordance with subsection (3);
- 20 (b) on each visit to the hospital, enter in the official visitors book the fact of their visit with such observations as they think fit; and
- (c) in accordance with such directions as are given to them by the Principal official visitor, report to the Principal official visitor as soon as practicable after each visit.

(5) An official visitor shall have and may exercise such other functions as are conferred or imposed on an official visitor by or under this Act.

(6) Nothing in this Division prevents an official visitor from reporting to the Minister with respect to any matter arising from or relating to the exercise by the official visitor of his functions.

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DIVISION 4.—*Authorised officers.*

Appointment of authorised officers.

27. The Secretary may, by instrument in writing, appoint one or more officers of the Public Service employed within the Department of Health to
5 be an authorised officer or authorised officers for the purposes of this Act.

Functions of authorised officers.

28. (1) Except as provided by subsection (2), an authorised officer shall have and may exercise the functions conferred or imposed on authorised officers by or under this Act.

10 (2) Where the instrument of appointment of an authorised officer specifies the functions that may be exercised by the authorised officer, he shall not be entitled to exercise any function conferred or imposed on authorised officers by or under this Act other than those specified by the instrument of his appointment.

15 (3) An authorised officer shall, in the exercise of his functions, be subject to the control and direction of the Secretary.

Inspection, etc., of hospitals.

29. (1) The Secretary shall cause every hospital to be visited and inspected from time to time by authorised officers, with or without any
20 previous notice and at such time of the day or night as he thinks fit.

(2) An authorised officer—

(a) may, at any time, make such inspections, investigations and inquiries as he considers necessary; and

25 (b) shall make such inspections, investigations and inquiries as are directed by the Secretary,

with respect to the care, treatment or control of patients or other persons detained in a hospital or with respect to the management of a hospital.

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(3) An authorised officer visiting a hospital may, by notice in writing, require a person to do any one or more of the following:—

- 5 (a) to furnish him with such information as he requires concerning any of the matters with respect to which an authorised officer is, by or under this Act, authorised to make inspections, investigations or inquiries;
- (b) to attend and give evidence before him concerning any such matters;
- 10 (c) to produce all books, documents or other records in the person's custody or under the person's control concerning any such matters.

(4) An authorised officer may require evidence to be given on oath, and either verbally or in writing, and for that purpose he may administer an oath.

(5) A person who, without just cause shown by him—

- 15 (a) refuses or neglects to comply with a requirement made under subsection (3); or
- (b) does not answer truly and fully a question put to him by an authorised officer in the exercise by the authorised officer of his functions,

20 shall be guilty of an offence against this Act.

(6) Any information furnished or evidence given pursuant to a requirement made under subsection (3) shall not, if the person furnishing the information or giving the evidence objected, at the time of furnishing the information or giving the evidence, to doing so on the ground that it
25 may tend to incriminate him or might be used in any proceedings against him under this Act, be admissible in any prosecution against that person for any offence, not being an offence for a breach of subsection (5), or be admissible in any such proceedings.

Prohibited acts of authorised officers.

30 **30.** An authorised officer shall not sign a certificate or recommendation for the admission of a person to, or for the further observation or treatment of a person in, a hospital.

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Prohibited interests of authorised officers.

31. An authorised officer, being an officer within the meaning of the Public Service Act, 1979, who has a pecuniary interest, directly or indirectly, in an authorised hospital shall be deemed to be guilty of a breach of discipline within the meaning of that Act.

DIVISION 5.—Welfare officers.**Appointment of welfare officers.**

32. The Secretary may appoint such persons as he thinks necessary to be welfare officers for the purposes of this Act.

10 Functions of welfare officers.

33. (1) The functions of a welfare officer are—

(a) where—

(i) a temporary patient or a continued treatment patient has been granted leave of absence from a hospital;

15 (ii) the patient has suffered a breakdown in his mental health; and

(iii) the patient's return to the hospital is desirable on account of his breakdown,

20 on the direction of the medical superintendent, to escort and convey or to assist in escorting and conveying the patient to the hospital;

(b) to escort and convey or to assist in escorting and conveying patients from a hospital to another hospital or to a public hospital;

25 (c) to visit patients who have been granted leave of absence from a hospital; and

(d) to visit the relatives or friends of patients referred to in paragraph (c) for the purpose of advising them on matters relating to the welfare of those patients.

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(2) A welfare officer may exercise such other functions as are conferred or imposed on welfare officers by or under this Act or as are assigned to him by an authorised officer.

DIVISION 6.—*Fees.*5 **Fixing of fees.**

34. (1) The Secretary may, from time to time, by notice published in the Gazette—

- 10 (a) fix fees for services provided by hospitals mentioned in the Fifth Schedule to the Public Hospitals Act, 1929, to the patients and other persons detained in those hospitals; and
- (b) make such provisions, not inconsistent with this Act, as to the payment and recovery of those fees as he thinks fit.

(2) Fees fixed under subsection (1) may apply differently according to different factors of a specified kind.

15 (3) Without restricting any power of the Secretary to exempt any patients or other persons referred to in subsection (1) from the payment of fees fixed under that subsection, fees shall not be payable by or on behalf of—

- 20 (a) a child whom the Minister for Youth and Community Services has, under section 108 of the Community Welfare Act, 1982, declared to be a ward and of whom that Minister is, under section 110 (1) of that Act, the guardian; or
- (b) an intellectually handicapped person, within the meaning of section 258 of the Community Welfare Act, 1982, under the guardianship of the Minister for Youth and Community Services.

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(4) The Secretary may, from time to time, by notice published in the Gazette, amend, substitute or revoke a notice published under subsection (1).

Collection of fees.

5 **35. (1)** A fee fixed under section 34 (1) for services provided by a hospital shall be paid by or on behalf of a patient or other person detained in a hospital to the hospital which provided the service to him.

(2) A fee fixed under section 34 (1) due and payable by or on behalf of a patient or other person to a hospital may be recovered by the
10 hospital as a debt in any court of competent jurisdiction from—

(a) the patient or other person or his estate before or after his discharge from the hospital and before his death; or

(b) the estate of the patient or other person after his death.

(3) The Secretary may, at his discretion, waive, reduce or postpone
15 the payment of a fee fixed under section 34 (1) which is payable by or on behalf of a patient or other person.

DIVISION 7.—Miscellaneous.**Annual report.**

20 **36. (1)** The Secretary shall, as soon as practicable after 30th June in each year, cause to be prepared and forwarded to the Minister a report as to—

(a) the state and condition of each hospital;

(b) the case of the patients and other persons detained in those hospitals; and

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(c) such other matters as he thinks fit,
for the 12 months preceding that date.

(2) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by him of
5 the report.

PART III.

MENTAL HEALTH REVIEW TRIBUNAL.

DIVISION 1.—*Constitution and functions.*

Interpretation: Pt. III.

10 37. In this Part—

“Deputy President” means a person appointed, for the time being, as a Deputy President of the Tribunal;

“member” means a person appointed, for the time being, as a member of the Tribunal;

15 “President” means the person appointed, for the time being, as the President of the Tribunal.

The Tribunal.

38. (1) There shall be a Mental Health Review Tribunal.

(2) The Tribunal shall have a seal of which judicial notice shall be
20 taken.

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Members of the Tribunal.

39. (1) Subject to this section, the members of the Tribunal shall be appointed by the Governor.

(2) The members shall comprise—

- 5 (a) a qualified person appointed as President of the Tribunal; and
(b) persons appointed from the following classes of persons:—
 (i) barristers and solicitors;
 (ii) psychiatrists; and
10 (iii) persons having, in the opinion of the Governor, other suitable qualifications or experience.

(3) The members may include one or more qualified persons appointed as a Deputy President or Deputy Presidents of the Tribunal.

(4) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, in his capacity as a
15 member, subject to that Act while he holds office as a member.

(5) Schedule 2 has effect with respect to the membership of the Tribunal.

Functions of the Tribunal.

40. The Tribunal shall have and may exercise the functions conferred or
20 imposed on it by or under this or any other Act.

Composition of the Tribunal.

41. (1) In the exercise of its functions under section 106 and in the exercise of its functions relating to forensic patients, the Tribunal shall be constituted by the following members nominated by the President:—

- 25 (a) the President or a Deputy President;

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- (b) a member of the class referred to in section 39 (2) (b) (ii); and
- (c) a member of the class referred to in section 39 (2) (b) (iii).

(2) Except as provided by subsection (1), the Tribunal shall be constituted by the following members nominated by the President:—

- 5
- (a) the President, a Deputy President or a member of the class referred to in section 39 (2) (b) (i);
 - (b) a member of the class referred to in section 39 (2) (b) (ii); and
 - (c) a member of the class referred to in section 39 (2) (b) (iii).

(3) A nomination made for the purposes of subsection (1) or (2)
10 may be made generally or in particular case or class of cases.

(4) The President shall notify a member nominated under subsection (1) or (2) (other than the President) of his nomination as soon as practicable after the nomination is made.

Delegation.

15 42. (1) The President may, by instrument in writing, delegate to a member, the Registrar of the Tribunal or a prescribed officer or prescribed employee of the Tribunal the exercise of such of the functions of the President as are specified in the instrument.

(2) A function the exercise of which has been delegated under this
20 section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of
25 delegation.

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(4) Notwithstanding any delegation under this section, the President may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the President and shall be deemed to have been done or suffered by the President.

(6) The President may, by instrument in writing, revoke wholly or in part any delegation under this section.

(7) An instrument purporting to have been signed by a person in his capacity as a delegate of the President shall, in all courts and before all persons acting judicially, be received in evidence as if it were an instrument duly executed by the President and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the President.

DIVISION 2.—*Conduct of meetings.*

15 Meetings of the Tribunal.

43. Where sufficient members have been appointed, more than one meeting of the Tribunal may be held at the same time.

Procedure at meetings of the Tribunal.

44. The procedure for the calling of, and for the conduct of business at, any meeting of the Tribunal shall, subject to this Part and any rules of the Tribunal made under section 58, be as determined by the Tribunal.

Determination whether a person is a mentally ill person.

45. A member shall not determine, for the purposes of this Act, that a person is a mentally ill person unless the member is satisfied, beyond a reasonable doubt, that the person is a mentally ill person.

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Appointment of person to assist the Tribunal.

46. The President may appoint a person to assist the Tribunal in respect of any matter before it.

Chairman and votes of members.

- 5 **47.** At a meeting of the Tribunal—
- (a) the President, Deputy President or member of the class referred to in section 39 (2) (b) (i), as the case may be, nominated by the President shall preside as chairman of the meeting;
 - 10 (b) except as provided by paragraph (c), questions arising at the meeting shall be determined by a majority of votes of the members present and voting;
 - (c) the decision of the chairman of the meeting upon any question of law or procedure which may arise at that meeting shall be the decision of the Tribunal; and
 - 15 (d) the chairman of the meeting shall have, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

Adjournment.

48. The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit.

20 Proceedings open to public.

49. The proceedings of the Tribunal shall, unless the Tribunal otherwise determines, be open to the public.

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Publication of names, etc.

50. (1) The name of a person who is involved in any matter before the Tribunal shall not, except with the approval of the Tribunal, be published or broadcast.

5 (2) A report (other than an official report) of any matter before the Tribunal shall not include information which identifies or may lead to the identification of any person the publication or broadcasting of whose name is prohibited by subsection (1).

10 (3) Information given or any statement made in any matter before the Tribunal shall not, except with the approval of the Tribunal, be published or broadcast.

(4) A person—

(a) who publishes or broadcasts the name of a person the publication or broadcasting of which is prohibited by subsection (1); or

15 (b) who publishes or broadcasts a report which contravenes subsection (2) or (3),

shall be guilty of an offence against this Act.

Rights of appearance and representation.

51. (1) A person having any matter before the Tribunal shall, unless 20 the Tribunal otherwise approves, appear before the Tribunal during the hearing of the matter.

(2) A person appointed under section 46 may appear before the Tribunal in relation to any matter in respect of which he is appointed.

25 (3) A forensic patient having any matter before the Tribunal shall be represented by a barrister or solicitor or, with the approval of the Tribunal, by another person of his choice unless he decides that he does not want to be so represented.

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(4) A patient, other than a forensic patient, or other person detained in a hospital having any matter before the Tribunal may be represented by a barrister or solicitor or, with the approval of the Tribunal, by another person of his choice.

5 Inspection, etc., of medical records.

52. (1) A patient or other person detained in a hospital having any matter before the Tribunal shall not, without the approval of the Tribunal, be entitled to inspect or otherwise have access to any medical records in the possession of any person relating to the patient or person.

10 **(2)** Subject to any order or direction of the Tribunal, a representative, referred to in section 51, of a person having any matter before the Tribunal shall be entitled, at any time before or during the consideration of that matter by the Tribunal, to inspect or otherwise have access to any
15 medical records in the possession of any person relating to the firstmentioned person.

(3) Subject to any order or direction of the Tribunal, in relation to an inspection under subsection (2) of, or other access under that subsection to, any medical record relating to a person—

20 (a) where a medical practitioner warns the representative of the person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records, the representative shall have full and proper regard to that warning; and

25 (b) the representative shall not be obliged to disclose any information obtained by virtue of the inspection or other access to the person.

(4) An order or direction of the Tribunal under subsection (2) or (3) shall have effect according to its tenor.

Functions of the Tribunal as to the production of evidence.

53. (1) Subject to the rules of the Tribunal, the Tribunal shall have and
30 may exercise the functions vested in the Court in respect of the following matters:—

(a) compelling the attendance of witnesses and their examination on oath, affirmation or declaration;

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- (b) compelling the production, discovery and inspection of books, records, documents and other papers;
 - (c) compelling witnesses to answer questions which the Tribunal considers to be relevant in any proceedings before it;
 - 5 (d) apprehending, detaining and punishing persons guilty of contempt, or of disobedience of any order made by the Tribunal, or of any process issuing out of the Tribunal;
 - (e) making recommendations as to the prosecution of witnesses for perjury,
- 10 and the exercise by the Tribunal of any such function has the same effect as it would have if exercised by the Court.

(2) All process issuing out of the Tribunal shall be in or to the effect of the form prescribed by the rules of the Tribunal and be signed by the President or a Deputy President.

15 **Records of proceedings before the Tribunal.**

54. (1) Proceedings before the Tribunal shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not be transcribed unless the President directs that the record be transcribed or the transcription of those records is otherwise required
20 by law, or on the application of a person appearing before the Tribunal.

(2) Any transcription so made shall, except as to such part, if any, of the transcription as is specified by the Tribunal, be supplied to a person appearing before the Tribunal upon payment of the fee prescribed by the rules of the Tribunal corresponding to the fee referred to in section 73 (2)
25 of the Justices Act, 1902, for copies of depositions.

Record of decision.

55. (1) Every decision of the Tribunal in respect of any matter before it at any meeting of the Tribunal shall be recorded in the form of an instrument in writing signed by the chairman of that meeting and shall
30 include the reasons for the decision of each member with respect to the matter.

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(2) Nothing in subsection (1) prevents the Tribunal from giving an oral decision in respect of any matter before it.

(3) An oral decision given by the Tribunal under subsection (2) shall be recorded in accordance with subsection (1).

5 Nature of decision of the Tribunal.

56. (1) A decision of the Tribunal with respect to any matter before it shall be final and conclusive and shall not be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed or called in question by any court of judicature 10 on any account whatsoever.

(2) Nothing in this section affects section 106.

Certain supervisory jurisdiction excluded.

57. (1) Without limiting section 56, no proceeding, whether for an order in the nature of prohibition, certiorari or mandamus or for a declaration 15 or injunction or for any other relief shall lie in respect of any decision of the Tribunal or any proceeding or any step in any matter before the Tribunal.

(2) Nothing in this section affects section 106.

Rules.

20 58. (1) Five members nominated by the President, who shall include the President or a Deputy President, or both, may make rules of the Tribunal, not inconsistent with this Act or the regulations, for or with respect to the calling of, and the conduct of business at, any meeting of the Tribunal and generally to prescribe all matters that by this Act are required or permitted 25 to be prescribed by rules of the Tribunal or are necessary or convenient to be prescribed by rules of the Tribunal for carrying out or giving effect to this Act.

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(2) Different rules of the Tribunal may be made to apply in different circumstances.

Gazettal, etc., of rules.

5 **59.** Subsections (I), (II) and (III) of section 41 of the Interpretation Act, 1897, apply to and in respect of a rule of the Tribunal made under this Act in the same way as they apply to and in respect of a regulation referred to in those subsections.

Judicial notice, etc., of rules.

60. (1) Judicial notice shall be taken of—

- 10 (a) a rule of the Tribunal made or purporting to have been made under this Act and published in the Gazette; and
(b) the date of its publication.

(2) It shall be presumed, in the absence of evidence to the contrary, that all conditions and steps precedent to the making of a rule of the
15 Tribunal under this Act have been complied with and performed.

DIVISION 3.—Miscellaneous.**Registrar and other officers of the Tribunal.**

61. (1) The registrar of a Division of the Court specified in section 38 (b) of the Supreme Court Act, 1970, being a Division nominated by the
20 Minister, shall be the Registrar of the Tribunal.

(2) Except as provided by subsection (1), such officers and employees as may be necessary for the exercise of the functions of the Tribunal may be appointed and employed under and subject to the Public Service Act, 1979.

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Authentication of documents.

62. Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President or a Deputy President.

5 Judicial notice of certain signatures.

63. Judicial notice shall be taken of the signature of the President, a Deputy President or the Registrar of the Tribunal when appearing on a document issued by the Tribunal.

Certain proceedings prohibited.

10 64. (1) No proceedings lie against the Tribunal or an officer of the Tribunal for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal or officer, and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this Act, if the Tribunal or officer has acted
15 in good faith and with reasonable care.

(2) A member, while acting as a member, shall have the immunities of a Judge of the Court.

Application of the Defamation Act, 1974.

65. For the purposes of section 18 of the Defamation Act, 1974, the
20 proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

Biennial report.

66. (1) The President shall, as soon as practicable after the date that occurs on the expiration of 12 months after the day appointed and notified
25 under section 2 (2), and thereafter, as soon as practicable after 1st March

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in each second year, prepare and forward to the Minister a report as to the exercise by the Tribunal of its functions for the twelve-monthly period or the two-yearly period, as the case may require, ending on that date.

- (2) The Minister shall lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after the receipt by him of the report.

PART IV.

INFORMAL ADMISSION OF PERSONS TO HOSPITALS.

Admission upon own request.

- 10 67. Subject to this Part, a person may be admitted to a hospital—
- (a) except as provided by paragraph (b), upon an application made, orally or in writing, by him to the medical superintendent; or
 - (b) where the person is an intellectually handicapped person under guardianship, upon an application made, orally or in writing, by him to the medical superintendent, being an application which is
- 15 approved, in writing, by the Tribunal.

Refusal to admit.

68. The medical superintendent may refuse to admit a person to a hospital as an informal patient if he is not satisfied that the person is likely
- 20 to benefit from care and treatment as an informal patient.

Informal patient under 16 years of age.

69. Where a person under the age of 16 years (other than an intellectually handicapped person under guardianship) is admitted to a hospital as an informal patient, the medical superintendent shall, as soon as practicable after admission, do all such things as are reasonably practicable to
- 25 notify the parents or guardian of the patient of his admission.

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Informal patient of 14 or 15 years of age.

70. Where a parent or the guardian of a person of 14 or 15 years of age who has been admitted to a hospital as an informal patient notifies the medical superintendent that he objects to the person's receiving care and treatment at the hospital, the medical superintendent shall discharge the person unless the person elects to continue as an informal patient.

Admission of persons under 14 years of age.

71. A person under the age of 14 years shall not be admitted to a hospital as an informal patient if, at or prior to the time at which he seeks to be so admitted, a parent or the guardian of the person has notified the medical superintendent that he objects to the person's being so admitted.

Informal patient under 14 years of age.

72. Where a parent or the guardian of a person under the age of 14 years who has been admitted to a hospital as an informal patient notifies the medical superintendent that he objects to the person's receiving care and treatment at the hospital, the medical superintendent shall discharge the person.

Functions of medical superintendent concerning informal patients.

73. A medical superintendent may—

- (a) discharge an informal patient; or
- (b) where, having regard to the condition of an informal patient, he considers it proper to do so, do all such things as may be necessary to cause the patient to be admitted to and detained in a hospital under Part V.

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PART V.

INVOLUNTARY ADMISSION OF PERSONS (OTHER THAN FORENSIC PATIENTS)
TO HOSPITALS.**Interpretation: Pt. V.**

- 5 **74.** A reference in this Part to the medical superintendent of a hospital includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital.

Admission upon the certificate of a medical practitioner.

- 10 **75. (1)** A person may be admitted to and detained in a hospital upon the certificate of a medical practitioner who—

- (a) has personally examined the person;
- (b) is of the opinion that the person is a mentally ill person;
- 15 (c) has satisfied himself, by such inquiry as is reasonable having regard to the circumstances of the case, that, because no other satisfactory means for dealing with the person are reasonably available, involuntary admission and detention are necessary; and
- (d) is not a near relative of the person.

(2) The certificate referred to in subsection (1) shall be in or to the effect of the form set out in Part I of Schedule 3.

- 20 **(3)** Where a medical practitioner who gives a certificate referred to in subsection (1) has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative, partner or assistant who has such an interest, he shall, upon giving the certificate, disclose that fact and give particulars of the interest in the certificate.

- 25 **(4)** Where a medical practitioner who gives a certificate referred to in subsection (1) is of the opinion—

- (a) that the condition of the person in respect of whom the certificate is given is such that the assistance of a member of the police force is required in order to convey the person to a hospital; and

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(b) that no other means of conveying the person to a hospital are reasonably available,

he may endorse the certificate in or to the effect of the form set out in Part II of Schedule 3.

5 (5) A member of the police force to whose notice an endorsement under subsection (4) is brought shall, as soon as practicable, apprehend and take or assist in taking the person in respect of whom the certificate is given to a hospital or cause or make arrangements for some other member of the police force to apprehend and take or assist in taking the person to a hospital.

10 (6) A member of the police force may—

(a) enter premises, if need be by force, for the purpose of apprehending a person in accordance with subsection (5); and

(b) apprehend a person in accordance with that subsection, without the necessity of the warrant of a justice.

15 (7) A person shall not be admitted to or detained in a hospital upon a certificate referred to in subsection (1) unless he is so admitted within 10 days after the day on which the certificate is given.

Admission upon request of relative or friend.

20 76. (1) Subject to subsection (2), a person may be admitted to and detained in a hospital upon a written request for the person to be so admitted and detained made by a relative or friend of the person to the medical superintendent.

25 (2) The medical superintendent shall not admit a person in respect of whom a request under subsection (1) is made unless he is satisfied that, because of the distance required to be travelled in order to have the person examined by a medical practitioner and the urgency of the circumstances, it is not reasonably practicable to seek the admission of the person under section 75.

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Admission upon information of member of police force.

77. (1) A person may be admitted to and detained in a hospital where he is apprehended and taken to the hospital by a member of the police force who, in writing, informs the medical superintendent—

- 5 (a) that he believes the person to be a mentally ill person; and
- (b) that—
- 10 (i) the person has recently attempted to kill himself or to cause serious bodily harm to himself;
- (ii) there are reasonable grounds for believing that it is probable that the person will, by act or neglect, attempt to kill himself or to cause serious bodily harm to himself;
- (iii) the person was found committing an offence by the member of the police force; or
- 15 (iv) the person was found by the member of the police force in circumstances which led him reasonably to believe that the person was about to commit an offence.

(2) A member of the police force may apprehend a person in accordance with subsection (1) without the necessity of the warrant of a justice.

Admission upon information of welfare officer.

- 20 78. A person may be admitted to and detained in a hospital where he is accompanied to the hospital by a welfare officer who, in writing, informs the medical superintendent that he believes the person to be a mentally ill person.

Refusal to admit.

- 25 79. The medical superintendent may refuse to admit a person under section 75, 76, 77 or 78 if he is of the opinion that the person is not a mentally ill person.

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Examination on admission.

80. (1) A person admitted to and detained in a hospital under section 75, 76, 77 or 78—

- 5 (a) shall be examined, as soon as practicable after his admission, by the medical superintendent; and
- (b) shall not be detained after the examination unless the medical superintendent certifies that, in his opinion, the person is a mentally ill person.

10 **(2)** An examination under subsection (1) shall not be used for the purpose of determining whether the person examined should be brought before a stipendiary magistrate under section 84 (3).

Administration of medication.

15 **81.** A person shall not administer or authorise the administration of any medication to a person admitted to and detained in a hospital under section 75, 76, 77 or 78 if the administration of the medication is likely to significantly impair the person's ability to communicate adequately with any other person who may be engaged to represent the person at an inquiry under section 85.

Further examination after admission.

20 **82. (1)** The medical superintendent shall, as soon as practicable after the admission of a person to the hospital, cause the person to be examined by 2 medical practitioners, of whom one shall be a psychiatrist, separately and apart from each other.

25 **(2)** Where the medical superintendent did not, under section 80 (1), himself examine the person admitted to and detained in the hospital, he may be one of the examining medical practitioners referred to in subsection (1).

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(3) If either of the 2 medical practitioners referred to in subsection (1) is of the opinion that the person examined by him is not a mentally ill person, the medical superintendent shall, as soon as practicable after being notified of that opinion, cause the person to be examined by another medical practitioner, who shall be a psychiatrist.

(4) A medical practitioner upon whose certificate or request a person has been admitted to a hospital shall not examine the person for the purposes of this section.

Consequence of examination.

10 **83. (1)** If, after the examination, under section 82, of a person admitted to and detained in a hospital, 2 medical practitioners—

(a) are of the opinion that the person is a mentally ill person, they shall advise the medical superintendent accordingly in or to the effect of the prescribed form; or

15 (b) are not of the opinion that the person is a mentally ill person, the person shall be discharged from the hospital.

(2) Where a medical practitioner who furnishes advice under subsection (1) (a) has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative, partner or assistant who has such an interest, 20 he shall, upon furnishing the advice, disclose that fact and give particulars of the interest in the advice.

Proceedings for inquiry before stipendiary magistrate.

25 **84. (1)** On receipt of advice furnished under section 83 (1) (a), the medical superintendent to whom the advice is furnished shall inform the person in respect of whom the advice is furnished of the duty imposed under subsection (2) on the medical superintendent to do all such things as are reasonably practicable to give the notice referred to in that subsection and shall obtain, or make all reasonable efforts to obtain, from the person the information required to enable the giving of that notice.

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(2) After complying with subsection (1), the medical superintendent shall, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of his intention to bring the person in respect of whom the advice under section 83 (1) (a) is
5 furnished before a stipendiary magistrate:—

- (a) the nearest relative, if there is one, of the person in respect of whom the advice is furnished, or relatives, up to 3 in number, if there are so many;
- 10 (b) in respect of a person other than a person to whom paragraph (e) applies, the person's guardian, if any;
- (c) any personal friend or friends of the person, up to 2 in number, who are either known as, or are said by the person to be, his personal friends;
- 15 (d) any other persons in Australia, up to 2 in number, whom the person says he wishes to be notified of his intention;
- (e) where the person is—
 - 20 (i) a child whom the Minister for Youth and Community Services has, under section 108 of the Community Welfare Act, 1982, declared to be a ward and of whom that Minister is, under section 110 (1) of that Act, the guardian; or
 - (ii) an intellectually handicapped person under guardianship of the Minister for Youth and Community Services,
that Minister.

25 (3) After giving notice in accordance with subsection (2), the medical superintendent shall, as soon as possible, bring the person in respect of whom the advice under section 83 (1) (a) is furnished before a stipendiary magistrate.

Inquiry.

30 **85. (1)** Where a person is brought before a stipendiary magistrate under section 84 (3), the magistrate shall hold an inquiry concerning the person.

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(2) The stipendiary magistrate may appoint a person to assist him in respect of the inquiry and a person so appointed may appear before the magistrate during the holding of the inquiry.

5 (3) An inquiry shall, unless the stipendiary magistrate otherwise determines, be open to the public.

(4) The person brought before the stipendiary magistrate shall be represented by a barrister or solicitor or, with the approval of the magistrate, by another person of his choice unless he decides that he does not want to be so represented.

10 (5) In the course of the inquiry, the stipendiary magistrate shall consider the reports and recommendations of the medical practitioners under sections 82 (3) and 83 (1) (a), as the case may be, concerning the person in respect of whom the inquiry is held and such other evidence as may be placed before him.

15 (6) The stipendiary magistrate may, at any time, adjourn the inquiry for a period not exceeding 14 days.

(7) The stipendiary magistrate shall adjourn the inquiry if he is not satisfied—

20 (a) that the person in respect of whom the inquiry is held has been informed of the duty imposed under section 84 (2) on the medical superintendent relating to the giving of the notice specified in that subsection; or

(b) that—

25 (i) the notice specified in that subsection has been given; or
(ii) all such things as are reasonably practicable have been done to give that notice.

Other provisions relating to inquiry.

30 **86. (1)** Sections 50 and 52 apply to and in respect of an inquiry in the same way as those sections apply to and in respect of a matter before the Tribunal and, in the application of those sections—

(a) a reference to the Tribunal shall be read and construed as a reference to the stipendiary magistrate who holds the inquiry;

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- (b) a reference to a patient shall be read and construed as a reference to the person in respect of whom the inquiry is held; and
- (c) a reference to a representative, referred to in section 51, of a person shall be read and construed as a reference to a representative, referred to in section 85, of a person.

(2) The Justices Act, 1902, in so far as it is not inconsistent with this Part, applies to and in respect of a stipendiary magistrate who holds an inquiry and an inquiry in the same way as it applies to and in respect of a justice or justices and proceedings before a justice or justices, respectively.

10 Result of inquiry.

87. (1) Where, pursuant to an inquiry under section 85 concerning a person, a stipendiary magistrate is satisfied beyond a reasonable doubt that the person is a mentally ill person, he shall—

- (a) order—
- (i) the discharge of the person to the care of a relative or friend who satisfies the stipendiary magistrate that the person will be properly taken care of; or
- (ii) such other course of action, other than that referred to in paragraph (b), as he thinks fit in respect of the person;
- or
- (b) where he is of the opinion that it is not appropriate to make an order under paragraph (a), direct that the person be detained in, or admitted to and detained in, a hospital specified in the direction for further observation or treatment, or both, as a temporary patient for such period as he shall, having regard to all the circumstances of the case, specify, being a period not exceeding 3 months.

(2) Where, pursuant to an inquiry under section 85 concerning a person, a stipendiary magistrate is not satisfied beyond reasonable doubt that the person is a mentally ill person, he shall order that the person be discharged from the hospital in which he is detained.

(3) An order or direction made or given under this section by a stipendiary magistrate shall have effect according to its tenor.

Mental Health.

Notice of temporary patient's rights of appeal.

5 **88.** Where a direction is given under section 87 (1) (b) in respect of a person, the medical superintendent of the hospital in which the person was detained immediately before the giving of the direction shall, as soon as practicable after the direction is given, give or cause to be given to the person a notice, in or to the effect of the prescribed form, which contains a statement of the rights of appeal conferred on the person, as a temporary patient, by or under this Act.

Bringing of certain temporary patients before the Tribunal.

10 **89.** Where it appears that a temporary patient will, immediately before the expiration of the period of detention directed in respect of the patient under section 87 (1) (b), continue to be detained in a hospital as a temporary patient, the medical superintendent shall, as soon as practicable before the expiration of that period, cause the patient to be brought before
15 the Tribunal.

Determination by the Tribunal.

90. (1) Where a temporary patient is brought before the Tribunal under section 89, the Tribunal shall determine whether the patient is a mentally ill person.

20 **(2)** Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, it shall determine whether the patient should be—

- (a) classified as a continued treatment patient and detained in a hospital for further observation or treatment, or both; or
- 25 (b) detained in a hospital for further observation or treatment, or both, as a temporary patient for such period, not exceeding 3 months, as the Tribunal specifies in its determination.

(3) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from
30 the hospital in which he is detained.

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(4) A determination made under this section by the Tribunal shall be in or to the effect of the prescribed form and shall have effect according to its tenor.

Further bringing of certain temporary patients before the Tribunal.

- 5 **91.** Where, in relation to a temporary patient—
- (a) the Tribunal has made a determination under section 90 (2) (b);
and
 - (b) it appears that the patient will, immediately before the expiration
of the period determined in respect of him under that paragraph,
10 continue to be detained in a hospital as a temporary patient,
the medical superintendent shall, as soon as practicable before the expiration
of that period, cause the patient to be brought before the Tribunal.

Further determination by the Tribunal.

15 **92.** (1) Where a temporary patient is brought before the Tribunal under section 91, the Tribunal shall determine whether the patient is a mentally ill person.

(2) Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, the Tribunal shall classify the patient as a continued treatment patient.

20 (3) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from the hospital in which he is detained.

(4) A determination made under this section by the Tribunal shall be in or to the effect of the prescribed form and shall have effect according
25 to its tenor.

Mental Health.

Classification of certain persons as informal patients.

5 **93.** Nothing in this Part prevents a medical superintendent at any time after a person is admitted to and detained in a hospital under section 75, 76, 77 or 78 and before an inquiry under section 85 is held concerning the person from classifying the person as an informal patient and dealing with the person accordingly.

Leave of absence for certain persons.

10 **94.** Section 107 applies to and in respect of a person admitted to and detained in a hospital under section 75, 76, 77 or 78 until such time as the person is discharged, the person is classified under section 93 as an informal patient or an inquiry under section 85 is held concerning the person, whichever first occurs, in the same way as section 107 applies to and in respect of a temporary patient or a continued treatment patient.

PART VI.

15 REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PATIENTS (OTHER THAN FORENSIC PATIENTS).

Interpretation: Pt. VI.

95. In this Part, "patient" does not include a forensic patient.

Medical examination of continued treatment patients.

20 **96.** The medical superintendent shall medically examine or cause to be medically examined, at such intervals as may be prescribed, each continued treatment patient for the purpose of determining whether or not the patient's continued detention in the hospital is necessary.

Mental Health.

Review of continued treatment patients by the Tribunal.

97. (1) The Tribunal shall review, at least once every 6 months, the case of each continued treatment patient in order to determine whether the patient is a mentally ill person.

5 (2) Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, the patient shall, subject to this Part, continue to be detained in a hospital for further observation or treatment, or both, as a continued treatment patient.

10 (3) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from the hospital in which he is detained.

15 (4) The Tribunal may, as a consequence of reviewing, under subsection (1), the case of a patient to whom subsection (2) applies, where it is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient from causing harm to himself or others, order that the patient be allowed to be absent from a hospital for such period and subject to such conditions, if any, as it thinks fit.

20 (5) Section 107 (subsection (1) excepted) applies to and in respect of a continued treatment patient absent from a hospital pursuant to an order under subsection (4) in the same way as it applies to and in respect of a patient who is absent from a hospital under section 107 (1).

Review of informal patients by the Tribunal.

98. (1) The Tribunal shall review, at least once every 12 months, the case of each informal patient who has received care or treatment, or both, 25 in a hospital for a continuous period in excess of 12 months.

(2) The Tribunal may, as a consequence of reviewing, under subsection (1), the case of a patient, order the discharge of the patient from a hospital.

Mental Health.

Classification of certain patients as informal patients.

99. A medical superintendent may, at any time, classify a temporary patient or a continued treatment patient as an informal patient if—

- 5 (a) the patient, in the opinion of the medical superintendent, is likely to benefit from care and treatment as an informal patient; and
- (b) the patient agrees to being classified as an informal patient.

Discharge of informal patients.

100. (1) An informal patient may, at any time, discharge himself from or leave a hospital.

- 10 (2) A medical superintendent may, at any time, discharge an informal patient if, in his opinion, the patient is not likely to benefit from further care and treatment as an informal patient.

Discharge of temporary patients and continued treatment patients.

101. A medical superintendent shall discharge a temporary patient or a 15 continued treatment patient if, in his opinion, the patient has ceased to be a mentally ill person.

Discharge of certain patients on patient's application.

102. (1) A temporary patient or a continued treatment patient may apply, orally or in writing, to the medical superintendent to be discharged.

- 20 (2) On receipt of an application under subsection (1) from a patient, the medical superintendent may—

- (a) discharge the patient; or
- (b) exercise the functions conferred on him under section 99.

Mental Health.

Discharge of certain patients on relative's or friend's application.

103. (1) A relative or friend of a temporary patient or a continued treatment patient may, at any time, apply to the medical superintendent for the discharge of the patient.

- 5 **(2)** On receipt of an application under subsection (1) in relation to a patient, the medical superintendent may discharge the patient if—
- (a) the relative or friend gives the medical superintendent an undertaking, in writing, that the patient will be properly taken care of;
 - 10 (b) the medical superintendent is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient from causing harm to himself or others; and
 - (c) where the patient is—
 - 15 (i) a child whom the Minister for Youth and Community Services has, under section 108 of the Community Welfare Act, 1982, declared to be a ward and of whom that Minister is, under section 110 (1) of that Act, the guardian; or
 - (ii) an intellectually handicapped person under guardianship of the Minister for Youth and Community Services,that Minister consents to the application.

20 Appeal against refusal to discharge.

104. (1) Where a medical superintendent has refused an application under section 102 (1) or section 103 (1) by or on behalf of a patient, or has failed to determine such an application within 72 hours after the making of the application, the person making the application or any other person
25 appointed by the patient may, in accordance with the regulations, appeal, orally or in writing, against the refusal to—

- (a) an authorised officer; or
- (b) the Tribunal.

(2) Where an appeal under subsection (1) is made orally, the
30 person or persons to whom the appeal is made shall forthwith make a record of the appeal.

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(3) Where an appeal is made under subsection (1) by or on behalf of a patient, the medical superintendent shall furnish to the person or body to whom the appeal is made a report concerning the patient which includes the medical superintendent's reasons for refusing to discharge the patient.

5 Determination of appeal.

105. (1) The person or body to whom an appeal is made under section 104 (1), in determining the appeal, shall have and may exercise the functions of the medical superintendent with respect to the application the refusal of which has given rise to the appeal and may make an order accordingly.

10 (2) Where an appeal is made under section 104 (1) to the Tribunal by or on behalf of a patient, the Tribunal, in addition to its functions under subsection (1), may, having regard to—

(a) the length of time between the date of the last determination under this Act that the patient was a mentally ill person and the date of
15 the appeal;

(b) the frequency of appeals made under section 104 (1) by or on behalf of the patient;

(c) the report concerning the patient furnished under section 104 (3);
and

20 (d) any other matter that the Tribunal considers relevant,

determine that no further right of appeal may be exercised by or on behalf of the patient under section 104 (1) to the Tribunal before the date on which the patient will next be brought before the Tribunal under the provisions of this Act or the date on which the patient's case will next be reviewed by
25 the Tribunal under those provisions, as the case may require.

Court order for discharge of patient.

106. (1) Where—

(a) the Tribunal receives information upon oath; or

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(b) the Tribunal has reason or cause to suspect,

that a person who is not a mentally ill person is detained in a hospital, the Tribunal shall order the medical superintendent to bring the person before the Tribunal for examination at a time specified in the order.

- 5 (2) Where, upon the examination of a person pursuant to subsection (1), the medical superintendent is unable to prove beyond a reasonable doubt that the person is a mentally ill person, the Tribunal shall order that the person be immediately discharged from the hospital in which he is detained.

Leave of absence.

- 10 **107. (1)** Where a medical superintendent is of the opinion that it will benefit the health of a temporary patient or a continued treatment patient to do so, he may allow the patient to be absent from a hospital for such period and subject to such conditions, if any, as he thinks fit.

(2) Where a patient who is absent from a hospital pursuant to
15 subsection (1) fails—

- (a) except as provided by subsection (3), to return to the hospital by the date on which the period for which his absence is allowed expires; or
- (b) to comply with a condition subject to which his absence is allowed,
20 he may, at any time after his failure, at the direction of the medical superintendent, be apprehended and dealt with as provided by section 110.

(3) Where, in respect of a patient who is absent from a hospital pursuant to subsection (1), a medical practitioner furnishes to the medical superintendent, before the date on which the period for which the patient's
25 absence is allowed expires, a certificate to the effect that, in the opinion of the medical practitioner, the detention of the patient in the hospital is no longer necessary, the medical superintendent shall, on receipt of the certificate, discharge the patient.

(4) Subsection (2) does not apply to a patient who has been
30 discharged under section 108 (2) or 109.

Mental Health.

Absence of patient for continuous period of not less than 28 days.

5 **108. (1)** Where a patient has, pursuant to section 107 (1), been absent from a hospital for a continuous period of not less than 28 days, the medical superintendent shall inquire into the welfare and mental health of the patient with a view to determining whether the patient should be immediately discharged.

(2) A medical superintendent shall discharge a patient following an inquiry under subsection (1) unless he is of the opinion that the further detention of the patient in the hospital is necessary.

10 (3) Nothing in this section affects section 107 (3).

Absence of patient for continuous period of not less than 12 months.

15 **109.** The medical superintendent shall discharge a patient who, in accordance with the provisions of this Part or otherwise than in accordance with those provisions, has been absent from a hospital for a continuous period of not less than 12 months.

Absence of patient without leave.

110. A temporary patient or a continued treatment patient, not being a patient to whom section 109 applies, who absents himself from a hospital, otherwise than in accordance with the provisions of this Part, may be apprehended at any time by—

- 25
- (a) the medical superintendent or any other person employed in the hospital;
 - (b) a member of the police force;
 - (c) a person authorised by the Minister or the medical superintendent;
or
 - (d) a person assisting the medical superintendent, any other person so employed, a member of the police force or a person so authorised,
- and, on being apprehended, shall be conveyed to and detained in the hospital from which he absented himself.

Mental Health.

Transfer of patients.

111. (1) An authorised officer may, by order in writing, direct the transfer of a temporary patient or a continued treatment patient from the hospital in which the patient is detained to another hospital.

5 (2) A medical superintendent may make arrangements with another medical superintendent for the transfer of a temporary patient or a continued treatment patient from the hospital in which the patient is detained to the hospital of which the other medical superintendent is the medical superintendent.

10 (3) An order under subsection (1) or arrangements under subsection (2) shall be sufficient authority for the transfer of a patient and for his reception into and detention in the hospital to which he is to be transferred.

PART VII.**15 FORENSIC PATIENTS.****Review following finding at special inquiry.**

112. (1) The Tribunal shall, as soon as practicable after the making of an order in respect of an accused person under section 428I (2) (b) or 428L (1) (b) (i) of the Crimes Act, 1900—

- 20 (a) review the person's case; and
- (b) make a recommendation to the Minister—
- (i) as to the person's detention, care and treatment; or
 - (ii) where the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release, as
- 25 to the person's release.

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(2) On receipt of a recommendation under subsection (1) in respect of a person, the Minister may—

5 (a) make an order for the person's detention in such place, being a hospital, a prison or any other place, and in such manner as is specified in the order; or

(b) where—

(i) the Tribunal has made a recommendation for the person's release; and

10 (ii) the Attorney General and the Minister for Police and Emergency Services have stated their intention not to proceed with any criminal charges against the person,

make an order, unconditionally or subject to conditions, for the person's release.

Order relating to person acquitted on ground of mental illness.

15 **113. (1)** The Tribunal shall, as soon as practicable after the making of an order in respect of a person under section 428s of the Crimes Act, 1900—

(a) review the person's case; and

(b) make a recommendation to the Minister—

20 (i) as to the person's detention, care and treatment; or

(ii) where the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release, as to the person's release.

25 (2) Where a recommendation under subsection (1) has been made to the Minister in respect of a person, the Governor may—

(a) make an order for the person's detention in such place, being a hospital, a prison or any other place, and in such manner as is specified in the order; or

30 (b) where the Tribunal has made a recommendation for the person's release, make an order, unconditionally or subject to conditions, for the person's release.

Mental Health.

Breach of condition of order for release.

114. (1) Where it appears to—

- (a) the Minister, in the case of an order made by him under section 112 (2) (b); or
- 5 (b) the Governor, in the case of an order made by him under section 113 (2) (b),

that a person has committed a breach of a condition of the order, the Minister or the Governor, as the case may require, may order that the person be apprehended and detained in such place, being a hospital, a prison
10 or any other place, and in such manner as is specified in the order.

(2) A member of the police force to whose notice an order under subsection (1) is brought shall, as soon as practicable, apprehend and take or assist in taking the person in respect of whom the order is made to the place specified in the order or cause or make arrangements for some other
15 member of the police force to apprehend and take or assist in taking the person to that place.

(3) A member of the police force may—

- (a) enter premises, if need be by force, for the purpose of apprehending a person in accordance with subsection (2); and
- 20 (b) apprehend a person in accordance with that subsection, without the necessity of the warrant of a justice.

(4) Where a credible person, on oath before a justice, shows reasonable cause to suspect that a person in respect of whom an order under subsection (1) is made is outside the State, the justice may issue a warrant
25 for the apprehension of the person in respect of whom the order under subsection (1) is made.

Security conditions for forensic patients.

115. A forensic patient detained in a hospital shall be subject to such security conditions as an authorised officer may consider necessary.

Mental Health.

Review of forensic patients by the Tribunal.

116. (1) The Tribunal may, at any time, and shall, at least once every 6 months or at the request of a medical superintendent—

- (a) review the case of each forensic patient; and
- 5 (b) make a recommendation to the Minister as to the patient's continued detention, care and treatment or the patient's release.

(2) Sections 112 (subsection (1) excepted) and 114 apply to and in respect of a recommendation made to the Minister under subsection (1) in respect of a forensic patient, other than a forensic patient detained 10 pursuant to an order under section 113 (2) (a), in the same way as those sections apply to and in respect of a recommendation under section 112 (1).

(3) Sections 113 (subsection (1) excepted) and 114 apply to and in respect of a recommendation made to the Minister under subsection (1) in respect of a forensic patient detained pursuant to an order under section 15 113 (2) (a) in the same way as those sections apply to and in respect of a recommendation under section 113 (1).

Requests for transfer to prison.

117. (1) A forensic patient who is detained in a hospital may, at any time, request the Tribunal to make a recommendation to the Minister for 20 an order that he be transferred to a prison.

(2) The Tribunal, after considering a request made to it under subsection (1), may make the recommendation requested by the forensic patient or may refuse to make that recommendation.

(3) Where the Tribunal makes a recommendation under subsection 25 (2) at the request of a forensic patient—

- (a) in the case of a forensic patient other than a forensic patient to whom paragraph (b) applies—the Minister; or
 - (b) in the case of a forensic patient detained pursuant to an order under section 113 (2) (a)—the Governor,
- 30 may make an order for the patient's transfer to a prison.

Mental Health.

Transfer of mentally ill prisoners to hospitals.

5 **118.** Where it appears to the Chief Medical Officer, on the certificates, in or to the effect of the form set out in Schedule 4, of 2 psychiatrists, that a person imprisoned in a prison, not being a person remanded in custody pending his trial for an offence, is mentally ill, the Chief Medical Officer may order that the person be transferred to a hospital.

Transfer of other prisoners to hospitals.

10 **119.** Without affecting section 118, where it appears to the Chief Medical Officer, on the certificates, in or to the effect of the form set out in Schedule 4, of 2 psychiatrists, that a person imprisoned in a prison, not being a person remanded in custody pending his trial for an offence, is suffering from a mental condition for which treatment is available in a hospital, the Chief Medical Officer may, with the consent in writing of the person, order that the person be transferred to a hospital.

15 Transfers between hospitals.

120. An authorised officer may order the transfer of a forensic patient detained in a hospital to any other hospital.

Termination of classification as forensic patient.

- 121. (1)** A person shall cease to be a forensic patient—
- 20 (a) in the case of a person in respect of whom an order has been made under section 428L (1) (b) (i) of the Crimes Act, 1900—
- (i) on the expiration of two-thirds of the term of any sentence stated in relation to the person under section 428L (1) (a) of that Act; or
- 25 (ii) on the day on which an unconditional order made under section 112 (2) (b), or section 112 (2) (b) as applied by section 116 (2), takes effect in relation to the person, whichever first occurs;

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- 5 (b) in the case of a person in respect of whom an order has been made under section 428s of the Crimes Act, 1900, on the day on which an unconditional order made under section 113 (2) (b), or section 113 (2) (b) as applied by section 116 (3), takes effect in relation to the person; and
- (c) in the case of a person (not being a person to whom paragraph (a) or (b) applies) who, during the term of his sentence, is transferred from a prison to a hospital—
- 10 (i) on the expiration of the term of his sentence, less any periods of remission to which he is entitled; or
- (ii) on the expiration of 10 years from the date of his conviction,
- whichever first occurs.

(2) Nothing in subsection (1) prevents the application of section 15 75, 76, 77 or 78 to a person who ceases to be a forensic patient.

Effect on sentence, etc., of detention in hospital.

122. Where a person convicted of an offence is transferred, under this Part, from a prison to a hospital, the period of his detention in the hospital shall, for the purposes of his sentence and parole, be treated as if it were 20 a period of imprisonment in a prison.

Special leave of absence in emergencies.

123. (1) A forensic patient may apply to the medical superintendent for special leave of absence in order to—

- 25 (a) visit a sick or dying near relative;
- (b) attend the funeral of a near relative; or
- (c) deal with circumstances constituting, in the opinion of the medical superintendent and the Secretary, an emergency.

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(2) On receipt of an application under subsection (1) from a forensic patient, the medical superintendent may, where he is of the opinion that no danger to any member of the public would result if the patient were to be granted special leave of absence, recommend to the Secretary that the
5 leave be granted.

(3) The Secretary may approve a recommendation under subsection (2) and grant, subject to such terms and conditions as he thinks fit, special leave of absence to a forensic patient.

(4) Where a forensic patient breaches any term or condition
10 subject to which special leave of absence is granted to him under subsection (3), he may be retaken and dealt with as provided by section 125.

Absence for emergency medical treatment.

124. (1) The medical superintendent may allow a forensic patient to be absent from a hospital for such period and subject to such conditions, if
15 any, as he thinks fit in order to receive emergency medical treatment.

(2) The medical superintendent shall forthwith notify the Minister of any absence allowed under subsection (1).

Retaking of escapees.

125. (1) A forensic patient who escapes from a hospital may be retaken
20 at any time by—

(a) the medical superintendent or any other person employed in the hospital;

(b) a member of the police force;

(c) a person authorised by the Secretary or the medical superintendent;
25 or

(d) a person assisting the medical superintendent, any other person so employed, a member of the police force or a person so authorised,

and, on being retaken, shall be conveyed to and detained in the hospital from which he escaped.

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(2) Where a credible person, on oath before a justice, shows reasonable cause to suspect that a forensic patient who has escaped from a hospital is outside the State, the justice may issue a warrant for the apprehension of the patient.

5 **Assisting or permitting escape.**

126. A person, being—

- (a) a person who rescues or attempts to rescue any person being conveyed to or detained in a hospital under this Part; or
- 10 (b) the medical superintendent or any other person employed in a hospital who—
 - (i) through wilful neglect or connivance, permits any person so detained to escape from a hospital; or
 - (ii) abets or connives at the escape of any person from a hospital,
- 15 shall be guilty of an offence against this Act and shall be liable—
 - (c) upon conviction or indictment to imprisonment for a period not exceeding 3 years; or
 - (d) upon summary conviction to—
 - 20 (i) imprisonment for a period not exceeding 1 year; or
 - (ii) a penalty not exceeding \$1,000, or both.

Form, effect, etc., of orders under this Part.

127. (1) An order under this Part shall be in writing.
- (2) An order under this Part shall have effect according to its tenor.
- 25 (3) An order which may be made under this Part by the Governor or the Minister for the transfer of a person between a prison and a hospital may, in the absence or unavailability, for any cause, of the Governor or the Minister, as the case may be, be made by any Minister of the Crown.
-

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PART VIII.**PATIENTS FUNDS AND ACCOUNTS.****Interpretation: Pt. VIII.**

128. In this Part—

- 5 “patient’s account” means the account kept in relation to a patient under section 130 (2);
- “responsible person” means—
- (a) in relation to a hospital, other than an authorised hospital—
the Secretary; and
- 10 (b) in relation to an authorised hospital—the medical superintendent of the authorised hospital.

Trust funds.

129. (1) The Secretary, in relation to each hospital other than an authorised hospital, and the medical superintendent of an authorised hospital
15 shall establish and maintain, in a bank approved by the Treasurer—

- (a) a Patients Trust Fund; and
- (b) a Patients Amenities Account.

(2) The Secretary, in relation to each hospital other than an authorised hospital, shall establish and maintain, in a bank approved by the
20 Treasurer, an Interest Account.

Patients Trust Fund.

130. (1) Where money is received by the responsible person from a patient for custody on behalf of the patient or from some other person for the benefit, use or enjoyment of a specified patient, that money shall be
25 paid into the Patients Trust Fund.

(2) The responsible person shall keep a separate current account in the Patients Trust Fund in respect of each patient.

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(3) Money standing to the credit of a patient's account may be withdrawn by the patient for any purpose which, in the opinion of the responsible person, is for the benefit, use or enjoyment of the patient.

5 (4) Where, in the opinion of the responsible person, a patient is incapable, through infirmity arising from disease or age or other reason, of withdrawing and safeguarding money from the patient's account, the responsible person may authorise the withdrawal of such sum from the patient's account as he considers necessary for the purchase of goods and services for the benefit, use or enjoyment of the patient.

10 (5) A certificate, signed by 2 persons employed on the staff of a hospital, to the effect that the goods or services represented by the sum withdrawn under subsection (4) have been received by the patient for his benefit, use or enjoyment is evidence that the patient has received those goods or services and that they are for the benefit, use or enjoyment of the
15 patient.

(6) After the discharge or death of a patient whose estate has been taken charge of by the Master, the responsible person shall pay to the Master any money standing to the credit of the patient in the patient's account.

Interest Account.

20 **131.** (1) Subject to this Act, money standing to the credit of patients' accounts in respect of those hospitals which are incorporated hospitals within the meaning of the Public Hospitals Act, 1929, and separate institutions within the meaning of that Act shall constitute one general fund and may be invested by the Secretary in accordance with and subject to the Trustee Act,
25 1925, or in any other form of investment approved by the Treasurer.

(2) Where money is invested under subsection (1)—

(a) there shall be paid into the Interest Account—

(i) the income from the investment; and

30 (ii) any capital gain made upon the realisation of the investment; and

(b) there shall be paid out of the Interest Account—

(i) any loss incurred upon the realisation of the investment; and

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(ii) at such time or times as the Secretary may determine, such management fees of the Secretary as he may determine.

(3) The Secretary shall, at least once a year, after making the payments referred to in subsection (2) (b), distribute the funds of the Interest
5 Account by crediting those funds to each patient's account proportionately according to—

- (a) the amount standing to the credit of the patient's account during the period for which that amount was invested under subsection (1); and
- 10 (b) the period for which that amount was so invested, being the period commencing on the date of investment or the date of the last preceding distribution, whichever is the later, and ending on the date of distribution.

Patients Amenities Account.

15 **132. (1)** There shall be paid into the Patients Amenities Account—

- (a) such amounts as are received by the responsible person for the purpose of providing goods, services or amenities for the benefit, use or enjoyment of the patients of the hospital generally; and
- 20 (b) such amounts, or amounts of such class or description of amounts, as may be prescribed.

(2) There may be paid out of the Patients Amenities Account, for the purpose referred to in subsection (1) (a), such amounts as may be determined by the responsible person.

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PART IX.

CARRYING OUT OF CERTAIN MEDICAL OR THERAPEUTIC TREATMENTS.

DIVISION 1.—*Psychosurgery.***Interpretation: Pt. IX, Div. 1.**

5 **133. (1)** In this Division—

“behaviour” does not include—

- (a) grand mal, petit mal or Jacksonian epilepsy; or
- (b) complex apparently automatic behaviour, whether presumed to be secondary to cerebral dysrhythmia or not;

10 “Board” means the Psychosurgery Review Board constituted under section 134;

“nearest relative”, in relation to a patient, means—

- 15 (a) where the patient is married and not separated from his spouse by order of a court or by agreement—the patient’s spouse;
- (b) where the patient—
 - (i) is not married; or
 - (ii) is married, but is separated from his spouse by order of a court or by agreement—
- 20 the parents or the surviving parent of the patient; or
- (c) where the applicant under section 137 (1) in respect of the patient—
 - (i) ascertains that the patient has no spouse or surviving parent;
 - 25 (ii) is unable to ascertain whether the patient has a spouse, parents or a surviving parent; or

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(iii) is unable to ascertain particulars of the name and whereabouts of any such spouse, parents or surviving parent—

5 such person, if any, as, in the opinion of the applicant, has the care, guardianship or custody of the patient at the time of the making of the application;

“patient” means a person upon whom psychosurgery is or is intended to be performed;

“psychosurgery” means—

- 10 (a) the creation of one or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or any procedure, when it is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person;
- 15 (b) the use for such a purpose of intracerebral electrodes to produce such a lesion or lesions, whether on the same or separate occasions; or
- 20 (c) the use on one or more occasions of intracerebral electrodes primarily for the purpose of influencing or altering the thoughts, emotions or behaviour of a person by stimulation through the electrodes without the production of a lesion in the brain of the person.

(2) In this Division, a reference to a person who performs psychosurgery includes a reference to a person who causes psychosurgery to be performed and a person who knowingly permits psychosurgery to be performed.

(3) In this Division, a reference to informed consent, in respect of a patient, is a reference to the free and voluntary consent of the patient to the performance on him of psychosurgery, after—

- 30 (a) a fair explanation has been made to him of the techniques or procedures to be followed, including an identification and explanation of any such technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to predict accurately the outcome of its performance;
- 35 (b) a full description has been given to him of the attendant discomforts and risks, if any;

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- (c) a full description has been given to him of the benefits, if any, to be expected;
- (d) a full disclosure has been made to him of appropriate alternative treatments, if any, that would be advantageous for him;
- 5 (e) an offer has been made to him to answer any inquiries concerning the procedures or any part of them;
- (f) notice has been given to him that he is free to refuse or to withdraw his consent and to discontinue the procedures or any of them at any time;
- 10 (g) a full disclosure has been made to him of any financial relationship between the person by whom consent for psychosurgery is sought, the medical practitioner who proposes to perform the psychosurgery and the hospital or institution in which it is proposed to perform the psychosurgery; and
- 15 (h) notice has been given to him that he has the right to legal advice and representation at any time during considerations relating to the performance of psychosurgery on him.

(4) For the purposes of subsection (3), the following classes of persons shall be presumed to be incapable of giving free and voluntary consent to the performance on them of psychosurgery:—

- (a) persons under the age of 18 years;
- (b) persons convicted of any crime and under sentence in respect of the conviction, whether in custody or not and whether the sentence has been suspended or not;
- 25 (c) persons awaiting trial on a criminal charge, whether in custody or not;
- (d) persons released on licence after serving some portion of a sentence in respect of a conviction for crime;
- (e) persons convicted of crime who are on probation or parole;
- 30 (f) persons convicted of crime who have escaped from lawful custody;
- (g) persons subject to the Governor's pleasure in respect of their liberty;

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- (h) persons released on recognizance in respect of a criminal charge, whether or not they have been found guilty in respect of that charge, during the period of the recognizance;
- (i) persons under arrest in respect of a criminal charge; and
- 5 (j) temporary patients, continued treatment patients or forensic patients.

Psychosurgery Review Board.

134. (1) There is hereby constituted a corporation under the corporate name of the "Psychosurgery Review Board".

(2) Schedule 5 has effect generally with respect to the constitution, 10 membership and meetings of the Board.

Psychosurgery to be performed, etc., in accordance with a consent of the Board.

135. A person shall not perform psychosurgery on a patient, except in accordance with a consent of the Board under section 141 (1).

15 Consent of patient.

136. A person shall not perform psychosurgery on a patient who—

- (a) refuses to have psychosurgery performed on him; or
- (b) except as otherwise provided by this Division, neither consents nor refuses to have psychosurgery performed on him.

20 Application for permission to perform psychosurgery.

137. (1) A person who proposes the performance of psychosurgery on a patient shall apply, in writing, to the Board for its consent to the performance of psychosurgery on the patient.

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(2) An applicant under subsection (1) shall specify in the application—

- (a) his or its name and address;
- (b) the name and address of the patient;
- 5 (c) the name and address of the patient's nearest relative, if any;
- (d) as to the giving of informed consent by the patient to the psychosurgery—
 - (i) whether, in the applicant's opinion, the patient is capable of giving that consent; and
 - 10 (ii) whether, in the applicant's opinion, the patient has given that consent or whether the applicant is in doubt that the patient has given that consent;
- (e) the exact nature of the psychosurgery proposed to be performed;
- (f) the clinical indications for the psychosurgery;
- 15 (g) the name or names of the person or persons proposing to perform the psychosurgery; and
- (h) the name of the hospital or institution in which it is proposed to perform the psychosurgery.

Procedure for convening hearing of application.

20 **138. (1)** The Chairman of the Board shall, within 10 days after the date of receipt of an application under section 137 (1), convene a meeting of the Board for the purpose of hearing and determining the application.

(2) The hearing of an application shall take place within 31 days after the date of receipt of the application.

25 (3) The Chairman of the Board shall cause to be given to the applicant, the patient and the patient's nearest relative, if any, not less than 5 days' notice, in writing, of the hearing.

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Attendance and representation at hearing.

139. At the hearing before the Board of an application under section 137 (1)—

- 5
- (a) the patient shall, unless the Board otherwise approves, attend and is entitled to be heard;
 - (b) the applicant and the patient's nearest relative, if any, are entitled to attend and to be heard; and
 - (c) the patient may be represented by a barrister or solicitor.

Hearing of application.

10 **140.** On the hearing of an application under section 137 (1), the Board may make such inquiries and conduct such examinations with respect to the application as it thinks fit.

Granting of consent.

15 **141. (1)** Where the Board, after hearing an application under section 137 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit, is satisfied that—

- 20
- (a) the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application;
 - (b) the patient has given that consent;
 - (c) the psychosurgery—
 - (i) has clinical merit; and
 - (ii) is appropriate for the patient;
 - (d) the person or persons proposing to undertake the performance of the psychosurgery is or are properly qualified to do so;
 - (e) the hospital or institution in which it is proposed to perform the psychosurgery is a proper place in which to perform it; and
- 25

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- (f) all other reasonable treatments for the patient have been adequately and skilfully administered without sufficient resulting benefits to the patient,

it may grant its consent to the application.

5 **(2)** A consent of the Board under subsection (1) shall specify—

- (a) the name of the patient;
- (b) the name or names of the person or persons proposing to perform the psychosurgery;
- (c) the exact nature of the psychosurgery proposed to be performed;
- 10 (d) the name of the hospital or institution in which it is proposed to perform the psychosurgery; and
- (e) the period within which the psychosurgery is to be performed.

(3) The Board shall give notice, in writing, of a consent under subsection (1) to the applicant for the consent, the patient and the patient's
15 barrister or solicitor, if any, within 7 days after the date on which the consent is granted.

(4) Notice under subsection (3) may be given—

- (a) in the case of a person other than a corporation—
- 20 (i) by delivering it to him; or
- (ii) by delivering it, or by sending it by registered mail, addressed to him at the address, if any, specified by him for the giving of notices under this Division, or, where no such address is specified, at his usual place of abode or his place of business, being the usual place of abode or place
25 of business last known to the Board; or
- (b) in the case of a corporation—
- (i) by leaving it at the place of business, or registered office, of the corporation with a person apparently in the service of the corporation and apparently not less than 16 years
30 of age; or
- (ii) by delivering it, or by sending it by registered mail, addressed to the corporation at the address, if any, specified by the corporation for the giving of notices under this

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Division, or, where no such address is specified, at the registered office of the corporation or its place of business last known to the Board.

- 5 (5) A consent of the Board under subsection (1) shall lapse if the psychosurgery the subject of the consent is not performed within the period specified in the consent.

Refusal of consent.

10 **142. (1)** Where the Board, after hearing an application under section 137 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit—

(a) is satisfied that—

- 15 (i) the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application; and
(ii) the patient has not given that consent; or

(b) is not satisfied as to any one or more of the matters specified in section 141 (1) (c)–(f),

the Board shall refuse to grant its consent to the application.

20 (2) The Board shall give notice, in writing, of a refusal to grant a consent under subsection (1) to the applicant for the consent as soon as practicable after the refusal is made.

(3) The Board, in a notice under subsection (2), shall state its reasons for refusing to grant the consent.

Stating of case for opinion of the Court.

25 **143.** Where the Board, after hearing an application under section 137 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit—

- 30 (a) is not satisfied that the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application; and

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(b) is satisfied as to the matters specified in section 141 (1) (c)–(f), it may state a case for the Court to determine—

- (c) whether the patient is capable of giving that consent;
- (d) whether the patient has given that consent; and
- 5 (e) where the Court determines that the patient is not capable of giving that consent, whether the Court should give that consent on behalf of the patient.

Determination of stated case.

10 **144.** Where the Court, after hearing a case stated for its determination under section 143 in respect of an application to the Board for its consent to the performance of psychosurgery on a patient, finds that the patient—

- (a) is capable of giving informed consent but has not given that consent, it shall make an order refusing the application;
- 15 (b) is capable of giving informed consent and has given that consent, it shall make an order remitting the application to the Board for the purpose of enabling the Board to grant its consent to the application;
- 20 (c) is not capable of giving informed consent and that, in the interests of the patient, that consent should not be given, it shall decline to give that consent on behalf of the patient and shall make an order refusing the application; or
- 25 (d) is not capable of giving informed consent but that, in the interests of the patient, that consent should be given, it may give that consent on behalf of the patient and shall make an order remitting the application to the Board for the purpose of enabling the Board to grant its consent to the application.

Granting of consent on remission of application.

145. (1) On the remission of an application to the Board under section 144 (b) or (d), the Board shall grant its consent to the application.

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(2) Subsections (2), (3), (4) and (5) of section 141 apply to and in respect of a consent under subsection (1) in the same way as those subsections apply to and in respect of a consent under section 141 (1).

Report of operation.

- 5 **146.** Where a person performs psychosurgery on a patient pursuant to a consent of the Board under section 141 (1) or 145 (1), he shall furnish a report in writing to the Board within 30 days after performing the psychosurgery as to the operation and its results.

Review and research.

- 10 **147. (1)** The Board shall, for the purpose of advancing research into psychosurgery, review, as often as it thinks fit, the case of each patient on whom psychosurgery has been performed.
- (2)** For the purposes of subsection (1), the Board may—
- (a) make or cause to be made such observations of patients; and
- 15 (b) make such arrangements for the gathering and recording of information,
- as it thinks fit.

DIVISION 2.—*Electro convulsive therapy and certain prescribed treatments.***Interpretation: Pt. IX, Div. 2.**

- 20 **148. (1)** In this Division, a reference to a treatment to which this Division applies is a reference to—
- (a) electro convulsive therapy; and
- (b) such operations or medical or therapeutic treatments as may be prescribed for the purposes of this Division.
- 25 **(2)** In this Division, a reference to the administration of a treatment to a person includes a reference to the performance of an operation on the person.

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(3) In this Division, a reference to a person who administers a treatment includes a reference to a person who causes a treatment to be administered and a person who knowingly permits a treatment to be administered.

5 (4) In this Division, a reference to informed consent, in respect of a person, is a reference to the free and voluntary consent of the person to the administration to him of a treatment to which this Division applies, after—

- 10 (a) a fair explanation has been made to him of the techniques or procedures to be followed, including an identification and explanation of any such technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to predict accurately the outcome of its performance;
- (b) a full description has been given to him of the possible attendant discomforts and risks, including loss of memory;
- 15 (c) a full description has been given to him of the benefits, if any, to be expected;
- (d) a full disclosure has been made to him of appropriate alternative treatments, if any, that would be advantageous for him;
- 20 (e) an offer has been made to him to answer any inquiries concerning the procedures or any part of them;
- (f) notice has been given to him that he is free to refuse or to withdraw his consent and to discontinue the procedures or any of them at any time; and
- 25 (g) a full disclosure has been made to him of any financial relationship between the person proposing the administration of the treatment, the medical practitioner who proposes to administer the treatment and the hospital or institution in which it is proposed to administer the treatment.

30 (5) For the purposes of subsection (4), a person shall be presumed to be incapable of giving free and voluntary consent to the administration to him of a treatment to which this Division applies if, prior to, or at, the time at which his consent is sought, he has received medication which, at the time his consent is sought, could impair his ability to give that consent.

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Administration of treatment—generally.

149. A medical practitioner shall not administer to a person a treatment to which this Division applies, except in accordance with this Division.

Places at which treatment may be administered.

5 **150.** A medical practitioner shall not administer to a person a treatment to which this Division applies otherwise than at—

- (a) a hospital; or
- (b) a place approved by the Secretary.

Circumstances in which treatment may be administered with consent—
10 **persons other than involuntary patients.**

151. Where—

- (a) a person, other than a temporary patient, continued treatment patient or forensic patient—
 - 15 (i) is capable of giving informed consent to the administration to him of a treatment to which this Division applies; and
 - (ii) has given that consent, in writing, in or to the effect of the prescribed form; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that they are of the opinion that the treatment
20 is—
 - (i) a reasonable and proper treatment to be administered to the person; and
 - (ii) necessary or desirable for the safety or welfare of the person,
25 a medical practitioner may administer that treatment to the person.

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**Circumstances in which treatment may be administered with consent
—involuntary patients.**

152. Without affecting section 156, where—

- 5 (a) a person, being a temporary patient, continued treatment patient or forensic patient, appears to the medical superintendent—
- (i) to be capable of giving informed consent to the administration to him of a treatment to which this Division applies; and
 - 10 (ii) to have given that consent, in writing, in or to the effect of the prescribed form; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that they are of the opinion that the treatment is—
- 15 (i) a reasonable and proper treatment to be administered to the person; and
 - (ii) necessary or desirable for the safety or welfare of the person,

the medical superintendent may apply to a stipendiary magistrate to determine the validity of the person's consent.

20 Inquiry.

153. (1) On an application under section 152, the stipendiary magistrate shall hold an inquiry to determine the validity of the consent of the person in respect of whom the application is made.

25 (2) The stipendiary magistrate may appoint a person to assist him in respect of the inquiry and a person so appointed may appear before the magistrate during the holding of the inquiry.

(3) The person in respect of whom the application under section 152 is made shall, unless the stipendiary magistrate otherwise approves, appear before the magistrate during the holding of the inquiry.

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(4) In the course of the inquiry, the stipendiary magistrate shall consider the certificates of the medical practitioners under section 152 (b) concerning the person in respect of whom the application is made and such other evidence as may be placed before him.

5 Result of inquiry.

154. Where, pursuant to an inquiry under section 153 concerning a person, a stipendiary magistrate is satisfied that the person—

- (a) is capable of giving informed consent to the administration to him of a treatment to which this Division applies; and
 - 10 (b) has given that consent,
- a medical practitioner may administer that treatment to the person.

Refusal of treatment by medical superintendent.

155. A medical superintendent may refuse to allow the administration to a patient referred to in section 152 of a treatment to which this Division
15 applies, notwithstanding that a stipendiary magistrate, in accordance with section 154, is satisfied as to the validity of the consent of the patient to the administration of the treatment to him.

Circumstances in which treatment may be administered without consent.

156. Where—

- 20 (a) a temporary patient, continued treatment patient or forensic patient—
 - (i) is, in the opinion of the medical superintendent, incapable of giving informed consent to the administration to him of a treatment to which this Division applies; or
 - 25 (ii) is, in the opinion of the medical superintendent, capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to him; and

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(b) 2 medical practitioners, at least one of whom is a psychiatrist, and the medical superintendent certify, in writing, that they are of the opinion that the treatment is—

5 (i) a reasonable and proper treatment to be administered to the patient; and

(ii) necessary to save the life of the patient,
a medical practitioner may administer that treatment to the patient.

Register.

10 **157. (1)** A register, in or to the effect of the prescribed form, for the purpose of recording information relating to the administration of treatments to which this Division applies, shall be kept or caused to be kept—

(a) in relation to a hospital—by the medical superintendent; or

(b) in relation to a place approved by the Secretary under section 150—by a person specified by the Secretary.

15 **(2)** The medical superintendent or person specified by the Secretary under subsection (1), as the case may require, shall, as soon as practicable after the administration of a treatment to which this Division applies, enter, or cause to be entered, in the register referred to in that subsection such particulars in relation to the administration of that treatment as are
20 required to complete an entry in that register.

(3) A member of the Tribunal, an official visitor or an authorised officer may, at any time, inspect a register referred to in subsection (1).

DIVISION 3.—Surgical operations.**Application of Division.**

25 **158.** This Division does not apply to—

(a) the performance of psychosurgery;

(b) the administration of electro convulsive therapy; or

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- (c) the performance or administration of an operation or a medical or therapeutic treatment prescribed for the purposes of Division 2.

Interpretation: Pt. IX, Div. 3.

159. In this Division, "nearest relative", in relation to a patient or other
5 person under detention in a hospital, means—

- (a) where the patient or other person is married and not separated from his spouse by order of a court or by agreement—the patient's or other person's spouse;
- (b) where the patient or other person—
10 (i) is not married; or
(ii) is married, but is separated from his spouse by order of a court or by agreement—
the parents or the surviving parent of the patient or other person;
or
- 15 (c) where the medical superintendent—
(i) ascertains that the patient or other person has no spouse or surviving parent;
(ii) is unable to ascertain whether the patient or other person has a spouse, parents or a surviving parent; or
20 (iii) is unable to ascertain particulars of the name and whereabouts of any such spouse, parents or surviving parent—
such person, if any, as, in the opinion of the medical superintendent, had the care, guardianship or custody of the patient or other person prior to his admission to the hospital.

25 Cases of emergency.

160. (1) In this section, "prescribed person" means medical superintendent, deputy medical superintendent, responsible medical officer or authorised officer.

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(2) Where—

- (a) a temporary patient, continued treatment patient, forensic patient (being a mentally ill person) or any other person under detention in a hospital—
- 5 (i) is, in the opinion of a prescribed person, incapable of giving consent to the performance of a surgical operation on him; or
- (ii) is, in the opinion of a prescribed person, capable of giving that consent but refuses to give that consent or neither
- 10 gives nor refuses to give that consent; and
- (b) the prescribed person is of the opinion that it is necessary, as a matter of urgency, to perform a surgical operation on the patient or other person in order to save his life or to prevent serious damage to his health,
- 15 the prescribed person may consent to the performance of the surgical operation on the patient or other person.

(3) Where—

- (a) an informal patient or forensic patient (not being a mentally ill person) is, in the opinion of a prescribed person, incapable of
- 20 giving consent to the performance of a surgical operation on him; and
- (b) the prescribed person is of the opinion that it is necessary to perform a surgical operation on the patient in order to save his life or to prevent serious damage to his health,
- 25 the prescribed person may consent to the performance of the surgical operation on the patient.

(4) Except where the circumstances of the case render it impracticable, a consent under subsection (2) or (3) shall be in writing and shall be signed by the prescribed person giving the consent.

30 **(5)** A consent under subsection (2) or (3) in relation to a patient or other person shall have the same effect as if it were given—

- (a) in the case of a patient or other person of or above the age of 14 years—by the patient or other person as if he had capacity to give the consent; or

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- (b) in the case of a patient or other person under the age of 14 years—
by his parents or guardian.

Other cases—notice of intention to obtain consent.**161. (1) Where—**

- 5 (a) a temporary patient, continued treatment patient, forensic patient
(being a mentally ill person) or any other person under detention
in a hospital—
 10 (i) is, in the opinion of the medical superintendent, incapable
of giving consent to the performance of a surgical operation
on him; or
 (ii) is, in the opinion of the medical superintendent, capable of
giving that consent but refuses to give that consent or
neither gives nor refuses to give that consent; and
 15 (b) the medical superintendent is of the opinion that it is desirable,
having regard to the interests of the patient or other person, to
perform a surgical operation on him,

the medical superintendent shall, in accordance with the regulations, do all
such things as are reasonably practicable to give notice, in writing, to the
nearest relative, if any, of the patient or person of his intention to obtain the
20 consent of an authorised officer or the Tribunal, as the case may require, to
the performance of the surgical operation on the patient or other person.

(2) Where—

- 25 (a) an informal patient or forensic patient (not being a mentally ill
person) is, in the opinion of the medical superintendent, incapable
of giving consent to the performance of a surgical operation on
him; and
 (b) the medical superintendent is of the opinion that it is desirable,
having regard to the interests of the patient, to perform a surgical
operation on him,

30 the medical superintendent shall, in accordance with the regulations, do all
such things as are reasonably practicable to give notice, in writing, to the
nearest relative, if any, of the patient of his intention to obtain the consent
of an authorised officer or the Tribunal, as the case may require, to the
performance of the surgical operation on the patient.

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Application for consent.

5 **162. (1)** At any time after the expiration of 14 days from the date on which notice in respect of a patient or other person is given under section 161 (1) or (2), the medical superintendent may, in accordance with subsection (2), apply to an authorised officer or the Tribunal for consent to the performance of the surgical operation on the patient or other person.

(2) An application under subsection (1) in respect of a patient or other person shall be made—

10 (a) except as provided by paragraph (b) (iii), where the nearest relative of the patient or person agrees, in writing, to the performance of the surgical operation—to an authorised officer; or

(b) where—

15 (i) the nearest relative of the patient or other person does not agree, in writing, to the performance of the surgical operation;

(ii) there is no nearest relative of the patient or other person;
or

20 (iii) the surgical operation proposed to be performed is that of the sterilisation of the patient or other person—

to the Tribunal.

Hearing and determination of application.

163. (1) An authorised officer or the Tribunal, as the case may require, shall hear and determine an application made under section 162.

25 **(2)** Where an authorised officer or the Tribunal determines an application made under section 162 by granting consent to the performance of a surgical operation on a patient or other person, the consent shall have the same effect as if it were given—

30 (a) in the case of a patient or person of or above the age of 14 years—by the patient or other person as if he had capacity to give the consent; or

(b) in the case of a patient or other person under the age of 14 years—by his parents or guardian.

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DIVISION 4.—*Prohibited and restricted treatments.***Prohibited treatments.**

164. A person shall not administer to or perform on another person—
- (a) electro narcosis therapy;
 - 5 (b) insulin shock; or
 - (c) an operation or treatment prescribed for the purposes of this section.

Administration of certain psychoactive drugs.

165. A person shall not administer to another person a prescribed psycho-
10 active drug otherwise than in accordance with such provisions as may be made in that behalf by the regulations.

PART X.**MISCELLANEOUS.****Amendment of certain documents.**

- 15 166. (1) A document by virtue of which a person is admitted to a hospital and which is incorrect or defective in any particular way may, within 28 days after the admission of the person and with the approval of the medical superintendent, be amended by the person who signed the document.

- (2) A document amended in accordance with subsection (1) shall
20 be deemed to have had effect in its amended form on and from its original date.

- (3) Where a document referred to in subsection (1) is not amended in accordance with that subsection, the medical superintendent may—

- (a) order the discharge of the person admitted to the hospital by
25 virtue of the document; or

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(b) do such things as are necessary to obtain a document in substitution for that document.

(4) A document obtained in accordance with subsection (3) in substitution for another document shall be deemed to have had effect as if it had come into existence on the date on which the document for which it is substituted came into or purported to come into existence.

Offences in relation to certain certificates.

167. A medical practitioner—

(a) who signs a certificate in or to the effect of the form set out in Part I of Schedule 3 or in Schedule 4 without having personally examined, on the date specified in the certificate, the person to whom the certificate relates for the purpose of ascertaining the condition of the person; or

(b) who wilfully makes a false or misleading statement in a certificate referred to in paragraph (a),

shall be guilty of an offence against this Act.

Ill-treatment, etc., of patients.

168. A medical superintendent or any other person employed in a hospital who strikes, wounds, ill-treats or wilfully neglects a patient or other person detained in a hospital shall, for every such offence, be liable to a penalty not exceeding \$4,000 or to imprisonment for a period not exceeding 6 months, or both.

Penalties.

169. A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed or if no penalty is so imposed to a penalty not exceeding \$4,000.

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Proceedings for offences.

170. Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone.

5 **Regulations.**

171. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect
10 to—

- (a) the design, construction, equipping, furnishing, maintenance, administration and staffing of, and the provision of facilities and services by, hospitals;
- 15 (b) the functions, responsibilities, obligations and liabilities of medical superintendents and medical officers;
- (c) the exercise by the Principal official visitor and the official visitors of their functions;
- (d) the establishment, in relation to a hospital, of a patient care review committee and the functions of such a committee;
- 20 (e) matters relating to the rights and privileges of patients and other persons under detention in hospitals, including matters relating to—
 - 25 (i) the information to be given, on their admission to a hospital, to patients and other persons as to their rights and privileges as patients or persons under detention;
 - (ii) the visiting of patients and other persons; and
 - (iii) correspondence by and with patients and other persons, including the authorisation of the perusal and withholding of that correspondence;
- 30 (f) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act; and

*Mental Health.*SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND
OFFICIAL VISITORS—*continued.*

- (2) Upon the expiration of the term of office of an official visitor, he shall, if
5 otherwise qualified, be eligible for reappointment from time to time.

Remuneration of and allowances for official visitors.

4. Each official visitor is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

10 Removal from office.

5. The Minister may remove an official visitor from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment.

Vacation of office.

6. An official visitor shall be deemed to have vacated his office—
- 15 (a) if he dies;
- (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation;
- 20 (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (d) if he becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person or an incapable person within the meaning of the Mental Health (Protective Jurisdiction) Act, 1958;
- 25 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
- 30 (f) if, being the Principal official visitor or an official visitor appointed for an authorised hospital, he has a pecuniary interest, directly or indirectly, in an authorised hospital;

Mental Health.

SCHEDULE 1—*continued.*

PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND
OFFICIAL VISITORS—*continued.*

- (g) if he—
- 5 (i) signs a certificate or request for the admission of a person to a hos-
pital; or
- (ii) attends professionally upon a patient in a hospital;
- (h) if he is removed from office by the Minister; or
- (i) upon his attaining the age of 65 years.

10

SCHEDULE 2.

(Sec. 39 (5).)

PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.

PART I.

THE PRESIDENT AND DEPUTY PRESIDENTS.

15 **Qualification.**

1. A person is qualified to be appointed as the President or a Deputy President if he is the Chief Justice of the Court or a Judge of that Court.

Appointment.

20 2. The President or a Deputy President shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as the President or a Deputy President.

Deputy Presidents.

25 3. (1) A Deputy President, while holding office as a Deputy President, shall, subject to the conditions of appointment specified in the instrument of his appointment and to any direction given to him by the President, have the powers, authorities, privileges and immunities and perform the duties of the President.

Mental Health.

SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL—*continued.*

- 5 (2) No person shall be concerned to inquire whether or not any occasion has arisen authorising a Deputy President to exercise the functions of the President and all acts or things done or omitted or suffered to be done by a Deputy President when exercising those functions shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by the President.

Effect of appointment to the Tribunal of Judges of the Court.

- 10 4. (1) The appointment of the Chief Justice or a Judge of the Court as the President or a Deputy President shall not, nor shall his service as the President or a Deputy President, affect his tenure of the office of Chief Justice or Judge of the Court, as the case may be, or his rank, title, status, precedence, salary or other rights or privileges as a holder of that office.

- 15 (2) The Chief Justice or a Judge of the Court may, notwithstanding that he is the President or a Deputy President, exercise his powers as the Chief Justice or a Judge of the Court, as the case may be.

- 20 (3) The service, as the President or a Deputy President, of the Chief Justice or a Judge of the Court shall, for all purposes, be taken to be service as the Chief Justice or a Judge of the Court, as the case may be.

Removal from office.

5. The Governor may remove the President or a Deputy President from office upon the address of both Houses of Parliament, but not otherwise.

Cessation of office.

- 25 6. Where a person who has been appointed, in accordance with this Act, as the President or a Deputy President ceases, in accordance with the law for the time being in force relating to the Chief Justice or Judges of the Court, to be the Chief Justice or a Judge of the Court, he shall thereupon cease to be the President or a Deputy President, as the case may be.
-

Mental Health.

SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL—*continued.*

PART II.

MEMBERS OTHER THAN THE PRESIDENT AND DEPUTY PRESIDENTS.

5 **Interpretation: Sch. 2, Pt. II.**

7. In this Part of this Schedule, "member" means a person appointed, for the time being, as a member of the Tribunal other than the President or a Deputy President.

Age of members.

8. A person who is of or above the age of 65 years shall not be appointed as a 10 member.

Term of office of members.

9. A member shall, subject to this Part of this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member.

15 **Remuneration of and allowances for members.**

10. Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Removal from office.

20 11. The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment.

Vacation of office.

12. A member shall be deemed to have vacated his office—

- (a) if he dies;
- 25 (b) if he resigns his office by writing under his hand addressed to the Governor;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 30 (d) if he becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person or an incapable person within the meaning of the Mental Health (Protective Jurisdiction) Act, 1958;

Mental Health.

SCHEDULE 2—*continued.*

PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL—*continued.*

- 5 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be a felony or a misdemeanour so punishable;
- (f) if he is removed from office by the Governor; or
- (g) upon his attaining the age of 65 years.

SCHEDULE 3.

(Sec. 75.)

10

MENTAL HEALTH ACT, 1983.

MEDICAL CERTIFICATE AS TO EXAMINATION OF PERSON.

PART I.

15 I, , Medical Practitioner,
(name in full—use block letters)

of do hereby certify that
on the day of, 19.....,

at I personally examined
(state place where examination took place)

20 for a period
(name of person in full)

of and I am of the
(state length of examination)

25 opinion that the person examined by me is a mentally ill person* because *See Note 1.
he/she is a person who, owing to mental illness, requires care, treatment or
control—

*(a) for his/her own protection by reason that—

- 30 (i) he/she has recently attempted to kill himself/herself or to cause serious bodily harm to himself/herself; or
- (ii) there are reasonable grounds for believing that it is probable that he/she will, by act or neglect, attempt to kill himself/herself or to cause serious bodily harm to himself/herself; or

*Strike out and initial any of the statements that are not applicable.

Mental Health.

SCHEDULE 3—*continued.*

(b) for the protection of others by reason that—

- 5 (i) he/she has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
- (ii) he/she has recently performed or attempted to perform an act of violence which indicates that it is probable that he/she will inflict serious bodily harm upon another person;
- 10 (iii) he/she has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement likely to result in the infliction of serious bodily harm upon another person; or
- 15 (iv) he/she has repeatedly engaged in a course of behaviour of nuisance or harassment directed at one or more persons which would be reasonably likely to lead to a breach of the peace and which is of a degree so far beyond the normal limits of social behaviour that a reasonable person would consider it intolerable.

20 I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person's involuntary admission to and detention in a hospital are necessary and that no alternative means for dealing with the person are reasonably available.

25 *Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant). *See Note 2.

(a)

30

.....

.....

(b)

35

.....

.....

40

Mental Health.

SCHEDULE 3—continued.

*The general medical and/or surgical condition of the person is as follows: *State present condition, any relevant history and any non-psychiatric medication currently or recently used.

5

.....

.....

*The following medication (if any) has been administered for purposes of psychiatric therapy or sedation: *State doses and duration of treatment. Distinguish emergency sedation, if any.

10

.....

.....

I am not a *near relative of the person. *See Note 3.

15 *I have/do not have a pecuniary interest, directly or indirectly, in an authorised hospital. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows: *Strike out and initial any of the statements that are not applicable.

.....

.....

20

.....

Made and signed this day of....., 19....

Signature

PART II.

25 If the assistance of a member of the police force is required, this part of the Form should be completed.

I am of the opinion, in relation to

.....

(name of person in full)

30 (a) that the condition of the person is such that the assistance of a member of the police force is required in order to take the person to a hospital; and

Mental Health.

SCHEDULE 3—*continued.*

(b) that no other means of taking the person to a hospital are reasonably available.

Made and signed this day of

5 19....

Signature

NOTES:

1. Section 5 of the Mental Health Act, 1983, states:—

10 5. (1) A reference in this Act to a mentally ill person is a reference to a person who, owing to mental illness, requires care, treatment or control—

(a) for his own protection by reason that—

- (i) he has recently attempted to kill himself or to cause serious bodily harm to himself; or
- 15 (ii) there are reasonable grounds for believing that it is probable that he will, by act or neglect, attempt to kill himself or to cause serious bodily harm to himself; or

(b) for the protection of others by reason that—

- 20 (i) he has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
- 25 (ii) he has recently performed or attempted to perform an act of violence which indicates that it is probable that he will inflict serious bodily harm upon another person;
- (iii) he has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement likely to result in the infliction of serious bodily harm upon another person; or
- 30 (iv) he has repeatedly engaged in a course of behaviour of nuisance or harassment directed at one or more persons which would be reasonably likely to lead to a breach of the peace and which is of a degree so far beyond the normal limits of social behaviour that a
- 35 reasonable person would consider it intolerable.

(2) A person is not a mentally ill person by reason only of any one or more of the following:—

- (a) that the person expresses or has expressed a particular political opinion;

Mental Health.

SCHEDULE 3—*continued.*

- (b) that the person expresses or has expressed a particular religious opinion;
- 5 (c) that the person expresses or has expressed a particular sexual preference or sexual orientation or is or has been sexually promiscuous;
- (d) that the person engages in or has engaged in immoral conduct;
- (e) that the person engages in or has engaged in illegal conduct;
- 10 (f) that the person has developmental disability of mind;
- (g) that the person takes or has taken drugs, including alcohol.

(3) Nothing in subsection (2) prevents, in relation to a person who takes or has taken drugs, the physiological, biochemical or psychological effects of drug taking from being regarded as an indication that
 15 the person is mentally ill.

2. In addition to matters ascertained as a consequence of personally examining the person, account may be taken of other matters not so ascertained where those matters—

- (a) arise from a previous personal examination of the person; or
- 20 (b) are communicated by a reasonably credible informant.

3. In section 4 (1) of the Mental Health Act, 1983, “near relative” is defined as follows:—

“near relative”, in relation to a person, means a parent, brother, sister or child or the spouse of the person and such other person or persons
 25 as may be prescribed as a near relative of the person.

4. For admission purposes, this certificate is valid only for a period of 10 days after the date on which the certificate is given.

SCHEDULE 4.

(Secs. 118, 119.)

30 MENTAL HEALTH ACT, 1983.

MEDICAL CERTIFICATE AS TO EXAMINATION OF PRISONER.

I, Psychiatrist,
 (name in full—use block letters)
 of do hereby certify
 35 that on the day of, 19.....,
 at
 (state name of prison where examination took place)

Mental Health.

SCHEDULE 4—*continued.*

separately from any other psychiatrist, I personally examined.....
..... and I am of the opinion
(name of prisoner in full)

5 that *he/she is *mentally ill/suffering from a mental condition for which * Strike
treatment is available in a hospital. I have formed this opinion on the out if
following grounds:— inapplicable.

(1) Facts indicating *mental illness/mental condition observed by
myself.
10

(2) Other relevant information (if any) communicated to me by
others (state name and address of each informant).
15

Made and signed this day of,
19....

25 Signature

SCHEDULE 5.

(Sec. 134.)

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD.

Interpretation: Sch. 5.

30 1. In this Schedule—
“Chairman” means the person appointed as referred to in clause 2 (2) (a) as the
Chairman of the Board;
“member” means a member of the Board.

Mental Health.

SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
*continued.***Members.**

- 5 2. (1) The Board shall consist of 7 members appointed by the Minister.
- (2) The members shall consist of—
- (a) a person appointed by the Minister as Chairman of the Board, being—
- 10 (i) a barrister of not less than 8 years' standing;
- (ii) a solicitor of not less than 8 years' standing; or
- 15 (iii) a barrister or solicitor of less than 8 years' standing, where at all times during a continuous period of not less than 8 years he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors;
- (b) a neurosurgeon from a panel of 3 neurosurgeons nominated by the Royal Australasian College of Surgeons;
- (c) a neurologist or neuroscientist, being a neurologist or neuroscientist from a panel of 3 neurologists or neuroscientists nominated by the Royal Australasian College of Physicians;
- 20 (d) a clinical psychologist from a panel of 3 clinical psychologists nominated by the Australian Psychological Society;
- (e) a person from a panel of 3 persons nominated by—
- (i) except as provided by subparagraph (ii), the New South Wales Council for Civil Liberties; or
- 25 (ii) where the Minister has specified a person or body as the person or body who shall make the nomination for the purposes of this paragraph, the person or body so specified; and
- (f) 2 psychiatrists, one of whom shall be from a panel of 3 psychiatrists nominated by the Australian and New Zealand College of Psychiatrists.
- (3) Where, for the purposes of subclause (2), a nomination of a panel of
- 30 persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the person or body entitled to nominate the panel, the Minister may appoint to be a member, instead of the person required to be appointed from that panel, a person who holds the same qualification, if any, as the person required to be so appointed.
- (4) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision does not operate to disqualify him from holding that office and also the office of a member or from accepting or retaining any remuneration or travelling
- 40 or subsistence allowance payable to a member under clause 5.

Mental Health.

SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
*continued.***Age of members.**

- 5 3. A person who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 6.

Term of office of member.

- 10 4. (1) Except as provided by subclauses (2) and (3), a member shall, subject to this Schedule, be appointed for such term, not exceeding 4 years, as is specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for reappointment as a member.

(2) A member shall not hold office as a member for a total period in excess of 8 years.

- 15 (3) The term of office of the members first appointed under this Schedule shall be—

- (a) in the case of the members referred to in clause 2 (2) (a) and (b)—5 years;
(b) in the case of the members referred to in clause 2 (2) (c), (d) and (e)—4 years; and
(c) in the case of the members referred to in clause 2 (2) (f)—3 years.

20 Remuneration of and allowances for members.

5. Each member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of him.

Alternate members.

- 25 6. (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness of a member, a person who holds the same qualifications, if any, and is nominated in the same manner, if any, as the person for whom he is the alternate member.

- 30 (2) An alternate member (other than the alternate member for the Chairman or Deputy Chairman of the Board) shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he is the alternate member.

Mental Health.

SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
continued.

5 (3) An alternate member for the Chairman or Deputy Chairman of the Board shall have and may exercise, while acting as a member, the functions, as such a member, of a member other than the Chairman or Deputy Chairman, as the case may be.

(4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of a member, and, subject to subclause (3), all things done or omitted or suffered to be done by that person
15 while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by that member.

Deputy Chairman.

7. (1) The Minister may, in the instrument of appointment of a member or by
15 another instrument, appoint a member, other than the chairman, as Deputy Chairman of the Board.

(2) The Deputy Chairman of the Board shall have and may exercise the functions of the Chairman during the absence, for any cause whatever, of the Chairman or during a vacancy in the office of Chairman.

Removal from office.

20 8. The Minister may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of his appointment.

Vacation of office.

9. A member shall be deemed to have vacated his office—

- (a) if he dies;
- 25 (b) if he resigns his office by writing under his hand addressed to the Minister and the Minister accepts his resignation;
- (c) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- 30 (d) if he becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person or an incapable person within the meaning of the Mental Health (Protective Jurisdiction) Act, 1958;

Mental Health.

SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
continued.

- 5 (e) if he is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or if he is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales would be a felony or a misdemeanour so punishable;
- (f) if he engages directly in the practice of psychosurgery;
- (g) upon his holding office as a member for a total period in excess of 8 years;
- 10 (h) if he is removed from office by the Minister; or
- (i) upon his attaining the age of 65 years.

Filling of casual vacancy.

10. (1) On the occurrence of a vacancy in the office of a member, the Minister may appoint a person to the vacant office for the balance of his predecessor's term of 15 office.

(2) A person appointed under subclause (1) shall be a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the member whose office has become vacant was qualified and nominated.

Convening of meetings.

20 11. (1) The Chairman may, at any time, convene a meeting of the Board.

(2) The Chairman, on receipt of a request in writing signed by 3 members, shall convene a meeting of the Board.

Quorum.

12. At a meeting of the Board, 6 members constitute a quorum.

25 Meetings.

13. (1) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(2) Questions arising at a meeting of the Board shall be determined if carried by the votes of not less than 5 members.

Mental Health.

SCHEDULE 5—*continued.*

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
continued.

General procedure.

- 5 14. The procedure for the calling of, and for the conduct of business at, meetings of the Board shall be as determined by the Board.

Chairman to preside.

15. The Chairman shall preside at all meetings of the Board at which he is present.

Absence of Chairman.

- 10 16. (1) In the absence of the Chairman from any meeting of the Board, the Deputy Chairman of the Board shall preside as chairman at that meeting.

(2) Where both the Chairman and the Deputy Chairman of the Board are absent from any meeting of the Board, the members present shall appoint one of their number to preside as chairman at that meeting.

15 Presiding member's vote.

17. The member presiding at a meeting of the Board shall have a deliberative vote only.

Minutes of meetings.

18. (1) The Board shall cause full and accurate minutes to be kept of its proceedings at meetings.

(2) The Board shall submit a copy of the minutes of a meeting of the Board to the Minister within 14 days after the date on which the meeting is held.

Presumptions.

19. In proceedings by or against the Board, no proof shall be required (until
25 evidence is given to the contrary) of—

(a) the constitution of the Board;

Mental Health.

SCHEDULE 5—*continued.*

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—
continued.

- 5 (b) the due making of any resolution of the Board;
(c) the appointment of any member; or
(d) the presence of a quorum at any meeting of the Board.

Immunity.

20. No matter or thing done or omitted or suffered to be done by the Board or a member shall, if the matter or thing was done or omitted or suffered to be done
10 bona fide for the purpose of executing this Act, subject the Board or the member to any action, liability, claim or demand whatever.

BY AUTHORITY

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