

CONCURRENCE COPY

MISCELLANEOUS ACTS (MENTAL HEALTH) REPEAL AND AMENDMENT BILL, 1983

EXPLANATORY NOTE

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

This Bill is cognate with the Mental Health Bill, 1983.

The objects of this Bill are—

- (a) to repeal the Inebriates Act, 1912, the Mental Defectives (Convicted Persons) Act, 1939, certain provisions of the Mental Health Act, 1958, and certain other enactments as a consequence of the enactment of the proposed Mental Health Act, 1983 (clause 4 and Schedule 1);
 - (b) to amend—
 - (i) the Criminal Appeal Act, 1912, so as to enable the Court of Criminal Appeal to hear appeals from certain findings in relation to persons who are unfit to be tried for offences;
 - (ii) the Mental Health Act, 1958, so as to enable the unrepealed portion of that Act to be cited as the Mental Health (Protective Jurisdiction) Act, 1958; and
 - (iii) the Legal Services Commission Act, 1979, so as to further enable the provision of legal aid to persons who are mentally ill, (clause 5 and Schedule 2); and
 - (c) to enact certain savings, transitional and other provisions consequent on and in connection with the enactment of the proposed Mental Health Act, 1983, and the proposed Crimes (Mental Disorder) Amendment Act, 1983 (clause 6 and Schedule 3).
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**MISCELLANEOUS ACTS (MENTAL HEALTH) REPEAL
AND AMENDMENT BILL, 1983**

No. , 1983.

A BILL FOR

An Act to repeal certain Acts and amend certain other Acts, consequent on the enactment of the Mental Health Act, 1983, and the Crimes (Mental Disorder) Amendment Act, 1983, and to enact savings, transitional and other provisions consequent on and in connection with the enactment of those Acts.

[MR BRERETON—24 *November*, 1982.]

Miscellaneous Acts (Mental Health) Repeal and Amendment.

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 Short title.

1. This Act may be cited as the "Miscellaneous Acts (Mental Health) Repeal and Amendment Act, 1983".

Commencement.

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

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Mental Health Act, 1983.

Schedules.

15 3. This Act contains the following Schedules:—

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—AMENDMENTS.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Repeals.

20 4. Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of that Schedule, repealed.

*Miscellaneous Acts (Mental Health) Repeal and Amendment.***Amendments.**

5. Each Act specified in Schedule 2 is amended in the manner set forth in that Schedule.

Savings, transitional and other provisions.

3 6. Schedule 3 has effect.

SCHEDULE 1.

(Sec. 4.)

REPEALS.

	Column 1.	Column 2.	
10	Year and number of Act.	Short title of Act.	
		Extent of repeal.	
	1912, No. 24 ..	Inebriates Act, 1912	The whole Act.
	1937, No. 35 ..	Statute Law Revision Act, 1937	So much of the Second Schedule as amends Act No. 24, 1912.
15	1939, No. 19 ..	Mental Defectives (Convicted Persons) Act, 1939.	The whole Act.
	1949, No. 43 ..	Mental Institution Benefits Agreement Act, 1949.	The unrepealed portion.
	1958, No. 45 ..	Mental Health Act, 1958 ..	Parts II-IX, XIIA and XIV (except sections 111, 112 (1) (a), (b), (b1), (f) and (2) and 113) and Schedules 2-4.
20	1961, No. 12 ..	Public Health (Amendment) Act, 1961.	Section 7.
	1964, No. 69 ..	Mental Health (Amendment) Act, 1964.	Sections 1 (2), 2, 3, 4, 5, 8, 9 (a) and 10.
25	1970, No. 52 ..	Supreme Court Act, 1970 ..	So much of the Second Schedule as amends Act No. 24, 1912, and sections 16, 18 and 108 (4) of Act No. 45, 1958.
30	1972, No. 41 ..	Supreme Court (Amendment) Act, 1972.	Paragraph (s) of the Second Schedule and so much of paragraph (an) of the Second Schedule as relates to sections 16, 18 and 108 (4) of Act No. 45, 1958.

*Miscellaneous Acts (Mental Health) Repeal and Amendment.*SCHEDULE 1—*continued.*REPEALS—*continued.*

Column 1.		Column 2.
Year and number of Act.	Short title of Act.	Extent of repeal.
5 1972, No. 63 ..	Health Commission Act, 1972	So much of the Schedule as amends Act No. 24, 1912, and Act No. 45, 1958 (except sections 4, 65 (1) and 102 (a) of that Act).
10 1974, No. 18 ..	Defamation Act, 1974 ..	So much of Schedule 1 as amends Act No. 24, 1912.
1976, No. 63 ..	Statute Law Revision Act, 1976	So much of Schedule 1 as amends Act No. 69, 1964.
1977, No. 18 ..	Jury Act, 1977	Schedule 5 (1) and (2).
15 1977, No. 19 ..	Notice of Action and Other Privileges Abolition Act, 1977.	So much of Schedule 1 as amends Act No. 24, 1912.
1979, No. 68 ..	Inebriates (Amendment) Act, 1979.	The whole Act.
20 1982, No. 87 ..	Mental Health (Community Welfare) Amendment Act, 1982.	The whole Act.

SCHEDULE 2.

(Sec. 5.)

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AMENDMENTS.

Criminal Appeal Act, 1912, No. 16—

Section 2 (2) (a1), (a2)—

Before section 2 (2) (a), insert:—

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(a1) an order made under section 428I of the Crimes Act, 1900, with respect to a person in relation to whom an investigation under section 428F (1) of that Act is conducted;

(a2) a sentence or disposition stated, or an order made, under section 428L of the Crimes Act, 1900, with respect to a person in relation to whom a special inquiry under section 428I (2) (c) of that Act is conducted;

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS—*continued.*

Mental Health Act, 1958, No. 45—

Section 1 (1)—

5 Omit the subsection, insert instead:—

(1) This Act may be cited as the “Mental Health (Protective Jurisdiction) Act, 1958”.

Legal Services Commission Act, 1979, No. 78—

(1) Section 4 (1), definition of “legal aid”—

10 After “Act”, insert “and includes, in relation to a person who is mentally ill, aid provided to the person in respect of any proceeding, whether of a legal nature or not, arising under the Mental Health Act, 1983”.

(2) Section 11 (2), (3)—

At the end of section 11, insert:—

15 (2) Nothing in this Act prevents the Commission from providing, to a person who is mentally ill, aid in respect of any proceeding, whether of a legal nature or not, arising under the Mental Health Act, 1983, by arranging for the services of persons approved by the Commission, whether or not those persons are private legal practitioners.

20 (3) Except as provided by subsection (2), this Act applies to and in respect of the provision of legal aid by a person approved by the Commission under that subsection in the same way as it applies to and in respect of the provision of legal aid by a private legal practitioner.

SCHEDULE 3.

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(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation: Sch. 3.

1. (1) In this Schedule—

30 “appointed day” means the day appointed and notified under section 2 (2) of the 1983 Act;

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

“the 1958 Act” means the Act which, immediately before the appointed day, could be cited as the Mental Health Act, 1958;

5 “the 1983 Act” means the Mental Health Act, 1983.

(2) Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Schedule have the same meanings as in the 1983 Act.

Hospitals.

2. (1) A place which was, immediately before the appointed day—

- 10 (a) an admission centre; or
(b) a mental hospital,

under the 1958 Act shall be deemed to be a hospital for the purposes of the 1983 Act.

(2) A place which was, immediately before the appointed day, an authorised hospital under the 1958 Act shall be deemed to be an authorised hospital for the
15 purposes of the 1983 Act.

(3) A licence in force, immediately before the appointed day, under section 11 (1) of the 1958 Act shall be deemed to be a licence issued under section 11 (2) of the
1983 Act.

Medical superintendents and deputy medical superintendents.

20 3. (1) A person whose appointment under section 8 of the 1958 Act as the medical superintendent of an admission centre or a mental hospital was in force immediately before the appointed day shall be deemed to have been appointed as the medical superintendent of the hospital which, pursuant to clause 2, the admission centre or mental hospital is deemed to be and to have been so appointed under section 8 of the
25 1983 Act.

(2) A person whose appointment under section 8 of the 1958 Act as the deputy medical superintendent of an admission centre or a mental hospital was in force immediately before the appointed day shall be deemed to have been appointed as the deputy medical superintendent of the hospital which, pursuant to clause 2, the admission centre
30 or mental hospital is deemed to be and to have been so appointed under section 9 of the 1983 Act.

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Authorised officers.**

- 5 4. A person whose appointment under section 7 of the 1958 Act as an authorised officer was in force immediately before the appointed day shall be deemed to have been appointed as an authorised officer under section 27 of the 1983 Act.

Welfare officers.

- 10 5. A person whose appointment under section 34 of the 1958 Act as a welfare officer was in force immediately before the appointed day shall be deemed to have been appointed as a welfare officer under section 32 of the 1983 Act.

Patients, etc.

- 15 6. (1) A person who, immediately before the appointed day, was a voluntary patient of an admission centre, mental hospital or authorised hospital shall be deemed to be, on and from that day, subject to the 1983 Act, an informal patient of the hospital which, pursuant to clause 2, the admission centre, mental hospital or authorised hospital is deemed to be.

- 20 (2) A person who, immediately before the appointed day, was admitted to and detained, under section 12 of the 1958 Act, in an admission centre and in respect of whom an inquiry, under section 12 (9) of the 1958 Act, had not, before that day, been held shall be deemed to be a person involuntarily admitted under Part V of the 1983 Act to the hospital which, pursuant to clause 2, the admission centre is deemed to be.

- 25 (3) A person who, immediately before the appointed day, was a temporary patient of a mental hospital or authorised hospital shall be deemed to be, on and from that day, subject to the 1983 Act, a temporary patient of the hospital which, pursuant to clause 2, the mental hospital or authorised hospital is deemed to be.

- 30 (4) A person who, immediately before the appointed day, was a continued treatment patient of a mental hospital or authorised hospital shall be deemed to be, on and from that day, subject to the 1983 Act, a continued treatment patient of the hospital which, pursuant to clause 2, the mental hospital or authorised hospital is deemed to be.

- (5) A person who, immediately before the appointed day, was a person detained in a mental hospital pursuant to Part VII of the 1958 Act shall be deemed to be, on and from that day, subject to the 1983 Act, a forensic patient of the hospital which, pursuant to clause 2, the mental hospital is deemed to be.

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Leave of absence.**

5 7. (1) A period of absence allowed to a patient (other than a voluntary patient) under section 19 of the 1958 Act which, immediately before the appointed day, had not expired shall be deemed to be a period of absence allowed to the patient under section 107 of the 1983 Act.

(2) A patient (other than a voluntary patient) who, before the appointed day, fails—

10 (a) to return to a hospital at the expiration of a period of absence allowed to him under section 19 of the 1958 Act; or

(b) to comply with any condition upon which he was so allowed to be absent, shall be deemed to have failed to have complied with section 107 (2) of the 1983 Act.

15 (3) A period of special leave of absence granted to a patient under section 29A of the 1958 Act which, immediately before the appointed day, had not expired shall be deemed to be a period of special leave of absence granted to the patient under section 123 (3) of the 1983 Act.

20 (4) A patient who, before the appointed day, has broken any term or condition upon which special leave of absence was granted to him under section 29A of the 1958 Act may be retaken and dealt with as provided by section 125 of the 1983 Act.

Unlawful absences.

25 8. (1) A patient (other than a person detained in a mental hospital pursuant to Part VII of the 1958 Act) who, immediately before the appointed day, is unlawfully absent from any admission centre, mental hospital or authorised hospital may be apprehended and dealt with as provided by section 110 of the 1983 Act.

(2) A person detained in a mental hospital pursuant to Part VII of the 1958 Act who, before the appointed day, has escaped from the mental hospital may be apprehended and dealt with as provided by section 125 of the 1983 Act.

Pending proceedings.

30 9. Any proceedings pending, immediately before the appointed day, under the 1958 Act before any court, tribunal or person—

(a) shall be deemed to be proceedings pending before the court, tribunal or person before whom those proceedings could be brought under the 1983 Act if those proceedings had been commenced on or after that day; and

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (b) shall be continued before and disposed of by the court, tribunal or person referred to in paragraph (a) accordingly.

5 Trust funds.

10. (1) A Patients Trust Fund kept, immediately before the appointed day, under section 101A of the 1958 Act shall be deemed to be a Patients Trust Fund established and maintained under section 129 of the 1983 Act.

- 10 (2) A Patients Amenities Account kept, immediately before the appointed day, under section 101B of the 1958 Act shall be deemed to be a Patients Amenities Account established and maintained under section 129 of the 1983 Act.

Construction of certain references.

11. (1) On and from the appointed day, a reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether
15 of the same or of a different kind, to—

- (a) an admission centre within the meaning of the 1958 Act;
- (b) a mental hospital within the meaning of the 1958 Act; or
- (c) an admission centre or a mental hospital within the meaning of the 1958 Act,

shall be read and construed as a reference to a hospital within the meaning of the
20 1983 Act.

- (2) On and from the appointed day, a reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether of the same kind or of a different kind, to—

- 25 (a) a person who becomes an insane patient or an insane or incapable person within the meaning of the Lunacy Act of 1898;
- (b) a person who becomes an insane person or patient or an incapable person within the meaning of the Lunacy Act of 1898;
- (c) a person who becomes a mentally ill, protected or incapable person within the meaning of the 1958 Act; or
- 30 (d) a person who becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the 1958 Act or a person under detention under Part VII of that Act,

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

shall be read and construed as a reference to a person who becomes a temporary patient, a continued treatment patient or a forensic patient within the meaning of the 1983 Act or a protected person or an incapable person within the meaning of the Mental Health (Protective Jurisdiction) Act, 1958.

Validation, etc., of certain fees.

12. (1) Any fees charged, waived, reduced, postponed or written off on and from 1st November, 1981, and before the appointed day in accordance with a determination of the Health Commission of New South Wales in respect of patients of hospitals shall be deemed to have been validly charged, waived, reduced, postponed or written off, as the case may require.

(2) The payment or recovery, on or after 1st November, 1981, of a fee referred to in subclause (1) which would, if section 35 of the 1983 Act had been in force at the time of the payment or recovery, have been valid is validated.

(3) For the purpose of the payment or recovery, on or after the appointed day, of a fee referred to in subclause (1), the fee shall be deemed to have been fixed under section 34 (1) of the 1983 Act.

Regulations.

13. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act, the 1983 Act or the Crimes (Mental Disorder) Amendment Act, 1983.

(2) A provision made under subclause (1) may take effect as from the appointed day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or

Miscellaneous Acts (Mental Health) Repeal and Amendment.

SCHEDULE 3—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

5 (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations under this clause so provide, have effect notwithstanding the foregoing clauses of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

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