

# CONCURRENCE COPY

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

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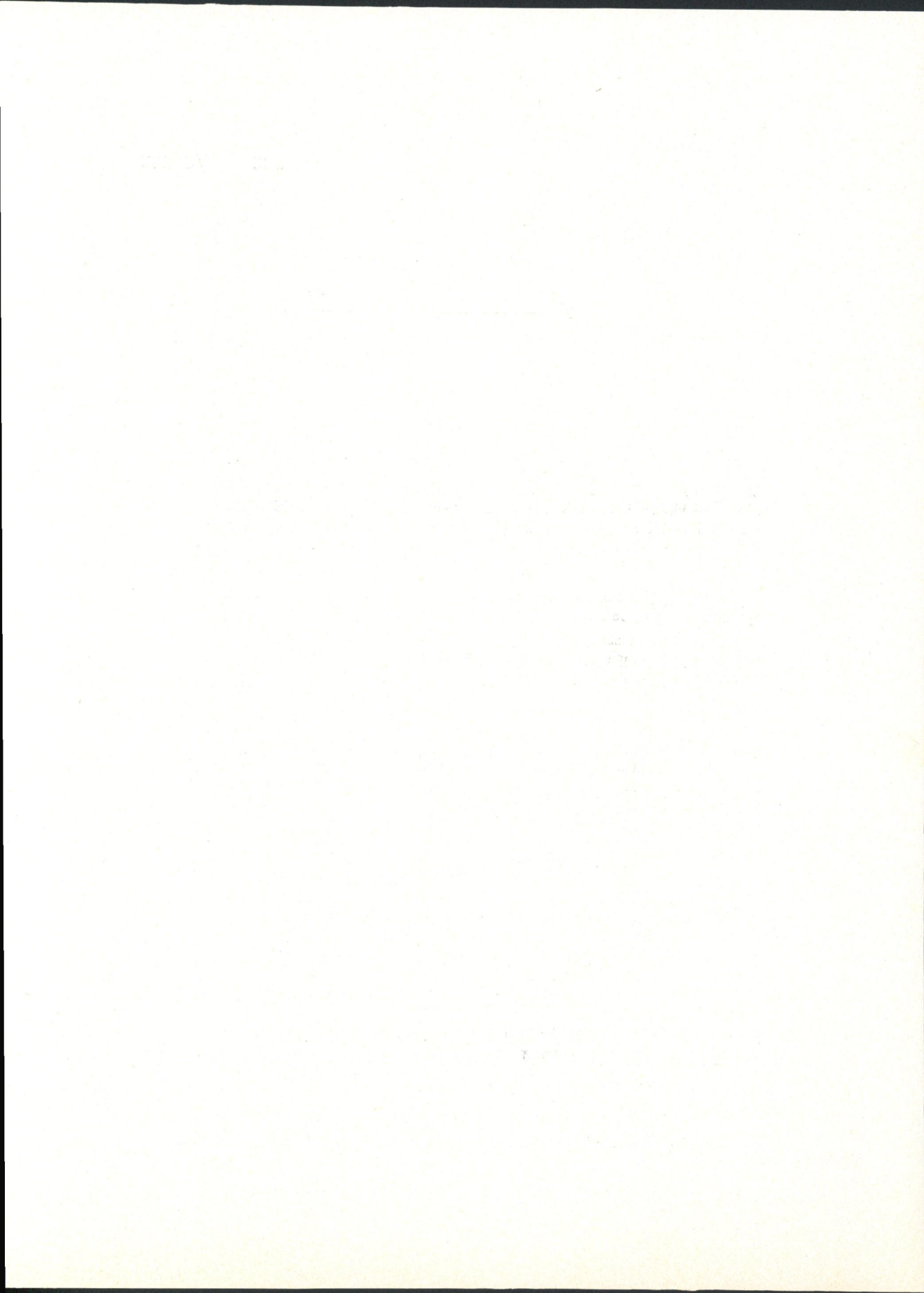
### EXPLANATORY NOTE

**(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, the Mental Health Act, 1958, and certain other enactments as a consequence of the enactment of the proposed Mental Health Act, 1983, and the proposed Protected Estates 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; and
    - (ii) 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, the proposed Protected Estates 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.

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**A BILL FOR**

An Act to repeal certain Acts and amend certain other Acts, consequent on the enactment of the Mental Health Act, 1983, the Protected Estates 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—22 November, 1983.]

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

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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 Short title.**

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

**Commencement.**

2. (1) Subject to this section, this Act shall commence on the date of  
10 assent to this Act.

(2) Section 4, in its application to a provision or item of Schedule 1, shall commence on the day on which that provision or item commences.

(3) Section 5, in its application to a provision of Schedule 2, shall commence on the day on which that provision commences.

15 (4) Section 6, in its application to a provision of Schedule 3, shall commence on the day on which that provision commences.

(5) The several provisions or items of Schedules 1, 2 and 3 shall  
20 commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—AMENDMENTS.

25 SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

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

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**Repeals.**

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

(2) Notwithstanding the repeal by subsection (1) of a provision of an Act specified in Column 1 of Schedule 1, that provision shall, if the regulations so provide, continue in force after its repeal, until such date as may be specified in the regulations, in the same manner as if that provision had not so been repealed.

(3) In the event of an inconsistency between a provision continued in force as referred to in subsection (2) and a provision of the Mental Health Act, 1983, the Protected Estates Act, 1983, or the Crimes Act, 1900 (as amended by the Crimes (Mental Disorder) Amendment Act, 1983), the provision of the Mental Health Act, 1983, the Protected Estates Act, 1983, or the Crimes Act, 1900 (as so amended), as the case may be, shall, unless the regulations otherwise provide, prevail to the extent of the inconsistency.

**Amendments.**

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

**Savings, transitional and other provisions.**

20 6. Schedule 3 has effect.

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

## SCHEDULE 1.

(Sec. 4.)

## REPEALS.

Column 1.		Column 2.	
5	Year and number of Act.	Short title of Act.	
		Extent of repeal.	
10	1912, No. 24 ..	Inebriates Act, 1912.	The whole Act.
	1937, No. 35 ..	Statute Law Revision Act, 1937.	So much of the <b>Second Schedule</b> as amends Act No. 24, 1912.
	1939, No. 19 ..	Mental Defectives (Convicted Persons) Act, 1939.	The whole Act.
	1949, No. 43 ..	Mental Institution Benefits Agreement Act, 1949.	Section 4.
15	1958, No. 45 ..	Mental Health Act, 1958.	The whole Act.
	1961, No. 69 ..	Public Health (Amendment) Act, 1961.	Section 7.
	1964, No. 69 ..	Mental Health (Amendment) Act, 1964.	The whole Act.
20	1965, No. 33 ..	Decimal Currency Act, 1965.	So much of the <b>First Schedule</b> as amends Act No. 24, 1912.
	1970, No. 52 ..	Supreme Court Act, 1970.	So much of the <b>Second Schedule</b> as amends Act No. 24, 1912, and <b>Act No. 45, 1958</b> .
	1970, No. 60 ..	Minors (Property and Contracts) Act, 1970.	So much of the <b>First Schedule</b> as amends Act No. 45, 1958.
25	1972, No. 41 ..	Supreme Court (Amendment) Act, 1972.	Paragraphs (s) and (an) of the <b>Second Schedule</b> .
	1974, No. 18 ..	Defamation Act, 1974.	So much of <b>Schedule 1</b> as amends Act No. 24, 1912.
30	1977, No. 18 ..	Jury Act, 1977.	Section 78 (1) and <b>Schedule 5</b> .
	1977, No. 19 ..	Notice of Action and Other Privileges Abolition Act, 1977.	So much of <b>Schedule 1</b> as amends Act No. 24, 1912.
35	1979, No. 68 ..	Inebriates (Amendment) Act, 1979.	The whole Act.
	1982, No. 87 ..	Mental Health (Community Welfare) Amendment Act, 1982.	The whole Act.
40	1982, No. 138 ..	Miscellaneous Acts (Health Administration) Amendment Act, 1982.	So much of <b>Schedule 1</b> as amends Act No. 24, 1912, and <b>Act No. 45, 1958</b> .
	1982, No. 168 ..	Miscellaneous Acts (Local Courts) Amendment Act, 1982.	So much of <b>Schedule 1</b> as amends Act No. 19, 1939.
45	1983, No. 3 ..	Miscellaneous Acts (Community Welfare) Amendment Act, 1983.	So much of <b>Schedule 1</b> as amends Act No. 87, 1982.
	1983, No. 27 ..	Mental Health (Powers of Attorney) Amendment Act, 1983.	The whole Act.
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*Miscellaneous Acts (Mental Health) Repeal and Amendment.*

## SCHEDULE 2.

(Sec. 5.)

## AMENDMENTS.

**Criminal Appeal Act, 1912, No. 16—**

## 5 (1) Section 2 (2) (a1)–(a9)—

Before section 2 (2) (a), insert:—

- (a1) a finding under section 428I (1) or (2) of the Crimes Act, 1900, in respect of a person;
- 10 (a2) an order made under section 428L (b) of the Crimes Act, 1900, in respect of a person;
- (a3) a verdict in accordance with section 428O (5) (c) or (d) of the Crimes Act, 1900, in respect of a person;
- (a4) a limiting term within the meaning of section 428P of the Crimes Act, 1900, in respect of a person;
- 15 (a5) a special verdict or order under section 428P (5) of the Crimes Act, 1900, in respect of a person;
- (a6) an order made under section 428Q (a) or (b) of the Crimes Act, 1900, in respect of a person;
- 20 (a7) a finding under section 428T (2) of the Crimes Act, 1900, in respect of a person;
- (a8) a special verdict under section 428ZA of the Crimes Act, 1900, in respect of a person;
- (a9) an order under section 428ZB of the Crimes Act, 1900, in respect of a person;

## 25 (2) Section 2 (2)—

Omit "(a) an order", insert instead "(a10) an order".

**Legal Services Commission Act, 1979, No. 78—**

## (1) Section 4 (1), definition of "legal aid"—

- 30 After "Act", insert "and includes, in relation to a person who is a patient within the meaning of the Mental Health Act, 1983, aid provided to the patient in respect of any matter, whether of a legal nature or not".

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

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SCHEDULE 2—*continued.*

AMENDMENTS—*continued.*

(2) Section 11 (2), (3)—

At the end of section 11, insert:—

5 (2) Nothing in this Act prevents the Commission from providing, to a patient within the meaning of the Mental Health Act, 1983, aid in respect of any matter, whether of a legal nature or not, by arranging for the services of persons approved by the Commission, whether or not those persons are private legal practitioners.

10 (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 manner as it applies to and in respect of the provision of legal aid by a private legal practitioner.

**Statutory and Other Offices Remuneration Act, 1975 (1976, No. 4)—**

15 Part 1 of Schedule 2—

At the end of the Part, insert:—

President of the Mental Health Review Tribunal.

Deputy President of the Mental Health Review Tribunal.

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SCHEDULE 3.

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SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

(Sec. 6.)

Part 1.

**Interpretation.**

1. In this Schedule—

25 “appointed day”, in relation to a provision of this Schedule, means the day appointed and notified under section 2 (5) in relation to that provision;

“the Estates Act” means the Protected Estates Act, 1983;

“the 1898 Act” means the Lunacy Act of 1898;

“the 1958 Act” means the Mental Health Act, 1958;

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



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

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

## Part 2.

**Interpretation.**

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

**Hospitals.**

3. (1) A place which was, immediately before the appointed day—  
(a) an admission centre; or  
10 (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 purposes of the 1983 Act.
- 15 (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 4. (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 3, the admission centre or mental hospital is deemed to be, and to have been so appointed under section 8 of the 1983 Act.
- 25 (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 3, the admission centre or mental hospital is deemed to be, and to have been so appointed under section  
30 9 of the 1983 Act.

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

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

5 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 28 of the 1983 Act.

**Welfare officers.**

6 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 10 appointed as a welfare officer under section 33 of the 1983 Act.

**Patients, etc.**

7. (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 15 which, pursuant to clause 3, the admission centre, mental hospital or authorised hospital is deemed to be.

(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 20 held shall be deemed to be a person who, under Part V of the 1983 Act, has been taken to and detained in the hospital which, pursuant to clause 3, the admission centre is deemed to be.

(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 25 from that day, subject to the 1983 Act, a temporary patient of the hospital which, pursuant to clause 3, the mental hospital or authorised hospital is deemed to be.

(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 30 which, pursuant to clause 3, 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 3, the mental hospital is deemed to be.

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

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

8. (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 111 of the 1983 Act.

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

- 10 (a) to return to a hospital at the expiration of a period of absence allowed to the patient under section 19 of the 1958 Act; or
- (b) to comply with any condition upon which the patient was so allowed to be absent,

shall be deemed to have failed to have complied with section 111 (2) of the 1983 Act.

(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 129 (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 the patient under section 29A of the 1958 Act may be retaken and dealt with as provided by section 131 of the 1983 Act.

**Unlawful absences.**

- 25 9. (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 114 of the 1983 Act.

- 30 (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 131 of the 1983 Act.

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

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

10. Any proceedings pending, immediately before the appointed day, under the  
5 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

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

**Trust funds.**

11. (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 142 of the 1983 Act.

15 (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 142 of the 1983 Act.

**Validation, etc., of certain fees.**

20 12. 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 or the Secretary of the Department of  
Health, as the case may be, 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.

## Part 3.

25 **Interpretation.**

13. Except in so far as the context or subject-matter otherwise indicates or requires,  
expressions used in this Part have the same meanings as in the Estates Act.

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

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Protected persons and incapable persons under the 1958 Act.**

14. Where, immediately before the appointed day, a person was a protected person,  
5 or an incapable person, within the meaning of the 1958 Act, an order shall be deemed to be made under the Estates Act, on that day, by the Court that the estate of the person be subject to management under the Estates Act.

**Declarations under section 38 of the 1958 Act.**

15 10 15. A declaration made by the Court in respect of a person under section 38 of the 1958 Act and in force, immediately before the appointed day, shall, notwithstanding the repeal of the 1958 Act, continue in force and may be revoked as if the declaration were made under section 13 of the Estates Act.

**Committee or manager appointed under the 1958 Act.**

15 16. A person who, not being the Protective Commissioner, was, immediately before the appointed day, a committee of the estate of another person, or a manager in respect of the property of another person, under the 1958 Act shall be deemed to be appointed under section 22 of the Estates Act, on the appointed day, as manager of the estate of the other person.

**Protective Commissioner appointed as committee or manager under the 1958 Act.**

20 17. Where, immediately before the appointed day, the Protective Commissioner was a committee of the estate of a person, or a manager in respect of the property of a person, under the 1958 Act, the management of the estate of the person shall be deemed to be, on the appointed day, committed to the Protective Commissioner under section 22 of the Estates Act.

**25 Patients under the 1958 Act.**

30 18. (1) Where, immediately before the appointed day, a person was a patient within the meaning of the 1958 Act, an order shall be deemed to be made under the Estates Act, on that day, by the Tribunal that the estate of the person be subject to management under the Estates Act and the estate of the person shall be deemed to be committed under the Estates Act, on that day, to the management of the Protective Commissioner.

*Miscellaneous Acts (Mental Health) Repeal and Amendment.*SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

## (2) Where—

5 (a) before the appointed day, a person was, but had ceased to be, a patient within the meaning of the 1958 Act; and

(b) immediately before the appointed day, the estate of the person was being managed pursuant to section 73 (3) of the 1958 Act,

the person shall, for the purposes of the Estates Act, be deemed to be a person—

10 (c) in respect of whom an order had been made by the Tribunal under the Estates Act that the estate of the person be subject to management under the Estates Act, being an order which was in force on that day; and

(d) who was, but ceased on that day to be, a patient within the meaning of the 1983 Act.

**Orders, etc., under the 1958 Act.**

15 19. An order or direction made under Part X, XI or XIII of the 1958 Act in respect of a person to whom Part X or XI of the 1958 Act applied or in respect of the estate or property of any such person, being an order or direction in force immediately before the appointed day, shall, subject to any order or direction made under the Estates Act, continue in force as if made under the Estates Act.

**20 Applications made under the 1958 Act.**

20. An application made under the 1958 Act and not finally determined before the appointed day—

25 (a) may be amended by the applicant or, with the consent of the applicant, by the Court in such manner as may be necessary for the determination of the application under the Estates Act; and

(b) shall, unless withdrawn, be determined as if it had been made under the Estates Act.

**Proclamations under the 1958 Act.**

30 21. (1) A proclamation made by the Governor, and published in the Gazette, under section 48 of the 1958 Act and in force immediately before the appointed day, being a proclamation which extended the provisions of that section to a country, shall be deemed to have been made, and published, under section 14 of the Estates Act and to have extended the provisions of section 14 of the Estates Act to the country.

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

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

(2) A proclamation published in the Gazette under section 100 of the 1958 Act and in force immediately before the appointed day, being a proclamation by which  
5 the Governor declared a country, state or territory outside New South Wales to be a reciprocating state for the purposes of Part XII of the 1958 Act shall be deemed to have been made and published under section 65 of the Estates Act and to be a proclamation by which the Governor declared the country, state or territory to be a reciprocating state for the purposes of Part VI of the Estates Act.

**10 Protective Commissioner and other officers.**

22. (1) The repeal by this Act of the 1958 Act does not affect the tenure of office of any person holding an office referred to in section 51 of that Act immediately before the appointed day.

(2) The person who, immediately before the appointed day, held office as the  
15 Protective Chief Clerk shall be deemed to be duly appointed, on that day, to the office of Deputy Protective Commissioner and shall be deemed to have been so appointed upon the same terms and conditions as those applicable to the person immediately before that day.

**Security or recognizance under the 1958 Act.**

20 23. Any security or bond given, and any recognizance entered into, under the 1958 Act shall be deemed to have been given, or entered into, as the case may be, under the Estates Act.

**Documents and acts under the 1958 Act to remain effectual.**

25 24. The provisions of the Estates Act apply to and in respect of any document executed or thing done under the 1958 Act in the same way as those provisions apply to and in respect of a document executed or thing done under the Estates Act.

**Accounts, etc., under the 1958 Act to continue.**

30 25. (1) The trust fund to which money paid into the Treasury under the 1958 Act was credited shall be the trust fund to which money paid into the Special Deposits Account in the Treasury is required to be credited under section 27 of the Estates Act.

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

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

(2) A current account kept under the 1958 Act in respect of the balance standing to the credit of an estate in the trust fund and which has not been closed 5 before the appointed day shall be deemed to have been kept under the Estates Act in respect of that balance.

(3) The Interest Account and the Estates Guarantee and Reserve Account kept by the Protective Commissioner under the 1958 Act shall, respectively, be the Interest Account and the Estates Guarantee and Reserve Account under the Estates Act 15 and the balances of those accounts immediately before the appointed day shall be the respective balances on that day.

**Personal effects and money unclaimed before appointed day.**

26. For the purposes of the Estates Act, any proceeds of a sale or other money to which section 74 of the 1958 Act applied immediately before the appointed day 15 shall, until recovered from the Treasurer, be deemed to be proceeds or money to which section 44 of the Estates Act applies.

**Trust or other interest affected by dealing under 1958 Act.**

27. The provisions of the Estates Act apply to and in respect of—

- 20 (a) property taken in exchange, or a renewed lease accepted, under the 1958 Act in the same way as those provisions apply to and in respect of property taken in exchange, or a renewed lease accepted, under the Estates Act; and
- 25 (b) money or other property arising from a dealing with property under the 1958 Act in the same way as those provisions apply to and in respect of money or other property arising from a dealing with property under the Estates Act.

## Part 4.

**Construction of certain references.**

28. (1) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), or in any regulation, 30 by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to—

- (a) an admission centre or a mental hospital, or both, within the meaning of the 1958 Act—shall be read and construed as a reference to a hospital within the meaning of the 1983 Act;



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

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

- 5 (b) an authorised hospital within the meaning of the 1958 Act—shall be read and construed as a reference to an authorised hospital within the meaning of the 1983 Act;
- (c) a hospital for the insane, a hospital for the criminal insane or a reception-house, or any combination of those expressions, within the meaning of the 1898 Act—shall be read and construed as a reference to a hospital within the meaning of the 1983 Act; or
- 10 (d) a licensed house within the meaning of the 1898 Act—shall be read and construed as a reference to an authorised hospital within the meaning of the 1983 Act.
- (2) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), or in any regulation, 15 by-law or other statutory instrument or in any other document, whether of the same kind or of a different kind, to—
- (a) a mentally ill person within the meaning of the 1958 Act—shall be read and construed as a reference to a mentally ill person within the meaning of the 1983 Act;
- 20 (b) a voluntary patient within the meaning of the 1958 Act—shall be read and construed as a reference to an informal patient within the meaning of the 1983 Act;
- (c) a temporary patient within the meaning of the 1958 Act—shall be read and 25 construed as a reference to a temporary patient within the meaning of the 1983 Act;
- (d) a continued treatment patient within the meaning of the 1958 Act—shall be read and construed as a reference to a continued treatment patient within the meaning of the 1983 Act;
- 30 (e) a person under detention under Part VII of the 1958 Act—shall be read and construed as a reference to a forensic patient within the meaning of the 1983 Act;
- (f) a patient within the meaning of the 1958 Act—shall be read and construed as a reference to a patient (other than an informal patient) within the meaning of the 1983 Act;
- 35 (g) a person detained in an admission centre under section 12 of the 1958 Act—shall be read and construed as a reference to a person taken to and detained in a hospital under Part V of the 1983 Act;
- (h) a patient or an insane patient, or both, within the meaning of the 1898 Act 40 —shall be read and construed as a reference to a patient (other than an informal patient) within the meaning of the 1983 Act; or

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

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

- (i) a lunatic within the meaning of the 1898 Act—shall be read and construed as a reference to a mentally ill person within the meaning of the 1983 Act.

5 (3) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

10 (a) a protected person or an incapable person, or both, within the meaning of the 1958 Act—shall be read and construed as a reference to a protected person within the meaning of the Estates Act;

(b) an incapable person or an insane person, or both, within the meaning of the 1898 Act—shall be read and construed as a reference to a protected person within the meaning of the Estates Act;

15 (c) a committee of an estate or a manager of an estate within the meaning of the 1958 Act—shall be read and construed as a reference to a manager of an estate appointed under the Estates Act;

20 (d) a committee of a person within the meaning of the 1958 Act—shall be read and construed as a reference to a guardian of a person appointed under the Estates Act; or

(e) a committee of an estate or a manager of an estate within the meaning of the 1898 Act—shall be read and construed as a reference to a manager of an estate appointed under the Estates Act.

25 (4) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

30 (a) the Master of the Supreme Court of New South Wales prescribed by rules of Court for the purposes of the 1958 Act, the Master in the Protective Division of that Court or the Master in Lunacy—shall, in so far as it relates to the powers and duties conferred upon the Master by or under any Act (other than the Supreme Court Act, 1970) or by any order of that Court, be read and construed as a reference to the Protective Commissioner;

35 (b) the Deputy Master in the Protective Jurisdiction of the Supreme Court of New South Wales—shall be read and construed as a reference to the Protective Commissioner; or

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


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

- 5 (c) the Chief Clerk in the Protective Jurisdiction of the Supreme Court of New South Wales or the Protective Chief Clerk—shall be read and construed as a reference to the Deputy Protective Commissioner.
- (5) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—
- 10 (a) a provision of the 1958 Act or of the 1898 Act—shall, except as provided by paragraph (c), be read and construed as a reference to the corresponding provision, if any, of the 1983 Act or of the Estates Act, as the case may require;
- 15 (b) the 1958 Act or the 1898 Act—shall, except as provided by paragraph (c), be read and construed as a reference to the 1983 Act or the Estates Act, as the case may require; or
- 20 (c) the keeping in strict custody pursuant to section 23 (3) of the 1958 Act of any person—shall be read and construed as a reference to the detention in strict custody pursuant to section 428P (5) or 428ZB of the Crimes Act, 1900, of that person.

**Regulations.**

- 25 29. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act, the Mental Health Act, 1983, the Protected Estates Act, 1983, 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
- 30 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
- 35 (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.

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

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SCHEDULE 3—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

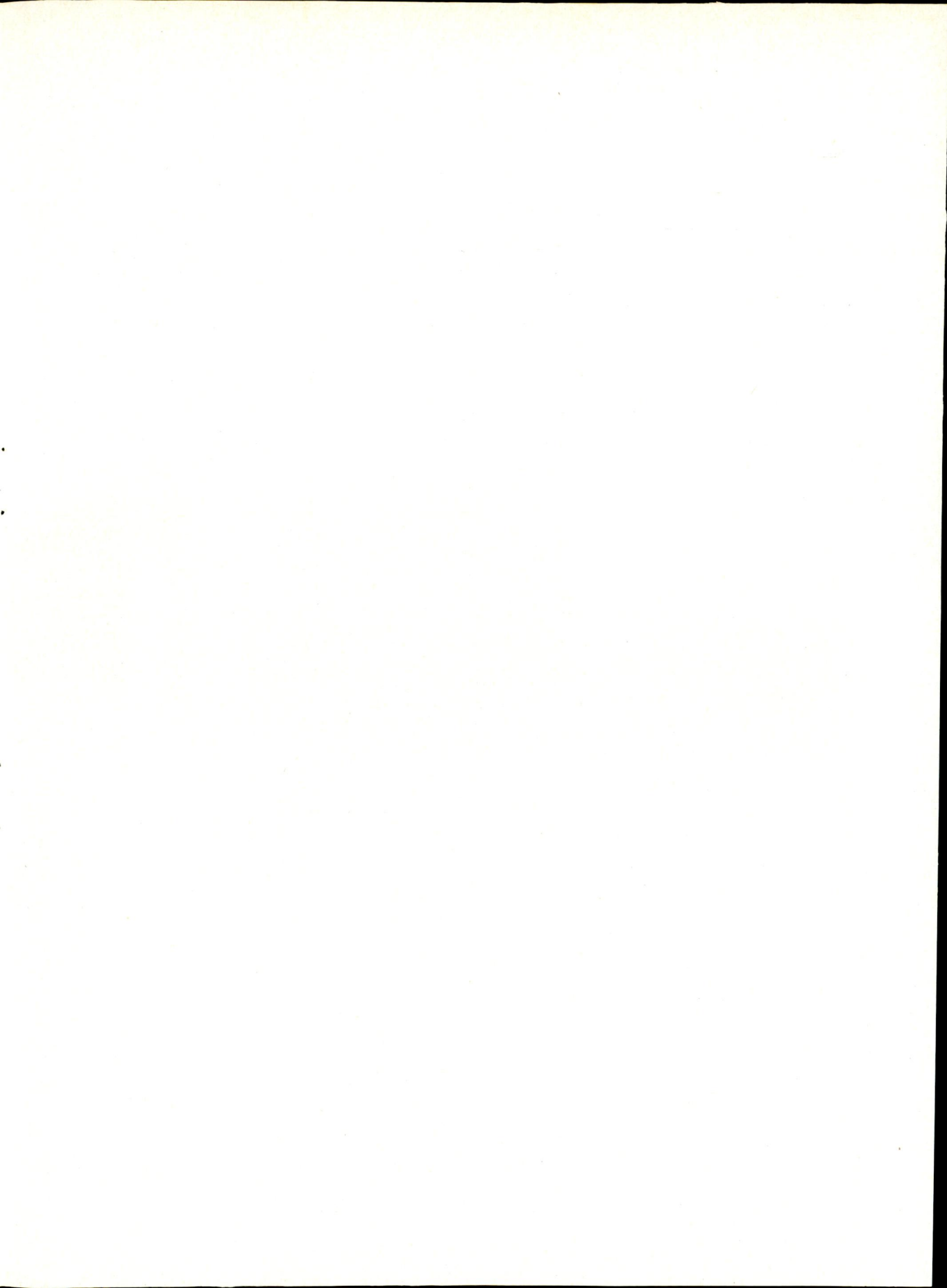
(5) A reference in any provision of this Act (this clause and section 4 excepted) to regulations does not include a reference to regulations made under this clause.

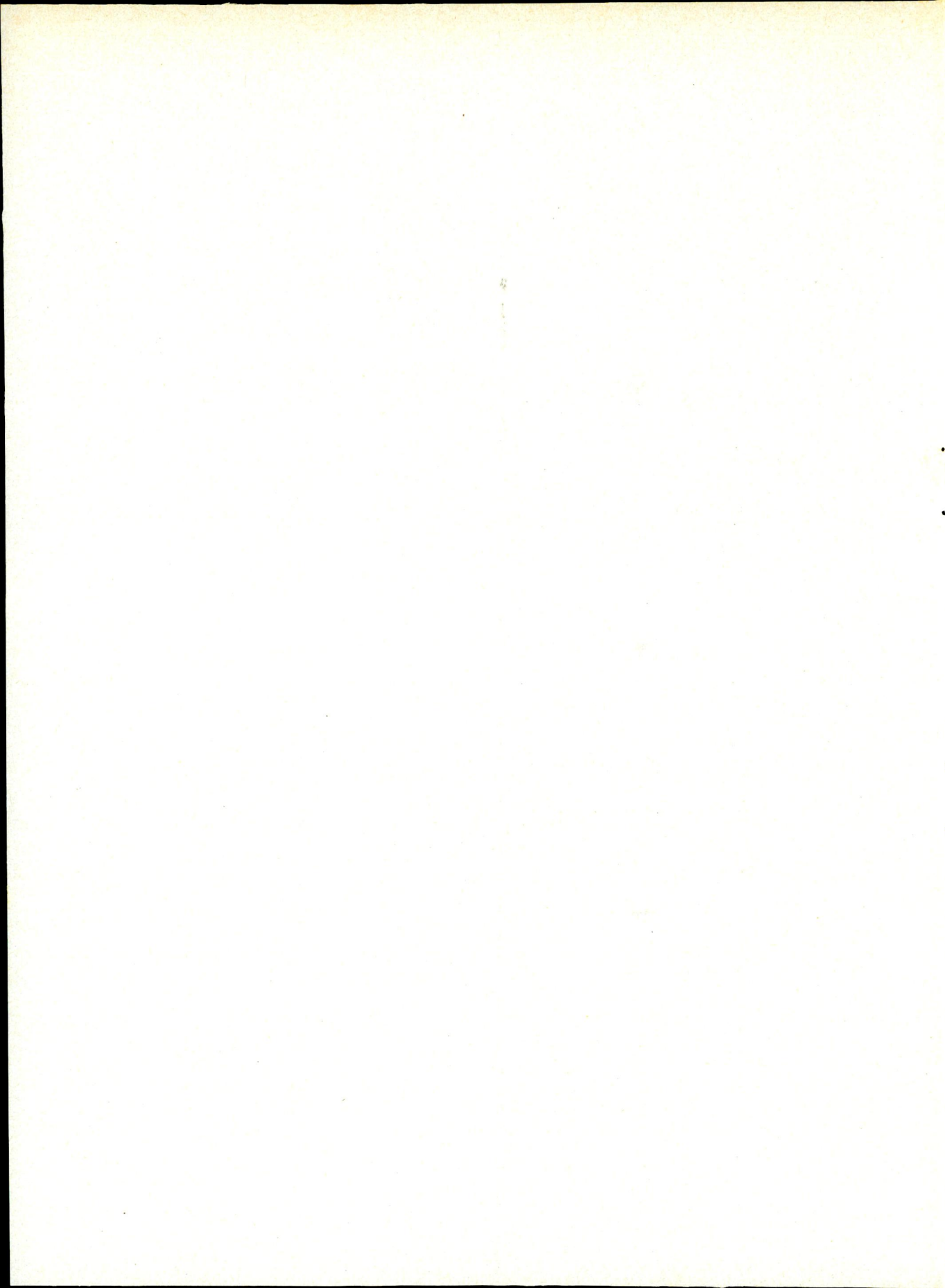
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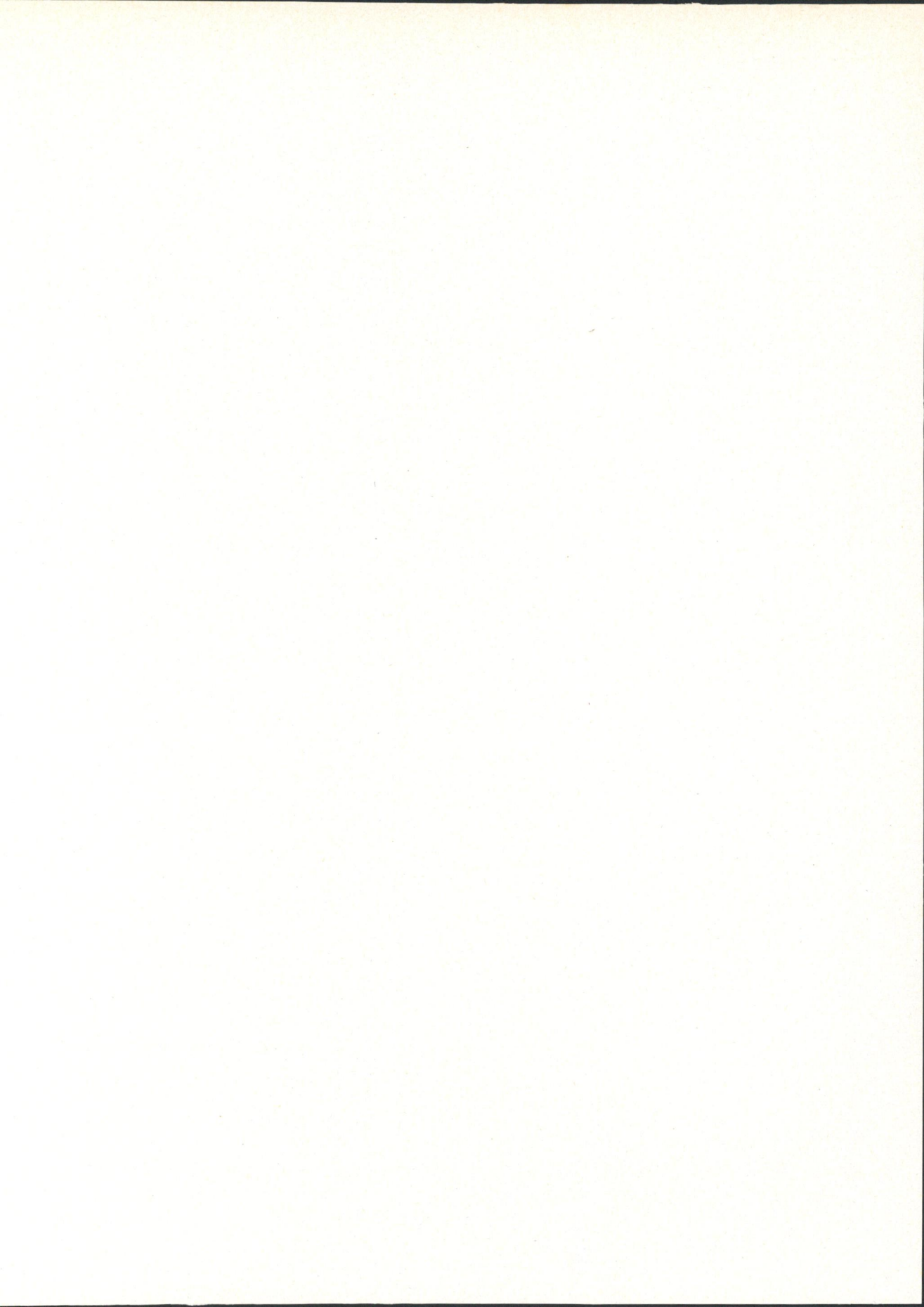
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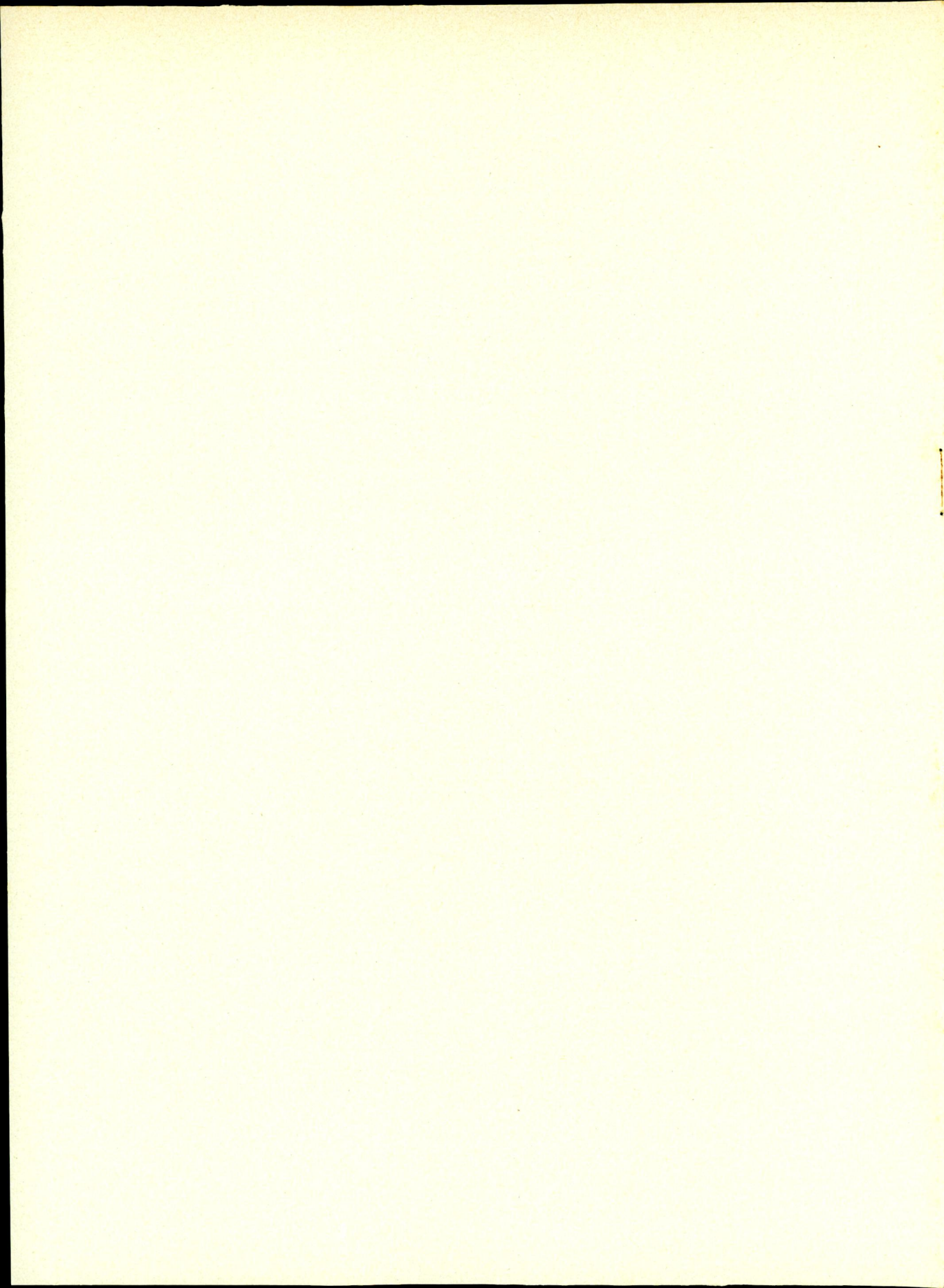
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1983

(80c)











MISCELLANEOUS ACTS (MENTAL HEALTH) REPEAL AND  
AMENDMENT ACT, 1983, No. 181

New South Wales



ANNO TRICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

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Act No. 181, 1983.

An Act to repeal certain Acts and amend certain other Acts, consequent on the enactment of the Mental Health Act, 1983, the Protected Estates 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. [Assented to, 31st December, 1983.]

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

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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:—

**Short title.**

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

**Commencement.**

2. (1) Subject to this section, this Act shall commence on the date of assent to this Act.

(2) Section 4, in its application to a provision or item of Schedule 1, shall commence on the day on which that provision or item commences.

(3) Section 5, in its application to a provision of Schedule 2, shall commence on the day on which that provision commences.

(4) Section 6, in its application to a provision of Schedule 3, shall commence on the day on which that provision commences.

(5) The several provisions or items of Schedules 1, 2 and 3 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Schedules.**

3. This Act contains the following Schedules:—

SCHEDULE 1.—REPEALS.

SCHEDULE 2.—AMENDMENTS.

SCHEDULE 3.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

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

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**Repeals.**

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

(2) Notwithstanding the repeal by subsection (1) of a provision of an Act specified in Column 1 of Schedule 1, that provision shall, if the regulations so provide, continue in force after its repeal, until such date as may be specified in the regulations, in the same manner as if that provision had not so been repealed.

(3) In the event of an inconsistency between a provision continued in force as referred to in subsection (2) and a provision of the Mental Health Act, 1983, the Protected Estates Act, 1983, or the Crimes Act, 1900 (as amended by the Crimes (Mental Disorder) Amendment Act, 1983), the provision of the Mental Health Act, 1983, the Protected Estates Act, 1983, or the Crimes Act, 1900 (as so amended), as the case may be, shall, unless the regulations otherwise provide, prevail to the extent of the inconsistency.

**Amendments.**

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

**Savings, transitional and other provisions.**

6. Schedule 3 has effect.

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

## SCHEDULE 1.

(Sec. 4.)

## REPEALS.

Column 1.		Column 2.
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.
1939, No. 19 ..	Mental Defectives (Convicted Persons) Act, 1939.	The whole Act.
1949, No. 43 ..	Mental Institution Benefits Agreement Act, 1949.	Section 4.
1958, No. 45 ..	Mental Health Act, 1958.	The whole Act.
1961, No. 69 ..	Public Health (Amendment) Act, 1961.	Section 7.
1964, No. 69 ..	Mental Health (Amendment) Act, 1964.	The whole Act.
1965, No. 33 ..	Decimal Currency Act, 1965.	So much of the First Schedule as amends Act No. 24, 1912.
1970, No. 52 ..	Supreme Court Act, 1970.	So much of the Second Schedule as amends Act No. 24, 1912, and Act No. 45, 1958.
1970, No. 60 ..	Minors (Property and Contracts) Act, 1970.	So much of the First Schedule as amends Act No. 45, 1958.
1972, No. 41 ..	Supreme Court (Amendment) Act, 1972.	Paragraphs (s) and (an) of the Second Schedule.
1974, No. 18 ..	Defamation Act, 1974.	So much of Schedule 1 as amends Act No. 24, 1912.
1977, No. 18 ..	Jury Act, 1977.	Section 78 (1) and Schedule 5.
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.
1982, No. 87 ..	Mental Health (Community Welfare) Amendment Act, 1982.	The whole Act.
1982, No. 138 ..	Miscellaneous Acts (Health Administration) Amendment Act, 1982.	So much of Schedule 1 as amends Act No. 24, 1912, and Act No. 45, 1958.
1982, No. 168 ..	Miscellaneous Acts (Local Courts) Amendment Act, 1982.	So much of Schedule 1 as amends Act No. 19, 1939.
1983, No. 3 ..	Miscellaneous Acts (Community Welfare) Amendment Act, 1983.	So much of Schedule 1 as amends Act No. 87, 1982.
1983, No. 27 ..	Mental Health (Powers of Attorney) Amendment Act, 1983.	The whole Act.

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

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## SCHEDULE 2.

(Sec. 5.)

## AMENDMENTS.

**Criminal Appeal Act, 1912, No. 16—**

## (1) Section 2 (2) (a1)–(a9)—

Before section 2 (2) (a), insert:—

- (a1) a finding under section 428I (1) or (2) of the Crimes Act, 1900, in respect of a person;
- (a2) an order made under section 428L (b) of the Crimes Act, 1900, in respect of a person;
- (a3) a verdict in accordance with section 428O (5) (c) or (d) of the Crimes Act, 1900, in respect of a person;
- (a4) a limiting term within the meaning of section 428P of the Crimes Act, 1900, in respect of a person;
- (a5) a special verdict or order under section 428P (5) of the Crimes Act, 1900, in respect of a person;
- (a6) an order made under section 428Q (a) or (b) of the Crimes Act, 1900, in respect of a person;
- (a7) a finding under section 428T (2) of the Crimes Act, 1900, in respect of a person;
- (a8) a special verdict under section 428ZA of the Crimes Act, 1900, in respect of a person;
- (a9) an order under section 428ZB of the Crimes Act, 1900, in respect of a person;

## (2) Section 2 (2)—

Omit "(a) an order", insert instead "(a10) an order".

**Legal Services Commission Act, 1979, No. 78—**

## (1) Section 4 (1), definition of "legal aid"—

After "Act", insert "and includes, in relation to a person who is a patient within the meaning of the Mental Health Act, 1983, aid provided to the patient in respect of any matter, whether of a legal nature or not".

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

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SCHEDULE 2—*continued.*

AMENDMENTS—*continued.*

(2) Section 11 (2), (3)—

At the end of section 11, insert:—

(2) Nothing in this Act prevents the Commission from providing, to a patient within the meaning of the Mental Health Act, 1983, aid in respect of any matter, whether of a legal nature or not, by arranging for the services of persons approved by the Commission, whether or not those persons are private legal practitioners.

(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 manner as it applies to and in respect of the provision of legal aid by a private legal practitioner.

**Statutory and Other Offices Remuneration Act, 1975 (1976, No. 4)—**

Part 1 of Schedule 2—

At the end of the Part, insert:—

President of the Mental Health Review Tribunal.

Deputy President of the Mental Health Review Tribunal.

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SCHEDULE 3.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Part 1.

**Interpretation.**

1. In this Schedule—

“appointed day”, in relation to a provision of this Schedule, means the day appointed and notified under section 2 (5) in relation to that provision;

“the Estates Act” means the Protected Estates Act, 1983;

“the 1898 Act” means the Lunacy Act of 1898;

“the 1958 Act” means the Mental Health Act, 1958;

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

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

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SCHEDULE 3—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

Part 2.

**Interpretation.**

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

**Hospitals.**

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

- (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 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.**

4. (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 3, the admission centre or mental hospital is deemed to be, and to have been so appointed under section 8 of the 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 3, the admission centre or mental hospital is deemed to be, and to have been so appointed under section 9 of the 1983 Act.

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

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

5. 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 28 of the 1983 Act.

**Welfare officers.**

6. 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 33 of the 1983 Act.

**Patients, etc.**

7. (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 3, the admission centre, mental hospital or authorised hospital is deemed to be.

(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 who, under Part V of the 1983 Act, has been taken to and detained in the hospital which, pursuant to clause 3, the admission centre is deemed to be.

(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 3, the mental hospital or authorised hospital is deemed to be.

(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 3, 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 3, the mental hospital is deemed to be.



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

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

8. (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 111 of the 1983 Act.

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

- (a) to return to a hospital at the expiration of a period of absence allowed to the patient under section 19 of the 1958 Act; or
- (b) to comply with any condition upon which the patient was so allowed to be absent,

shall be deemed to have failed to have complied with section 111 (2) of the 1983 Act.

(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 129 (3) of the 1983 Act.

(4) A patient who, before the appointed day, has broken any term or condition upon which special leave of absence was granted to the patient under section 29A of the 1958 Act may be retaken and dealt with as provided by section 131 of the 1983 Act.

**Unlawful absences.**

9. (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 114 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 131 of the 1983 Act.

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

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

10. 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
- (b) shall be continued before and disposed of by the court, tribunal or person referred to in paragraph (a) accordingly.

**Trust funds.**

11. (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 142 of the 1983 Act.

(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 142 of the 1983 Act.

**Validation, etc., of certain fees.**

12. 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 or the Secretary of the Department of Health, as the case may be, 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.

## Part 3.

**Interpretation.**

13. Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Part have the same meanings as in the Estates Act.

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

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SCHEDULE 3—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.***Protected persons and incapable persons under the 1958 Act.**

14. Where, immediately before the appointed day, a person was a protected person, or an incapable person, within the meaning of the 1958 Act, an order shall be deemed to be made under the Estates Act, on that day, by the Court that the estate of the person be subject to management under the Estates Act.

**Declarations under section 38 of the 1958 Act.**

15. A declaration made by the Court in respect of a person under section 38 of the 1958 Act and in force, immediately before the appointed day, shall, notwithstanding the repeal of the 1958 Act, continue in force and may be revoked as if the declaration were made under section 13 of the Estates Act.

**Committee or manager appointed under the 1958 Act.**

16. A person who, not being the Protective Commissioner, was, immediately before the appointed day, a committee of the estate of another person, or a manager in respect of the property of another person, under the 1958 Act shall be deemed to be appointed under section 22 of the Estates Act, on the appointed day, as manager of the estate of the other person.

**Protective Commissioner appointed as committee or manager under the 1958 Act.**

17. Where, immediately before the appointed day, the Protective Commissioner was a committee of the estate of a person, or a manager in respect of the property of a person, under the 1958 Act, the management of the estate of the person shall be deemed to be, on the appointed day, committed to the Protective Commissioner under section 22 of the Estates Act.

**Patients under the 1958 Act.**

18. (1) Where, immediately before the appointed day, a person was a patient within the meaning of the 1958 Act, an order shall be deemed to be made under the Estates Act, on that day, by the Tribunal that the estate of the person be subject to management under the Estates Act and the estate of the person shall be deemed to be committed under the Estates Act, on that day, to the management of the Protective Commissioner.

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

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

## (2) Where—

- (a) before the appointed day, a person was, but had ceased to be, a patient within the meaning of the 1958 Act; and
- (b) immediately before the appointed day, the estate of the person was being managed pursuant to section 73 (3) of the 1958 Act,

the person shall, for the purposes of the Estates Act, be deemed to be a person—

- (c) in respect of whom an order had been made by the Tribunal under the Estates Act that the estate of the person be subject to management under the Estates Act, being an order which was in force on that day; and
- (d) who was, but ceased on that day to be, a patient within the meaning of the 1983 Act.

**Orders, etc., under the 1958 Act.**

19. An order or direction made under Part X, XI or XIII of the 1958 Act in respect of a person to whom Part X or XI of the 1958 Act applied or in respect of the estate or property of any such person, being an order or direction in force immediately before the appointed day, shall, subject to any order or direction made under the Estates Act, continue in force as if made under the Estates Act.

**Applications made under the 1958 Act.**

20. An application made under the 1958 Act and not finally determined before the appointed day—

- (a) may be amended by the applicant or, with the consent of the applicant, by the Court in such manner as may be necessary for the determination of the application under the Estates Act; and
- (b) shall, unless withdrawn, be determined as if it had been made under the Estates Act.

**Proclamations under the 1958 Act.**

21. (1) A proclamation made by the Governor, and published in the Gazette, under section 48 of the 1958 Act and in force immediately before the appointed day, being a proclamation which extended the provisions of that section to a country, shall be deemed to have been made, and published, under section 14 of the Estates Act and to have extended the provisions of section 14 of the Estates Act to the country.

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

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

(2) A proclamation published in the Gazette under section 100 of the 1958 Act and in force immediately before the appointed day, being a proclamation by which the Governor declared a country, state or territory outside New South Wales to be a reciprocating state for the purposes of Part XII of the 1958 Act shall be deemed to have been made and published under section 65 of the Estates Act and to be a proclamation by which the Governor declared the country, state or territory to be a reciprocating state for the purposes of Part VI of the Estates Act.

**Protective Commissioner and other officers.**

22. (1) The repeal by this Act of the 1958 Act does not affect the tenure of office of any person holding an office referred to in section 51 of that Act immediately before the appointed day.

(2) The person who, immediately before the appointed day, held office as the Protective Chief Clerk shall be deemed to be duly appointed, on that day, to the office of Deputy Protective Commissioner and shall be deemed to have been so appointed upon the same terms and conditions as those applicable to the person immediately before that day.

**Security or recognizance under the 1958 Act.**

23. Any security or bond given, and any recognizance entered into, under the 1958 Act shall be deemed to have been given, or entered into, as the case may be, under the Estates Act.

**Documents and acts under the 1958 Act to remain effectual.**

24. The provisions of the Estates Act apply to and in respect of any document executed or thing done under the 1958 Act in the same way as those provisions apply to and in respect of a document executed or thing done under the Estates Act.

**Accounts, etc., under the 1958 Act to continue.**

25. (1) The trust fund to which money paid into the Treasury under the 1958 Act was credited shall be the trust fund to which money paid into the Special Deposits Account in the Treasury is required to be credited under section 27 of the Estates Act.

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

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

(2) A current account kept under the 1958 Act in respect of the balance standing to the credit of an estate in the trust fund and which has not been closed before the appointed day shall be deemed to have been kept under the Estates Act in respect of that balance.

(3) The Interest Account and the Estates Guarantee and Reserve Account kept by the Protective Commissioner under the 1958 Act shall, respectively, be the Interest Account and the Estates Guarantee and Reserve Account under the Estates Act and the balances of those accounts immediately before the appointed day shall be the respective balances on that day.

**Personal effects and money unclaimed before appointed day.**

26. For the purposes of the Estates Act, any proceeds of a sale or other money to which section 74 of the 1958 Act applied immediately before the appointed day shall, until recovered from the Treasurer, be deemed to be proceeds or money to which section 44 of the Estates Act applies.

**Trust or other interest affected by dealing under 1958 Act.**

27. The provisions of the Estates Act apply to and in respect of—

- (a) property taken in exchange, or a renewed lease accepted, under the 1958 Act in the same way as those provisions apply to and in respect of property taken in exchange, or a renewed lease accepted, under the Estates Act; and
- (b) money or other property arising from a dealing with property under the 1958 Act in the same way as those provisions apply to and in respect of money or other property arising from a dealing with property under the Estates Act.

**Part 4.****Construction of certain references.**

28. (1) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to—

- (a) an admission centre or a medical hospital, or both, within the meaning of the 1958 Act—shall be read and construed as a reference to a hospital within the meaning of the 1983 Act;

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

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

- (b) an authorised hospital within the meaning of the 1958 Act—shall be read and construed as a reference to an authorised hospital within the meaning of the 1983 Act;
- (c) a hospital for the insane, a hospital for the criminal insane or a reception-house, or any combination of those expressions, within the meaning of the 1898 Act—shall be read and construed as a reference to a hospital within the meaning of the 1983 Act; or
- (d) a licensed house within the meaning of the 1898 Act—shall be read and construed as a reference to an authorised hospital within the meaning of the 1983 Act.

(2) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

- (a) a mentally ill person within the meaning of the 1958 Act—shall be read and construed as a reference to a mentally ill person within the meaning of the 1983 Act;
- (b) a voluntary patient within the meaning of the 1958 Act—shall be read and construed as a reference to an informal patient within the meaning of the 1983 Act;
- (c) a temporary patient within the meaning of the 1958 Act—shall be read and construed as a reference to a temporary patient within the meaning of the 1983 Act;
- (d) a continued treatment patient within the meaning of the 1958 Act—shall be read and construed as a reference to a continued treatment patient within the meaning of the 1983 Act;
- (e) a person under detention under Part VII of the 1958 Act—shall be read and construed as a reference to a forensic patient within the meaning of the 1983 Act;
- (f) a patient within the meaning of the 1958 Act—shall be read and construed as a reference to a patient (other than an informal patient) within the meaning of the 1983 Act;
- (g) a person detained in an admission centre under section 12 of the 1958 Act—shall be read and construed as a reference to a person taken to and detained in a hospital under Part V of the 1983 Act;
- (h) a patient or an insane patient, or both, within the meaning of the 1898 Act—shall be read and construed as a reference to a patient (other than an informal patient) within the meaning of the 1983 Act; or

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

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

- (i) a lunatic within the meaning of the 1898 Act—shall be read and construed as a reference to a mentally ill person within the meaning of the 1983 Act.

(3) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

- (a) a protected person or an incapable person, or both, within the meaning of the 1958 Act—shall be read and construed as a reference to a protected person within the meaning of the Estates Act;
- (b) an incapable person or an insane person, or both, within the meaning of the 1898 Act—shall be read and construed as a reference to a protected person within the meaning of the Estates Act;
- (c) a committee of an estate or a manager of an estate within the meaning of the 1958 Act—shall be read and construed as a reference to a manager of an estate appointed under the Estates Act;
- (d) a committee of a person within the meaning of the 1958 Act—shall be read and construed as a reference to a guardian of a person appointed under the Estates Act; or
- (e) a committee of an estate or a manager of an estate within the meaning of the 1898 Act—shall be read and construed as a reference to a manager of an estate appointed under the Estates Act.

(4) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

- (a) the Master of the Supreme Court of New South Wales prescribed by rules of Court for the purposes of the 1958 Act, the Master in the Protective Division of that Court or the Master in Lunacy—shall, in so far as it relates to the powers and duties conferred upon the Master by or under any Act (other than the Supreme Court Act, 1970) or by any order of that Court, be read and construed as a reference to the Protective Commissioner;
- (b) the Deputy Master in the Protective Jurisdiction of the Supreme Court of New South Wales—shall be read and construed as a reference to the Protective Commissioner; or



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

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

- (c) the Chief Clerk in the Protective Jurisdiction of the Supreme Court of New South Wales or the Protective Chief Clerk—shall be read and construed as a reference to the Deputy Protective Commissioner.

(5) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), 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—

- (a) a provision of the 1958 Act or of the 1898 Act—shall, except as provided by paragraph (c), be read and construed as a reference to the corresponding provision, if any, of the 1983 Act or of the Estates Act, as the case may require;
- (b) the 1958 Act or the 1898 Act—shall, except as provided by paragraph (c), be read and construed as a reference to the 1983 Act or the Estates Act, as the case may require; or
- (c) the keeping in strict custody pursuant to section 23 (3) of the 1958 Act of any person—shall be read and construed as a reference to the detention in strict custody pursuant to section 428P (5) or 428ZB of the Crimes Act, 1900, of that person.

**Regulations.**

29. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act, the Mental Health Act, 1983, the Protected Estates Act, 1983, 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
- (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.

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

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

(5) A reference in any provision of this Act (this clause and section 4 excepted) to regulations does not include a reference to regulations made under this clause.

*In the name and on behalf of Her Majesty I assent to this Act.*

L. W. STREET,  
*By Deputation from*  
*His Excellency the Governor.*

*Government House,*  
*Sydney, 31st December, 1983.*

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BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984



