

MENTAL HEALTH (AMENDMENT) ACT 1986
No. 92

NEW SOUTH WALES



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SCHEDULE 1—AMENDMENTS TO THE MENTAL HEALTH ACT 1983

MENTAL HEALTH (AMENDMENT) ACT 1986 No. 92

NEW SOUTH WALES



Act No. 92, 1986

An Act to amend the Mental Health Act 1983 with respect to the functions of certain authorised officers, the involuntary admission of persons to hospitals, the classification of patients and in certain other respects.
[Assented to, 29 May 1986]

See also Crimes (Mental Illness) Amendment Act 1986; Criminal Appeal (Mental Illness) Amendment Act 1986; Protected Estates (Amendment) Act 1986.

Mental Health (Amendment) 1986

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 "Mental Health (Amendment) Act 1986".

Commencement

2. (1) Except as provided by subsection (2), this Act shall commence on the date of assent to this Act.

(2) The provisions of Schedule 1 (13), and section 3 in its application to those provisions, shall be deemed to have commenced on 31 December 1983.

Amendment of Act No. 178, 1983

3. The Mental Health Act 1983 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE MENTAL HEALTH ACT 1983**(1) Section 4 (Interpretation)—**

(a) Section 4 (1), definition of "continued treatment patient"—

Omit "as referred to in section 127 (1)", insert instead "under section 126A".

(b) Section 4 (1), definition of "forensic patient"—

(i) In paragraph (a), after "1900", insert "or section 7 (4) of the Criminal Appeal Act 1912 (including that subsection as applied by section 5AA (5) of that Act)".

SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

- (ii) In paragraph (c), after “imprisonment”, insert “and who has not been classified by the Tribunal as a continued treatment patient”.

(2) Section 31 (**Restriction on exercise of functions of certain authorised officers**)—

Section 31 (2), (3)—

At the end of section 31, insert:

(2) Nothing in subsection (1) prevents a medical superintendent, or deputy medical superintendent, who is an authorised officer from signing any such certificate or recommendation, in the capacity of a medical superintendent or deputy medical superintendent, in relation to the admission to or the further observation or treatment of a person in the hospital of which the medical superintendent or deputy medical superintendent is the medical superintendent or deputy medical superintendent.

(3) A medical superintendent, or deputy medical superintendent, who is an authorised officer shall not exercise any function conferred or imposed on authorised officers by or under this Act at or in relation to the hospital of which he or she is the medical superintendent or deputy medical superintendent.

(3) Section 60 (**Certain proceedings prohibited**)—

Before “Act”, insert “or any other”.

(4) Section 72 (**Detention upon the certificate of a medical practitioner**)—

(a) Section 72 (1)—

After “hospital”, insert “(other than an authorised hospital)”.

(b) Section 72 (5)—

After “hospital” where firstly occurring, insert “(other than an authorised hospital)”.

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SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

- (5) Section 73 (**Detention upon request of relative or friend**), section 74 (**Detention following apprehension by member of police force**)—

Sections 73 (1), 74 (1)—

After “hospital” wherever occurring, insert “(other than an authorised hospital)”.

- (6) Section 75 (**Detention upon order of court**)—

(a) Section 75—

After “hospital”, insert “(other than an authorised hospital)”.

(b) Section 75—

Omit “428L, 428Q or”.

- (7) Section 76 (**Detention upon information of welfare officer**)—

After “hospital” where firstly occurring, insert “(other than an authorised hospital)”.

- (8) Section 118 (**Order relating to person found not guilty by reason of mental illness**)—

Section 118 (1)—

After “1900”, insert “or section 7 (4) of the Criminal Appeal Act 1912 (including that subsection as applied by section 5AA (5) of that Act)”.

- (9) Section 124 (**Transfer of other prisoners to hospitals**)—

After “mental condition”, insert “(being a condition of disability of mind not including either mental illness or developmental disability of mind)”.

SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

(10) Section 126A—

After section 126, insert:

Classification as continued treatment patient

126A. (1) The Tribunal, after reviewing, under this Part, the case of a forensic patient who would, by virtue of the operation of this Act or any other law, cease to be a forensic patient within 6 months after the date of the review and who is—

- (a) a person who has been detained in a hospital, prison or other place following a special hearing under section 428M (2) of the Crimes Act 1900;
- (b) a person who, while serving a fixed sentence without a non-parole period, has been transferred to a hospital from a prison; or
- (c) a person who, while serving a fixed sentence with a non-parole period, has been transferred to a hospital from a prison,

may classify the person as a continued treatment patient.

(2) Where, after reviewing, under this Part, the case of a forensic patient to whom subsection (1) (a), (b) or (c) applies, the Tribunal classifies the patient as a continued treatment patient, it shall not be necessary for the Tribunal to make any recommendation that would otherwise be required to be made as a consequence of the review.

(11) Section 127 (**Termination of classification as forensic patient**)—

(a) Section 127 (1) (a)—

After “1900”, insert “or section 7 (4) of the Criminal Appeal Act 1912 (including that subsection as applied by section 5AA (5) of that Act)”.

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SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

(b) Section 127 (1) (d) (i), (ii)—

Omit the subparagraphs, insert instead:

- (i) upon a finding at a further inquiry held under section 428s (2) of the Crimes Act 1900 that the person is fit to be tried for the offence; or
- (ii) where the Attorney General determines that the person will not be further proceeded against by the Attorney General in respect of the offence—upon the person's release from detention pursuant to section 428s (3) of the Crimes Act 1900;

(c) Section 127 (1) (d)—

Omit “whichever first occurs;”.

(d) Section 127 (1) (h) (i)—

After “release”, insert “(which the Minister is hereby authorised to order or to otherwise ensure)”.

(12) Schedule 1 (**Provisions relating to the Principal official visitor and official visitors**)—

(a) Clause 2—

Omit the clause.

(b) Clause 6 (g)—

After “hospital;”, insert “or”.

(c) Clause 6 (h)—

Omit “clause 5; or”, insert instead “clause 5”.

(d) Clause 6 (i)—

Omit the paragraph.

(13) Schedule 2 (**Provisions relating to the membership of the Tribunal**)—(a) Schedule 2, clause 3 (**Term of office of member**)—

Omit “5”, insert instead “7”.

SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

(b) Schedule 2, clauses 8–10—

After clause 7, insert:

Preservation of rights of member previously public servant, etc.

8. (1) In this clause—

“statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule;

“superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

(2) Subject to subclause (3) and to the terms of appointment, where a member was, immediately before being appointed as a member—

- (a) an officer of the Public Service or a Teaching Service;
- (b) a contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
- (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as a member; and
- (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,

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SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

as if he or she had continued to be such an officer, contributor or person during his or her service as a member and—

- (h) his or her service as a member shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
- (i) he or she shall be deemed to be an officer or employee for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(3) If a member would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme, he or she shall not be so entitled upon becoming (whether upon appointment as a member or at any later time while holding office as a member) a contributor to any other superannuation scheme, and the provisions of subclause (2) (i) cease to apply to or in respect of him or her in any case where he or she becomes a contributor to any such other superannuation scheme.

(4) Subclause (3) does not prevent the payment to a member upon his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.

(5) A member shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

Member entitled to re-appointment to former employment in certain cases

9. (1) In this clause, “statutory body” means any body declared under clause 10 to be a statutory body for the purposes of this Schedule.

SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued*

(2) A person who—

- (a) ceases to be a member by reason of the expiration of the period for which the person was appointed or by reason of resignation;
- (b) was, immediately before being appointed as a member—
 - (i) an officer of the Public Service or a Teaching Service; or
 - (ii) an officer or employee of a statutory body; and
- (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,

shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as a member.

(3) Where subclause (2) does not apply to a person who—

- (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (2) (b); and
- (b) is after that appointment appointed as a member,

the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be a member, as are specified in the instrument of appointment as a member or as are agreed upon by the person and by or on behalf of the Government.

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SCHEDULE 1—*continued*AMENDMENTS TO THE MENTAL HEALTH ACT 1983—*continued***Declaration of statutory bodies**

10. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.
