

1995—No. 499

MENTAL HEALTH ACT 1990—REGULATION

(Mental Health Regulation 1995)

NEW SOUTH WALES



[Published in Gazette No. 105 of 1 September 1995]

His Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Mental Health Act 1990, has been pleased to make the Regulation set forth hereunder.

ANDREW REFSHAUGE,
Deputy Premier and Minister for Health.

Citation

1. This Regulation may be cited as the Mental Health Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“**approved form**” means a form approved by the Minister;

“**Registrar**” means the Registrar of the Tribunal;

“**the Act**” means the Mental Health Act 1990.

(2) In this Regulation, a reference to a numbered Form is a reference to a Form of that number set out in Schedule 1.

Application for informal admission to hospital

4. For the purposes of section 12 of the Act:

- (a) an application for admission to a hospital as an informal patient may be in an approved form; and
- (b) an application for admission of a person under guardianship to a hospital as an informal patient may be in an approved form.

Application for review of decision of medical officer

5. For the purposes of section 19 of the Act, an application for review of a decision of a medical officer may be in an approved form.

Authorisation of medical examination

6. For the purposes of the definition of “appropriate person” in section 27 of the Act, the prescribed class of persons is persons who are Justices of the Peace.

Statement of legal rights and entitlements

7. For the purposes of section 30 of the Act, the prescribed form of statement of a person’s legal rights and other entitlements under the Act is the form set out in Form 1.

Medical report as to mental state of detained person

8. For the purposes of:

- (a) section 29 (2) of the Act, the certificate of the medical superintendent may be in the form set out in Form 2; and
- (b) section 33 of the Act, the prescribed form of advice to the medical superintendent is the form set out in Form 2.

Notice of appearance before Magistrate

9. Notice under section 38 (3) of the Act is given in accordance with this Regulation if it is in the form set out in Form 3 and is served on the person or persons entitled to be given the notice.

Appearance before a Magistrate or the Tribunal

10. In addition to the requirements of sections 39, 56, 58 and 191 of the Act, and of any regulations referred to in section 302 (2) (d) of the Act, the medical superintendent is to ensure that a person to be brought before a Magistrate or the Tribunal has, so far as is reasonably practicable, been supplied with shaving equipment or make-up.

Form of summons (inquiry by Magistrate)

11. For the purposes of section 47 of the Act, the prescribed form of summons is Form 4.

Compliance with summons (inquiry by Magistrate)

12. If a summons to produce documents at an inquiry is issued under section 47 of the Act, and the summons specifies a place at which the documents may be produced, any of those documents produced at that place before commencement of the inquiry are to be taken to have been duly produced in compliance with the summons.

Fee for transcript of proceedings

13. For the purposes of sections 48, 167 and 279 of the Act, the prescribed fee for a transcription is the fee calculated as prescribed for the purposes of section 73 (2) of the Justices Act 1902 for copies of depositions.

Determination by the Tribunal

14. For the purposes of section 57 of the Act, the prescribed form of determination is the form set out in Form 5.

Periodic medical examination of continued treatment patient

15. For the purposes of section 61 of the Act, each successive interval of 3 months following the date on which the patient became a continued treatment patient is a prescribed interval.

Notice of discharge

16. For the purposes of section 65 of the Act, a notice of discharge may be in an approved form.

Appeal against refusal to discharge

17. (1) A patient may appeal under section 69 of the Act:
- (a) by serving on the medical superintendent of the hospital a notice in the form set out in Form 6; or
 - (b) by declaring to the medical superintendent of the hospital a desire to appeal to the Tribunal.

(2) A person other than the patient may appeal under section 69 of the Act:

- (a) by lodging at the office of the Tribunal, or by serving on the Tribunal by post, a notice in the form set out in Form 7; or
- (b) by serving such a notice on the medical superintendent of the hospital; or
- (c) by declaring to the medical superintendent of the hospital, in the presence of the patient, that the patient wishes to appeal to the Tribunal.

(3) If an appeal is made by a declaration referred to in subclause (1) (b) or (2) (c), the medical superintendent, or a medical practitioner nominated by the medical superintendent, is the prescribed person for the purposes of section 69 of the Act.

(4) If an appeal is made under subclause (2) (a), the Registrar must:

- (a) notify the medical superintendent accordingly; and
- (b) call on the medical superintendent to provide the report required by section 69 (3) of the Act.

Prescribed authority (forensic patients)

18. (1) For the purposes of sections 84, 85, 86, 87, 90, 94, 96, 101, 102, 103, 105, 106 and 107 of the Act, the prescribed authority is:

- (a) the Governor, if the person is the subject of an order under section 25 or 39 of the Mental Health (Criminal Procedure) Act 1990; or
- (b) the Governor-General, if the person was detained by order of the Governor-General and the Governor-General is to make an order for the conditional or unconditional release of the person; or
- (c) in any other case—the Minister.

(2) For the purposes of section 93 of the Act, the prescribed authority is the Minister.

(3) Section 16A of the Acts Interpretation Act 1901 of the Commonwealth applies to the references in this clause to the Governor-General in the same way as it applies to a reference to the Governor-General in an Act of the Commonwealth.

Transfer of prisoner to hospital

19. For the purposes of section 87 of the Act, the prescribed period is a period of 14 days from the making of the order under section 97 or 98 of the Act for the transfer to a hospital.

Notice of rights after refusal of treatment

20. For the purposes of section 142 of the Act, the prescribed notice of rights is a notice in the form set out in Form 8.

Application for variation or revocation of community orders

21. An application under section 148 of the Act for variation or revocation of a community counselling order or a community treatment order may be made in an approved form.

Orders that may be made on appeal under sec. 151

22. On the hearing of an appeal under section 151 of the Act, the order the subject of the appeal may be revoked, varied or confirmed.

Procedure before consent to psychosurgery

23. For the purposes of section 155 (2) of the Act, Form 9 is the prescribed form.

Consent of Board to psychosurgery

24. (1) An application under section 157 of the Act for the consent of the Board to the performance of psychosurgery may be in the form set out in Form 10.

(2) For the purposes of section 157 (2) (j) of the Act, the prescribed particulars are (in addition to those referred to in section 157 (2) (a)–(i) of the Act) the particulars that would be required to complete Form 10, including the contents of any documentation or reports to be attached to the Form.

Form of summons (Psychosurgery Review Board)

25. For the purposes of section 166 of the Act, the prescribed form of summons is Form 11.

Compliance with summons (Psychosurgery Review Board)

26. If a summons to produce documents at the hearing of an application for consent to perform psychosurgery is issued under section 166 of the Act, and the summons specifies a place at which the documents may be produced, any of those documents produced at that place before commencement of the hearing are to be taken to have been duly produced in compliance with the summons.

Procedure before consent to electro convulsive therapy

27. For the purposes of section 183 (2) of the Act, the prescribed form is Form 12, Part 1.

Consent to electro convulsive therapy

28. (1) For the purposes of section 185 of the Act, the prescribed form is Form 12, Part 2.

(2) For the purposes of section 188 (2) (a) of the Act, consent to the administration of electro convulsive therapy may be given in the form set out in Part 3 of Form 12.

Notice of application to administer electro convulsive therapy

29. If an application is made to the Tribunal under section 185 or 188 of the Act, notice under section 190 (1) of the Act is given in accordance with this Regulation if:

- (a) in the case of an application under section 185—the notice is in the form set out in Form 13; or
- (b) in the case of an application under section 188—the notice is in the form set out in Form 14.

Register of information relating to electro convulsive therapy

30. The register to be kept under section 196 of the Act in relation to treatments by electro convulsive therapy is to be a book in which pages to the effect of Form 15 are completed in relation to each patient or other person undergoing the treatment.

Notice to relative of application to perform surgical operation or carry out special treatment

31. Notice under section 205 (3) of the Act is given in accordance with this Regulation if it is in the form set out in Form 16 and is served personally or by post on the person entitled to be given the notice.

Application for licence for authorised hospital

32. For the purposes of section 211 of the Act, the prescribed fee is \$50.

Annual licence fee for authorised hospital

33. For the purposes of section 214 of the Act, the prescribed annual licence fee is \$50.

Fee for duplicate licence

34. For the purposes of section 215 of the Act, the prescribed fee for a duplicate licence is \$25.

Form of summons (Mental Health Review Tribunal)

35. For the purposes of section 278 of the Act, the prescribed form of summons is Form 17.

Compliance with summons (Mental Health Review Tribunal)

36. If a summons to produce documents at a meeting of the Tribunal is issued under section 278 of the Act, and the summons specifies a place at which the documents may be produced, any of those documents produced at that place before the meeting commences are to be taken to have been duly produced in compliance with the summons.

Fee for copy of Tribunal determination

37. For the purposes of section 280 of the Act, the prescribed fee for a copy of a written instrument is the fee calculated as prescribed for the purposes of section 73 (2) of the Justices Act 1902 for copies of depositions.

Oath of office—assessors

38. For the purposes of section 282 of the Act, the prescribed form of oath to be taken by a person nominated for appointment as an assessor is the form set out in Form 18.

Information as to follow-up care after discharge

39. The information required to be provided under section 293 of the Act in relation to follow-up care includes:

- (a) a description of patient support groups and community care groups operating in the vicinity of the hospital including a description of the services provided by the groups, and a method of contacting them; and
- (b) a description of any out-patient or other services available at the hospital which are available to the patient; and
- (c) a description of the purpose and method of obtaining community counselling orders and community treatment orders; and
- (d) a description of such other similar follow-up services as may be available in the vicinity of the hospital.

Involuntary admissions to be reported to Tribunal

40. (1) The medical superintendent of a hospital must report to the Tribunal particulars of each person (other than a forensic patient or an informal patient) admitted to the hospital as a patient and each person who is detained as a patient after being an informal patient.

(2) The report is to be in the form set out in Form 19 and is to be made as soon as practicable (but not later than 21 days) after the Occurrence of the first of any of the following events in relation to a patient or detained person:

- (a) the conclusion of a Magistrate's inquiry in respect of a patient;
- (b) the discharge of a patient by the hospital;
- (c) a patient becoming an informal patient after being detained in the hospital as a temporary patient or continued treatment patient;
- (d) a person ceasing to be detained in the hospital.

(3) A report is not required to be made by the medical superintendent of a hospital about any temporary patient or continued treatment patient transferred to the hospital from another hospital.

Order or direction by Magistrate—inquiries relating to mentally ill persons

41. An order or direction of a Magistrate pursuant to an inquiry under Division 2 of Part 2 of Chapter 4 of the Act may be in the form set out in Form 20.

Persons who may apply for community counselling orders and community treatment orders

42. A director of a health care agency is an authorised applicant for a community counselling order or a community treatment order for the purposes of paragraph (d) of the definition of “authorised applicant” in Schedule 1 to the Act.

Repeal and savings

43. (1) The Mental Health Regulation 1990 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the repealed Regulation, had effect under that Regulation is taken to have effect under this Regulation.

SCHEDULE 1—FORMS

(Cl. 3 (2))

FORM 1

(Cl. 7)

MENTAL HEALTH ACT 1990**Section 30****YOUR RIGHTS**

You should read the questions and answers below to find out your rights and what may happen to you after you are brought to a mental hospital.

WHAT HAPPENS AFTER I ARRIVE AT HOSPITAL?

You must be seen by a hospital doctor not later than 12 hours after you arrive at the hospital.

If you are a person who is already in hospital as an informal patient, and you have been told you are now to be kept in hospital against your will, you must be seen by a hospital doctor not later than 12 hours after it is decided to keep you in hospital.

WHEN CAN I BE KEPT IN HOSPITAL AGAINST MY WILL?

You can be kept in hospital against your will if you are certified by the hospital doctor as a mentally ill person or a mentally disordered person. The doctor will decide whether you are a mentally ill person or a mentally disordered person,

A mentally ill person is someone who has a mental illness and who needs to be kept in hospital for his or her own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that he or she needs to be kept in hospital for a short time for his or her own protection or to protect other people.

The hospital cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

HOW LONG CAN I BE KEPT IN HOSPITAL AGAINST MY WILL?

If you are found to be a mentally disordered person, you can only be kept in hospital for up to 3 DAYS (weekends and public holidays are not counted in this time). During this time you must be seen by a doctor at least once every 24 hours. You cannot be detained as a mentally disordered person more than 3 times in any month.

If you are found to be a mentally ill person, you will be kept in hospital until you see a Magistrate who will hold an inquiry to decide what will happen to you.

HOW CAN I GET OUT OF HOSPITAL?

You, or a friend or relative, may at any time ask the medical superintendent to let you out. You must be let out if you are not a mentally ill person or a mentally disordered person or if the medical superintendent thinks that there is other appropriate care reasonably available to you.

CAN I BE TREATED AGAINST MY WILL?

The hospital staff may give you appropriate medical treatment, even if you do not want it, for your mental condition or in an emergency to save your life or prevent serious damage to your health. The hospital staff must tell you what your medical treatment is if you ask. You must not be given excessive or inappropriate drugs.

CAN I BE GIVEN ECT AGAINST MY WILL?

You may only be given electro convulsive therapy against your will if 2 doctors and the medical superintendent certify that the treatment is necessary to save your life or if the Mental Health Review Tribunal decides that it is necessary or desirable for your safety or welfare.

WHAT OTHER RIGHTS DO I HAVE IN HOSPITAL?

You can receive mail. You must not be ill-treated.

MORE INFORMATION

You should read the questions and answers below to find out about Magistrates' inquiries and when you may be kept in hospital against your will after an inquiry.

WHEN IS A MAGISTRATE'S INQUIRY HELD?

A Magistrate's inquiry must be held as soon as possible after it is decided to keep you in hospital against your will because you are a mentally ill person.

WHAT HAPPENS AT A MAGISTRATE'S INQUIRY?

The Magistrate will decide whether or not you are a mentally ill person.

If the Magistrate decides that you are not a mentally ill person, you must be let out of hospital. The Magistrate may make a community counselling order requiring you to have certain treatment after you are let out.

If the Magistrate decides that you are a mentally ill person, the Magistrate will then decide what will happen to you. The Magistrate may order that you be kept in hospital as a TEMPORARY PATIENT for a set time (not more than 3 months) or the Magistrate may order that you be let out of hospital. If you are let out, the Magistrate may make a community treatment order requiring you to have certain treatment after you are let out.

The Magistrate may adjourn the inquiry for up to 14 days.

WHAT RIGHTS DO I HAVE AT A MAGISTRATE'S INQUIRY?

You can tell the Magistrate what you want or have your lawyer tell the Magistrate what you want. You can wear street clothes, be helped by an interpreter and have your relatives and friends told about the inquiry. You can apply to see your medical records.

CAN I APPEAL AGAINST BEING MADE A TEMPORARY PATIENT?

You can appeal. If you are made a temporary patient, you will be given a notice setting out your appeal rights. The notice includes information about how to apply to be let out of hospital.

WHAT HAPPENS WHEN THE TIME SET BY AN ORDER MAKING ME A TEMPORARY PATIENT RUNS OUT?

The medical superintendent will look at your case before the time ends and may discharge you from hospital. If you are still in hospital at the end of the time set by the Magistrate, your case will be looked at by the Mental Health Review Tribunal. If the Tribunal decides that you are a mentally ill person, it may make you stay as a temporary patient for a further period of time (not more than 3 months) or it may make you a continued treatment patient.

The Tribunal must let you out of hospital if it decides that you are not a mentally ill person or if it feels that other care is more appropriate and reasonably available.

WHO CAN I ASK FOR HELP?

You may ask a social worker, doctor, official visitor, chaplain, your own lawyer or the Mental Health Advocacy Service for help. The Mental Health Advocacy Service telephone number is:

(NOTE: Additional telephone numbers may be added as appropriate.)

FORM 2

(Cl. 8)

MENTAL HEALTH ACT 1990

Sections 29 (2), 33 (I)

MEDICAL REPORT AS TO MENTAL STATE OF A DETAINED PERSON

This report is made as:

- [] a certificate of the opinion of the medical superintendent after examination of a person under section 29 of the Act (initial examination)

OR

- [] advice by a medical practitioner to a medical superintendent under section 33 of the Act (further examination)

(tick whichever is appropriate)

I, the undersigned, a registered medical practitioner, on.....

(date)

personally examined

(patient's name)

a person detained at

(Hospital)

* In my opinion,

(patient's name)

is not a mentally ill or mentally disordered person.

* In my opinion,

(patient's name)

is a mentally ill person.

* In my opinion,

(patient's name)

is a mentally disordered person.

(* Delete whichever is inapplicable)

The basis for my opinion is as follows:

** (Reported behaviour of the patient)

.....

.....

.....

.....

(Observations by me of the patient)

.....
.....
.....

(Conclusion)

.....
.....
.....

Name of Medical Practitioner:

Qualifications as a Psychiatrist (if applicable):

.....

.....
(Signature)

.....
(Date)

(** This report may be continued on a separate annexure.)

Note that this report is for the use of a legal tribunal and therefore should not be written in technical medical language.

FORM 3

(Cl. 9)

MENTAL HEALTH ACT 1990

Section 38 (3)

INQUIRY—MENTAL HEALTH ACT 1990

Hospital

Address

NOTICE OF PROCEEDINGS BEFORE MAGISTRATE

Dear

I wish to advise you that
is at present a patient at this hospital under the provisions of the Mental Health Act 1990.

On at approximately
..... a visiting Magistrate will hold an inquiry at
.....

to consider whether or not further detention for the purpose of treatment is warranted.

You are invited to attend this inquiry. With the permission of the patient and the Magistrate, any person at all may represent the patient. However the patient will be legally represented unless he/she decides that he/she does not want to be. Should it be necessary, a competent interpreter will be available to assist.

If the Magistrate considers further detention is warranted he/she will also consider whether or not the patient is able to manage his/her affairs. If the Magistrate considers that the patient is able to do so, then the patient will continue to do so. If the Magistrate is not satisfied that the patient can manage his/her affairs, then an order will be made that the Protective Commissioner manage the patient's affairs.

If the patient does not agree that his or her affairs should be managed by the Protective Commissioner, the patient may appeal to the Supreme Court.

If you have any questions, please feel free to discuss them with the patient's doctor or social worker. Contact may be made by telephoning

Yours faithfully,

.....
Medical Superintendent

.....
(Date)

FORM 4

(Cl. 11)

MENTAL HEALTH ACT 1990

Section 47 (1)

SUMMONS

Inquiry under Mental Health Act 1990

Hospital

Address

To:

.....

.....

A Magistrate will be holding an inquiry under the Mental Health Act 1990 in relation to

(patient's name)

The inquiry will be held at on

(time)

(date)

at the above address.

You are required:

* to attend the inquiry as a witness

* to attend the inquiry to produce the following documents:

.....

.....

(delete if inapplicable)*

You are entitled to receive reasonable costs, including any loss of earnings incurred through compliance with this summons.

Should you fail or refuse to comply with this summons properly served, you may be guilty of an offence under the Mental Health Act 1990.

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If you are required to attend the hearing only to produce documents, it is sufficient compliance with this summons if those documents are delivered to at

.....
(*address*)

on or before

.....
(*Signature*)

.....
(*Name*)

FORM 5

(Cl. 14)

MENTAL HEALTH ACT 1990**Section 57 (6)****DETERMINATION OF TRIBUNAL**

.....
(patient's name)

was brought before the Mental Health Review Tribunal on
(date)

under the provisions of section 56 of the Mental Health Act 1990.

The Tribunal determined that the patient:

* be DISCHARGED from hospital

* be DETAINED as a temporary treatment patient from
(date)

until no later than for further observation or treatment or both
(date)

* be classified as a continued treatment patient and detained in hospital for further observation or treatment or both.

(* delete whichever is inapplicable)

Signed by the Members of the Tribunal on
(date)

.....
(Member)

.....
(Member)

.....
(Member)

FORM 6

(Cl. 17 (1) (a))

MENTAL HEALTH ACT 1990

Section 69 (1)

APPEAL BY PATIENT AGAINST REFUSAL TO DISCHARGE

The Registrar
Mental Health Review Tribunal

Having applied to the Medical Superintendent for discharge under section 67 (1) of the
Mental Health Act 1990, I , being:
(*patient's name*)

- * a temporary patient
- * a continued treatment patient at the

.....
(*name of hospital*)

do hereby appeal to the Mental Health Review Tribunal against the Medical
Superintendent's:

- * refusal to discharge me
- * failure to make a determination on my application for discharge within 3
working days after the making of the application.

(* delete whichever is inapplicable)

Signature..... Date

FORM 7

(Cl. 17 (2) (a))

MENTAL HEALTH ACT 1990**Section 69 (1)****APPEAL BY A PERSON OTHER THAN THE PATIENT AGAINST REFUSAL TO DISCHARGE A PATIENT**

Application having been made to the Medical Superintendent for discharge under section 67 or 68 of the Mental Health Act 1990 of
(patient's name)

who is:

- * a temporary patient
- * a continued treatment patient at the

.....
(name of hospital)

I,....., being:
(name of appellant)

- * the applicant for discharge of the patient
- * a person appointed by the patient

do hereby appeal to the Mental Health Review Tribunal against the Medical superintendent's:

- * refusal to discharge the patient
- * failure to make a determination, within 3 working days after the application for discharge of the patient.

(* delete whichever is inapplicable)

Signature Date

FORM 8

(Cl. 20)

MENTAL HEALTH ACT 1990

Section 142 (a)

RIGHTS TO APPLY FOR REVIEW

To
(*patient's name*)

On.. you were ordered under
(*date*)

section 139 of the Mental Health Act 1990 to be taken to a hospital or health care agency as a result of breaching your Community Treatment Order. You may have been taken directly to the hospital or you may have been taken to the hospital only after you refused treatment at a health care agency.

YOU HAVE A RIGHT TO APPEAL SHOULD YOU WISH TO DO SO.

You may discuss your rights of appeal with a social worker, doctor, official visitor or your own lawyer, or with the Mental Health Advocacy Service whose legal advice is free.

1. You may apply to the Mental Health Review Tribunal to have the Community Treatment Order varied or revoked.
2. You may lodge an appeal against the Order with the Supreme Court or the Mental Health Review Tribunal.
3. You may ask the Medical Superintendent to discharge you from the hospital.
4. You may get a relative or friend to apply to the Medical Superintendent for your discharge, if the person is prepared to take care of you. This application may be made orally or in writing. It would be to your advantage to make such an application in writing.

FORM 9

(Cl. 23)

MENTAL HEALTH ACT 1990

Section 155

INFORMATION AND CONSENT—PSYCHOSURGERY

PART 1—CONSENT

I, consent to undergo
(*patient's name*)

the psychosurgery operation known as
.....
(*nature of surgery*)

In giving this consent, I acknowledge that:

- (a) an explanation which I understand has been given to me, describing the operation and identifying and explaining any procedure which is not in regular use, or any procedure the results of which are difficult to predict;
- (b) the discomforts and risks of the treatment have been explained to me;
- (c) the benefits of the treatment have been explained to me;
- (d) any alternative treatments that are available and which may be of benefit to me have been explained to me;
- (e) an offer was made to me to answer any questions I had in relation to the procedures;
- (f) I have read and considered Part 2 of this form, dealing with disclosure of financial relationship;
- (g) I have been given the attached material which sets out in writing the above explanations relating to my operation.

I understand that:

- (a) I am free to refuse or to withdraw my consent, and discontinue the procedure or any part of it, at any time.
- (b) I have a right to legal advice and representation at any time during considerations relating to the performance of the surgery.

.....
(Signature)

.....
(Date)

PART 2—DISCLOSURE OF FINANCIAL RELATIONSHIP

Item A

To be completed by the person proposing the administration of the treatment.

- (a) I declare that there is no financial relationship between me and the hospital or institution in which it is proposed to administer the treatment.

OR

- (b) I declare that the following is a full disclosure of the financial relationship between me and the hospital or institution in which it is proposed to administer the treatment:

.....
.....

Signature

Item B

To be completed by the medical practitioner who proposes to administer the treatment (unless that medical practitioner is also the person who completed Item A).

- (a) I declare that there is no financial relationship between me and the hospital or institution in which it is proposed to administer the treatment.

OR

- (b) I declare that the following is a full disclosure of the financial relationship between me and the hospital or institution in which it is proposed to administer the treatment:

.....
.....

Signature

CERTIFICATION BY WITNESS

I certify that all the matters dealt with in this Form have been orally explained to the person (in respect of whom treatment is proposed) in a language with which that person is familiar.

Signature..... Date

FORM 10

(Cl. 24)

MENTAL HEALTH ACT 1990

Section 157 (1)

APPLICATION TO PERFORM PSYCHOSURGERY

Applicant's name:

Applicant's address:

.....

Patient's name:

Patient's address:

Patient's age:

Patient's sex:

Name of nearest relative:

Address of nearest relative:

Describe nature of the psychosurgery to be performed:

.....

.....

.....

Clinical indications for psychosurgery:

.....

.....

(FULL DOCUMENTATION/CLINICAL REPORTS IN RELATION TO THIS
APPLICATION SHOULD BE ATTACHED.)

Name(s) of person(s) proposing to perform the psychosurgery.

.....

.....

Name of hospital or institution in which it is proposed to perform the psychosurgery:

.....

Has:

- (a) a fair explanation been made to the patient in a language with which the patient is familiar, of the techniques or procedures to be followed, including an identification and explanation of any such technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to predict accurately the outcome of its performance? YES/NO
- (b) a full description been given to the patient of the attendant discomforts and risks, if any? YES/NO
- (c) a full description been given to the patient of the benefits, if any, to be expected? YES/NO
- (d) a full disclosure been made to the patient of appropriate alternative treatments, if any, that would be advantageous for the patient? YES/NO
- (e) an offer been made to the patient to answer any inquiries concerning the procedures or any part of them? YES/NO
- (f) notice been given to the patient that the patient is free to refuse or to withdraw his or her consent and to discontinue the procedures or any of them at any time? YES/NO
- (g) a full disclosure been made to the patient of any financial relationship between the person by whom consent for psychosurgery is sought or the medical practitioner who proposes to perform the psychosurgery, or both, and the hospital or institution in which it is proposed to perform the psychosurgery? YES/NO
- (h) notice been given to the patient that the patient has the right to legal advice and representation at any time during considerations relating to the performance of psychosurgery on the patient? YES/NO

IN YOUR OPINION, HAS THE PATIENT UNDERSTOOD THE EXPLANATIONS YOU HAVE GIVEN ABOUT THE TREATMENT?

YES/NO

IN YOUR OPINION, IS THE PATIENT CAPABLE OF GIVING INFORMED CONSENT? YES/NO

IN YOUR OPINION, HAS THE PATIENT GIVEN INFORMED CONSENT? YES/NO

OR

ARE YOU IN DOUBT THAT THE PATIENT HAS GIVEN INFORMED CONSENT? YES/NO

Signature

Date

FORM 11

(Cl. 25)

MENTAL HEALTH ACT 1990

Section 166 (1)

SUMMONS

Psychosurgery Review Board

To:

The Psychosurgery Review Board will be hearing an application to perform
psychosurgery in relation to
(name of patient)

The hearing will take place at on
(time) (date)
at
(address)

You are required:

* to attend the hearing as a witness

* to attend the hearing and produce the following documents:

.....
.....
.....

(* delete if inapplicable)

You are entitled to receive reasonable costs, including any loss of earnings incurred
through compliance with this summons.

Should you fail or refuse to comply with this summons, properly served, you may be
guilty of an offence under the Mental Health Act 1990.

If you are required to attend the hearing only to produce documents, it is sufficient
compliance with this summons if those documents are delivered to:

..... at

on or before

Signature

President/Deputy President
Psychosurgery Review Board

FORM 12

(Cll. 27, 28)

MENTAL HEALTH ACT 1990

Sections 183, 185 and 188

INFORMATION AND CONSENT—ELECTRO CONVULSIVE THERAPY**PART 1****INFORMATION TO CONSIDER BEFORE SIGNING**

The treatment is recommended where the alternative forms of treatment have either not had the desired result or would work much too slowly to be effective in a particular case.

The treatment will take the following form:

- (a) You will be given a brief general anaesthetic. This involves giving a drug to relax the muscles. The anaesthetist will generally give the anaesthetic by means of intravenous injection.
- (b) While the patient is anaesthetised, another medical practitioner will use medical apparatus designed to pass a modified electrical current for a few seconds through the brain, with the intention of affecting those parts concerned with emotion and thought.
- (c) While the current is passing, the anaesthetic will prevent the patient from feeling anything and also the patient's body from moving more than slightly.
- (d) Treatment will be given 2 or 3 times a week.
- (e) A course of treatment will generally involve up to 12 treatments but, on some occasions, more treatments will be required. Any queries you have in relation to the number of treatments you may need can be raised with your doctor.

Possible benefits of treatment:

Benefits depend upon the symptoms of the conditions for which treatment is given. Relief may be obtained from symptoms of depression, agitation and insomnia.

Possible alternative treatments:

Other treatments may also be suitable for your condition. Any queries you have in relation to these can be discussed with your doctor.

A written explanation of the alternative treatments available in relation to your condition is attached.

Possible complications of treatment:

Some patients notice a difficulty with their memory for recent events which almost invariably clears up within a month of receiving the last treatment. Some patients experience a headache or a brief period of confusion, or both, on awakening after the anaesthetic. Otherwise, because the treatment and anaesthetic are very brief and present no significant stress to the body, serious complications are uncommon. All general anaesthetics carry some risk.

Consent to treatment

This treatment cannot be carried out without your consent (see below), unless you are an involuntary patient at the hospital. If you are an involuntary patient, the treatment can only be carried out without your consent if a life-saving situation arises or after a full hearing before the Mental Health Review Tribunal.

Before giving this consent you may ask your Doctor any questions relating to the techniques or procedures to be followed. You may also withdraw your consent and discontinue this treatment at any time.

Legal advice

You also have the right to get legal advice and medical advice before you give your consent.

DISCLOSURE OF FINANCIAL RELATIONSHIP

Item A

To be completed by the person proposing the administration of the treatment.

- (a) I declare that there is no financial relationship between me and the hospital or institution in which it is proposed to administer the treatment.

OR

- (b) I declare that the following is a full disclosure of the financial relationship between me and the hospital or institution in which it is proposed to administer the treatment:

.....

.....

Signature

Name

Item B

To be completed by the medical practitioner who proposes to administer the treatment (unless that medical practitioner is also the person who completed Item A).

- (a) I declare that there is no financial relationship between me and the hospital or institution in which it is proposed to administer the treatment.

- (b) I declare that the following is a full disclosure of the financial relationship between me and the hospital or institution in which it is proposed to administer the treatment:

.....

.....

Signature

Name

PART 2
CONSENT TO ELECTRO CONVULSIVE THERAPY

I,
(*name in full*)

consent to being treated with a course of electro convulsive therapy.

I *acknowledge* that I have read/have had read to me Part 1 of this Form, and that I understand the information it contains.

I *understand* that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

Signature Date

PART 3
CONSENT TO ELECTRO CONVULSIVE THERAPY
(INVOLUNTARY PATIENTS)

I,
(*name in full*)

consent to being treated with electro convulsive therapy.

I *acknowledge* that I have read/have had read to me Part 1 of this Form, and that I understand the information it contains.

I *understand* that I am free at any time to change my mind and withdraw from the course of treatment if I so desire.

I *understand* that my consent will be reviewed by the Mental Health Review Tribunal.

Signature Date

CERTIFICATION BY WITNESS

I certify that all matters dealt with in this Form have been orally explained to the person in respect of whom treatment is proposed and have been so explained in a language with which that person is familiar.

Signature Date

FORM 13

(Cl. 29 (a))

MENTAL HEALTH ACT 1990

Section 190

**NOTIFICATION OF APPLICATION TO DETERMINE VALIDITY OF CONSENT TO
ELECTRO CONVULSIVE THERAPY—PERSONS OTHER THAN INVOLUNTARY
PATIENTS**

Dear

It is my opinion as Medical Superintendent of

.....
(*name of hospital*)

that it is desirable and in the best interests of

.....
(*full name of person the subject of the application*)

for him/her to undergo a course of electro convulsive therapy. He/she has consented.

However, I am unsure whether he/she is capable of giving informed consent to the treatment.

In such cases I am required by law to notify you in writing that an application is being made to the Mental Health Review Tribunal to determine whether he/she is capable of giving informed consent and has given that consent.

He/she has consented to me giving you this notice.

If you wish to discuss this matter further please contact:

..... on
(*name*) (*telephone number*)

Yours faithfully,

.....
Medical Superintendent

.....
(*Date*)

FORM14

(Cl. 29 (b))

MENTALHEALTHACT 1990

Section 190

**NOTIFICATION OF APPLICATION TO ADMINISTER ELECTRO CONVULSIVE
THERAPY—INVOLUNTARY PATIENTS**

Dear

It is my opinion as Medical Superintendent of

.....
(*name of hospital*)

that it is desirable and in the best interests of

.....
(*patient's full name*)

for him/her to undergo a course of electro convulsive therapy.

- * He/she has consented to the treatment.
- * He/she is incapable of giving consent to the treatment.
- * He/she is capable of giving consent to the treatment but has refused to do so.
- * He/she is capable of giving consent to the treatment but has neither refused nor consented.

* delete whichever is inapplicable.

In such cases I am required by law to notify you in writing that an application is being made to the Mental Health Review Tribunal to determine:

- (a) whether the patient is capable of giving informed consent to the administration of the treatment and has given that consent; and
- (b) if the patient is incapable of giving informed consent or has not consented—whether the treatment is necessary or desirable for the safety or welfare of the patient.

If you wish to discuss this matter further please contact:

..... on
(*name*) (*telephone number*)

Yours faithfully,

.....
Medical superintendent

.....
(*Date*)

(Cl. 30)

MENTAL HEALTH ACT 1990

Section 196

REGISTER OF ELECTRO CONVULSIVE THERAPY

[illegible]

Page No.

[illegible]

34
1995—No. 499

FORM 16

(Cl. 31)

MENTAL HEALTH ACT 1990
Section 205 (3)
NOTIFICATION TO RELATIVE

Dear

It is my opinion as Medical Superintendent of

.....
(name of hospital)

that it is desirable and in the best interests of

.....
(patient's full name)

who is involuntarily detained in the hospital in accordance with the Mental Health Act 1990, for him/her to undergo *a surgical operation/*special medical treatment for

.....
(lay description of condition)

This *operation/*treatment is called
(medical name)

To *perform the surgery/*carry out the treatment I am required by law to obtain the patient's consent.

However he/she is:

- * Incapable of giving that consent.
- * Capable of giving that consent but has refused to do so.
- * Capable of giving that consent but has neither refused nor consented.

(* delete whichever is inapplicable)

In such cases I am required by law to notify you in writing that it is my intention to obtain consent on the patient's behalf from the Mental Health Review Tribunal.

If you wish to discuss this matter further please contact

..... on
(name) (telephone number)

Yours faithfully,

.....
Medical Superintendent

.....
(Date)

FORM 17

(Cl. 35)

MENTAL HEALTH ACT 1990**Section 278 (1)****SUMMONS****Mental Health Review Tribunal**

To:

The Mental Health Review Tribunal will be hearing matters in relation to

.....
(name of patient)The hearing will take place at on
(time) (date)at
(address)

You are required:

* to attend the hearing as a witness

* to attend the hearing and produce the following documents:

.....
.....

(* delete if inapplicable)

You are entitled to receive reasonable costs, including any loss of earnings incurred through compliance with this summons.

Should you fail or refuse to comply with this summons, properly served, you may be guilty of an offence under the Mental Health Act 1990.

If you are required to attend the hearing only to produce documents, it is sufficient compliance with this summons if those documents are delivered to

at on or before

Signature

President/Deputy President
Mental Health Review Tribunal

FORM 18

(Cl. 38)

MENTAL HEALTH ACT 1990

Section 282 (2) (b)

OATH OF ASSESSOR

I, do swear that I will
well and truly advise and assist, without fear or favour, affection or ill will, the Supreme
Court of New South Wales as an assessor in any matter coming before that Court
pursuant to the provisions of the Mental Health Act 1990.

FORM 19

(Cl. 40)

MENTAL HEALTH ACT 1990**Section 302 (2) (m)****PSYCHIATRIC ADMISSIONS****Advice to Mental Health Review Tribunal****INSTRUCTIONS**

Follow the instructions set out below to fill out this form. Tick the boxes provided or write in the information required.

For patients reclassified from informal patients to involuntary patients

Fill out sections A, B and D only of this form.

For other patients (not being forensic patients or informal patients) detained in the hospital

Fill out sections A, C and D only of this form.

When to fill out the form

The form should be filled out as soon as practicable after the Occurrence of the first of any of the following events in relation to a patient or detained person:

- conclusion of Magistrate's inquiry in respect of a patient
- discharge of a patient
- a temporary patient or continued treatment patient being reclassified as an informal patient
- a person ceasing to be detained in the hospital

Where to send the form

This form is to be sent not later than 21 days after the first event occurs to The Registrar of the Mental Health Review Tribunal.

Should you have any questions about the form contact the Registrar or Deputy Registrar of the Tribunal by telephone.

SECTION A. INVOLUNTARY

To be completed for all **involuntary** patients.

- Q1. Hospital
- Q2. Medical Record Number
- Q3. Date of Birth
- Q4. Sex
- Q5. Country of Birth
- Q6. Interpreter required Yes ☐ No ☐ Language

SECTION B. RECLASSIFICATION

To be completed for all Patients **reclassified** Prom informal to involuntary and for all patients presenting voluntarily but who are scheduled at the admission office.

- Q7. If the patient was reclassified to involuntary, when was this done?

SECTION C. INITIAL ADMISSION

To be completed for patients taken to hospitals only.

- Q8. Date taken to hospital

Q9. Method of referral (*Tick one box*)

- | | |
|--|--------------|
| <input type="checkbox"/> Certificate of medical practitioner | sec. 21 |
| <input type="checkbox"/> Request by relative/friend | sec. 23 |
| <input type="checkbox"/> Apprehension by police | sec. 24 |
| <input type="checkbox"/> Order under sec. 33 Mental Health (Criminal Procedure Act) 1990 | sec. 25 |
| <input type="checkbox"/> Welfare officer or welfare officer with police assistance | sec. 26 |
| <input type="checkbox"/> Authorised medical practitioner's certificate | secs. 21, 27 |
| <input type="checkbox"/> Breach of Community Treatment Order | sec. 142 |

- Q10. After examination, was the patient admitted?

☐ Yes ☐ No

- Q11. On admission was the patient classified as

- ☐ Informal
- ☐ Involuntary, mentally ill
- ☐ Involuntary, mentally disordered

Q12. Was the patient discharged by hospital before Magistrate's inquiry?

☐ Yes ☐ No

If yes, when?

SECTION D. INVOLUNTARY

To be completed for all **involuntary** patients.

Q13. Was the patient presented to a Magistrate?

☐ Yes ☐ No

Q14. If yes to Q13, what was the date of the inquiry?

(If inquiry completed, proceed with Q16.)

Q15. Was the case adjourned?

☐ Yes ☐ No If yes, until when?

(Note: If the patient was then presented again at a resumed hearing, proceed with Q16.)

Q16. At the first or resumed hearing, what was the Magistrate's decision?

☐ Discharge

☐ Defer discharge. For how long?

☐ Classify patient as Temporary Patient.

Until when?

☐ Make a Community Treatment Order

☐ Make a Community Counselling Order

☐ Any other order (please specify)

(C1. 41)

Division 2 of Part 2, Chapter 4

Date

Name of Magistrate

NOTE: The reasons for my order or direction (as required by section 53 of the Act) are annexed to this form.

NOTES

TABLE OF PROVISIONS

1. Citation
2. Commencement
3. Definitions
4. Application for informal admission to hospital
5. Application for review of decision of medical officer
6. Authorisation of medical examination
7. Statement of legal rights and entitlements
8. Medical report as to mental state of detained person
9. Notice of appearance before Magistrate
10. Appearance before a Magistrate or the Tribunal
11. Form of summons (inquiry by Magistrate)
12. Compliance with summons (inquiry by Magistrate)
13. Fee for transcript of proceedings
14. Determination by the Tribunal
15. Periodic medical examination of continued treatment patient
16. Notice of discharge
17. Appeal against refusal to discharge
18. Prescribed authority (forensic patients)
19. Transfer of prisoner to hospital
20. Notice of rights after refusal of treatment
21. Application for variation or revocation of community orders
22. Orders that may be made on appeal under sec. 151
23. Procedure before consent to psychosurgery
24. Consent of Board to psychosurgery
25. Form of summons (Psychosurgery Review Board)
26. Compliance with summons (Psychosurgery Review Board)
27. Procedure before consent to electro convulsive therapy
28. Consent to electro convulsive therapy
29. Notice of application to administer electro convulsive therapy
30. Register of information relating to electro convulsive therapy
31. Notice to relative of application to perform surgical operation or carry out special treatment
32. Application for licence for authorised hospital
33. Annual licence fee for authorised hospital
34. Fee for duplicate licence
35. Form of summons (Mental Health Review Tribunal)
36. Compliance with summons (Mental Health Review Tribunal)
37. Fee for copy of Tribunal determination
38. Oath of office—assessors
39. Information as to follow-up care after discharge
40. Involuntary admissions to be reported to Tribunal
41. Order or direction by Magistrate—inquiries relating to mentally ill persons
42. Persons who may apply for community counselling orders and community treatment orders
43. Repeal and savings

SCHEDULE 1—FORMS

EXPLANATORY NOTE

The object of this Regulation is to repeal and remake, with minor changes, the provisions of the Mental Health Regulation 1990 under the Mental Health Act 1990.

The Regulation sets out the following:

- forms to be used in connection with the Act (including statements of the rights of patients under the Act, forms for consent to particular treatments, notices to be given to relatives and certificates of medical advice)
- fees required under the Act (such as fees for copies of transcripts of proceedings taken in connection with the Act and hospital licence fees)
- information as to follow-up care that is to be provided to patients after discharge (including information as to patient and community support groups, out-patient services and similar services)
- matters to be recorded or reported for the purposes of the Act (including requirements as to medical reports relating to the mental state of a detained person, registers of information relating to electro convulsive therapy and reports to the Mental Health Review Tribunal of involuntary admissions to hospitals)
- the intervals at which continued treatment patients must be medically examined for the purpose of determining whether or not the patient's continued detention in a hospital is necessary
- the manner in which appeals against a failure to discharge a patient may be made
- the form of summons to be used by a Magistrate, the Psychosurgery Review Board and the Mental Health Review Tribunal for an inquiry under the Act and the manner in which a summons to produce documents may be complied with
- persons who may apply for community treatment orders and community counselling orders (in addition to the persons who may apply for them under the Act)

This Regulation is made under the Mental Health Act 1990, including section 302 (the general regulation making power), section 302A (Approved forms) and the sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.

The Regulation comprises matters of a machinery nature or matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.
