

MENTAL HEALTH ACT 1990 No. 9

NEW SOUTH WALES



TABLE OF PROVISIONS

CHAPTER 1 - INTRODUCTORY

1. Shorttitle
2. Commencement
3. Definitions

CHAPTER 2 - OBJECTS ETC.

4. Care, treatment and control of mentally ill and mentally disordered persons
5. Additional administrative objects of Act
6. Objectives of the Department
7. Functions of the Director-General

CHAPTER 3 - MENTALLY ILL AND MENTALLY DISORDERED PERSONS

8. Criteria for involuntary admission etc, as mentally ill person or mentally disordered person
9. Mentally ill persons
10. Mentally disordered persons
11. Certain words or conduct may not indicate mental illness or disorder

CHAPTER 4 - ADMISSION TO, AND CARE IN, HOSPITALS

PART 1 - VOLUNTARY ADMISSION TO HOSPITALS

12. Admission on own request
13. Informal patient under 16 years of age
14. Informal patient of 14 or 15 years of age
15. Admission etc. of person under 14 years of age
16. Persons under guardianship
17. Medical superintendent may refuse to admit person
18. Other functions of medical superintendent concerning informal patients

19. Review of decisions made by medical officer

PART 2 - INVOLUNTARY ADMISSION TO HOSPITALS

Division 1 - Admission to and detention in hospitals

20. Detention of persons generally
21. Detention on certificate of medical practitioner
22. Assistance by police
23. Detention on request of relative or friend
24. Detention after apprehension by police
25. Detention on order of court
26. Detention on information of welfare officer
27. Detention following order for medical examination etc.
28. Refusal to detain
29. Examination on detention at hospital
30. Information to be given to detained person
31. Treatment of patients
32. Further examination at hospital
33. Consequence of further examination
34. Formation of opinion as to mental illness etc.
35. Limited detention of mentally disordered persons
36. Persons detained after apprehension by police etc.
37. Limited detention of certain persons after examination at hospital

Division 2 - Inquiries relating to mentally ill persons

38. Notice of inquiry etc.
39. Dress
40. Termination of detention
41. Inquiry concerning detained person
42. Adjournments
43. Representation and appearances at inquiries
44. Publication of names etc.
45. Inspection etc. of medical records
46. Administration of oath
47. Production of evidence
48. Records of proceedings
49. Matters to be checked by Magistrate
50. Matters which must be considered by Magistrate
51. Result of finding that person is mentally ill
52. Result of finding that person is not mentally ill
53. Record of decision
54. Classification of persons as informal patients

Division 3 - Temporary patients and continued treatment patients

55. Notice of temporary patient's rights of appeal
56. Bringing of certain temporary patients before the Tribunal
57. Determination by the Tribunal
58. Further bringing of certain temporary patients before the Tribunal
59. Further determination by the Tribunal

PART 3 - REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PERSONS
(OTHER THAN FORENSIC PATIENTS) IN HOSPITALS

60. Application of Part
61. Medical examination of continued treatment patients
62. Review of continued treatment patients by the Tribunal
63. Review of informal patients by the Tribunal
64. Classification of certain patients as informal patients
65. Discharge of informal patients
66. Discharge of temporary patients and continued treatment patients
67. Discharge etc. of certain patients on patient's application
68. Discharge of certain patients on relative's or friend's application
69. Appeal against refusal to discharge
70. Determination of appeal
71. Leave of absence
72. Absence of patient for continuous period of not less than 28 days
73. Absence of patient for continuous period of not less than 12 months
74. Discharge of certain absent patients on certificate of medical practitioner
75. Medical superintendent may order apprehension of certain absent patients
76. Absence of patient without leave
77. Absence of patient with permission
78. Transfer of patients between hospitals

CHAPTER 5 - FORENSIC PATIENTS

PART 1 - RELATIONSHIP OF CHAPTER TO OTHER LEGISLATION

79. Other legislation relating to criminal proceedings involving persons who may be mentally ill or suffering from some other mental condition

PART 2 - REVIEW OF FORENSIC PATIENTS

80. Tribunal to review cases of persons found unfit to be tried
81. Tribunal to review cases of persons found not guilty by reason of mental illness
82. Tribunal to review cases of forensic patients
83. Notice of recommended releases
84. Release of persons after review
85. Treatment etc. of persons found not guilty by reason of mental illness and forensic patients after review by Tribunal
86. Review of persons transferred from prisons
87. Review of persons to be transferred from prisons
88. Powers of Tribunal

89. Classification as continued treatment patient

PART 3 - OTHER PROVISIONS RELATING TO FORENSIC PATIENTS

90. Leave of absence on review of case
91. Leave of absence may be granted by authorised officer
92. Special leave of absence in emergencies
93. Breach of condition of order for release
94. Reinvestigation by Tribunal
95. Security conditions for forensic patients
96. Requests for transfer to prison
97. Transfer of mentally ill prisoners to hospitals
98. Transfer of other prisoners to hospitals
99. Transfer of forensic patients between hospitals
100. Effect on sentence etc. of detention in hospital
101. Termination of classification as forensic patient of person found not guilty by reason of mental illness
102. Termination of classification as forensic patient of person awaiting special hearing
103. Termination of classification as forensic patient of person found guilty of offence after special hearing
104. Termination of classification as forensic patient of person who becomes fit to be tried for an offence
105. Termination of classification as forensic patient of person serving a fixed term of imprisonment
106. Termination of classification as forensic patient of person serving sentence of imprisonment for life
107. Termination of classification as forensic patient of person serving minimum term of imprisonment with additional term
108. Termination of classification as forensic patient of person on remand
109. Person who ceases to be a forensic patient may be detained as involuntary patient etc.
110. Absence for medical treatment
111. Retaking of escapees
112. Aiding or permitting escape
113. Form, effect etc. of orders under this Chapter

CHAPTER 6 - CARE AND TREATMENT OUTSIDE HOSPITALS

PART 1 - HEALTH CARE AGENCIES

114. Declaration of health care agencies
115. Directors and Deputy Directors
116. Psychiatric case managers
117. Same person may hold 2 offices

PART 2 - COMMUNITY COUNSELLING ORDERS

118. Making of community counselling orders
119. Procedure on application to Tribunal
120. Conditions precedent to making of community counselling order
121. Treatment plan not required for short term orders
122. Report required for certain applications
123. Appointment of medical practitioners for purposes of making orders
124. Duration of community counselling order
125. Progress reports
126. Discharge reports
127. Breach of community counselling order
128. Action on further breaches of community counselling order
129. Apprehension of person in breach of community counselling order
130. Apprehension by police

PART 3 - COMMUNITY TREATMENT ORDERS

131. Making of community treatment orders
132. Person to be discharged
133. Conditions precedent to making of community treatment order
134. Report required for certain applications
135. Duration of community treatment orders
136. Discharge reports
137. Breach of community treatment order
138. Action on further breaches of community treatment order
139. Apprehension of person in breach of community treatment order
140. Apprehension by police
141. Procedure at health care agency
142. Procedure at hospital
143. Effect of review by medical superintendent

PART 4 - GENERAL

144. Reports
145. Duty of affected person
146. Powers and duties of health care agencies
147. Use of drugs
148. Variation or revocation of order
149. Revocation by Director
150. Delegation
151. Appeals

CHAPTER 7 - MEDICAL OR THERAPEUTIC TREATMENTS RELATING
TO MENTAL ILLNESS OR GIVEN TO PATIENTS

PART 1 - TREATMENTS FOR MENTAL ILLNESS

Division 1 - Psychosurgery

152. Psychosurgery Review Board
153. Psychosurgery on patients to be performed only with consent of Board
154. Consent of patient required
155. Requirements for obtaining informed consent
156. Persons presumed incapable of giving informed consent
157. Application for permission to perform psychosurgery
158. Procedure for convening hearing of application
159. Attendance and representation at hearing
160. Hearing open to public
161. Hearing of application
162. Publication of names etc.
163. Assistance by interpreters
164. Inspection etc. of medical records
165. Administration of oath
166. Production of evidence
167. Records of proceedings
168. Record of decision
169. Circumstances in which Board may consent to psychosurgery
170. Form of consent
171. Circumstances in which Board must refuse to consent to psychosurgery
172. Notice of decision
173. Lapse of consent
174. Board may state case for Court's opinion
175. Determination of stated case
176. Granting of consent on remission of application
177. Report of operation etc.
178. Review and research

Division 2 - Electro convulsive therapy and certain prescribed treatments

179. Application of Division
180. Administration of treatment
181. Persons who must be present during administration of electro convulsive therapy
182. Places at which treatment may be administered
183. Requirements for obtaining informed consent
184. Persons presumed incapable of giving informed consent
185. Circumstances in which treatment may be administered with consent - persons other than involuntary patients
186. Circumstances in which treatment may be administered without consent to patients - emergencies
187. Circumstances in which treatment may be administered to involuntary patients etc.

Mental Health 1990

188. Application to Tribunal to administer treatment with consent to patient
189. Application to Tribunal to administer electro convulsive therapy without consent to patient
190. Notice of inquiry to obtain consent
191. Inquiry
192. Matters to be checked by Tribunal
193. Matters which must be considered by Tribunal
194. Result of inquiry
195. Refusal of treatment by medical superintendent
196. Register

Division 3 - Prohibited treatments

197. Prohibited treatments
198. Administration of drugs - generally
199. Administration of drugs in hospitals

PART 2 - TREATMENTS CARRIED OUT ON PATIENTS

200. Application of Part
201. Cases of emergency
202. Effect of consent
203. Notice of operation to be given
204. Special medical treatment
205. Applications for consent to the carrying out of certain operations and treatments other than in an emergency
206. Application for consent
207. Hearing and determination of application

CHAPTER 8 - ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS

PART 1 - HOSPITALS

Division 1 - Hospitals other than authorised hospitals

208. Establishment of hospitals other than authorised hospitals
209. Appointment of medical superintendents
210. Appointment of deputy medical superintendents

Division 2 - Authorised hospitals

211. Application for licence
212. Grant or refusal of licence
213. Duration of licence
214. Annual statement and licence fee
215. Duplicate licence
216. Cancellation of licences - generally
217. Cancellation of licences - failure to show cause
218. Variation of licence
219. Medical supervision
220. Appointment of medical superintendent

- 221. Duties of medical superintendent
- 222. Appointment of deputy medical superintendent
- 223. Functions of deputy medical superintendent
- 224. Offence where hospital no longer authorised
- 225. Certain private hospitals to be licensed

PART 2 - OFFICIAL VISITORS AND OTHER OFFICERS

- 226. Appointment of Principal official visitor
- 227. Functions of Principal official visitor
- 228. Appointment of official visitors
- 229. General provisions relating to the Principal official visitor and official visitors
- 230. Inspection of hospitals
- 231. Access etc. to be given to official visitors
- 232. Other functions of official visitors
- 233. Reports to Minister
- 234. Request by patient etc. in hospital to see official visitor
- 235. Appointment of authorised officers
- 236. Functions of authorised officers
- 237. Inspection etc. of hospitals
- 238. Powers of authorised officer visiting hospital
- 239. Information may not be used to incriminate
- 240. Restriction on exercise of functions of certain authorised officers
- 241. Prohibited interests of authorised officers
- 242. Appointment of welfare officers
- 243. Functions of welfare officers

PART 3 - PATIENTS FUNDS AND ACCOUNTS

- 244. Trust funds
- 245. Patients Trust Fund
- 246. Withdrawals from patients' accounts
- 247. Discharge or death of patient
- 248. Patients' accounts to form one fund
- 249. Payments to and from Interest Account
- 250. Distribution of Interest Account
- 251. Patients Amenities Account

CHAPTER 9 ., MENTAL HEALTH REVIEW TRIBUNAL

PART 1 - THE TRIBUNAL

- 252. Constitution of the Tribunal
- 253. Additional provisions relating to members
- 254. Seal of the Tribunal
- 255. Functions of the Tribunal
- 256. Registrar and other officers of the Tribunal
- 257. Authentication of documents
- 258. Judicial notice of certain signatures
- 259. Certain proceedings prohibited

- 260. Application of the Defamation Act 1974
- 261. Annual report
- 262. Service of documents on Tribunal
- 263. Delegation

PART 2 - PROCEEDINGS OF THE TRIBUNAL

- 264. Composition of the Tribunal generally
- 265. Composition of the Tribunal for dealing with forensic patients
- 266. Meetings of the Tribunal
- 267. Procedure at meetings of the Tribunal
- 268. Determination whether a person is a mentally ill person etc.
- 269. Appointment of person to assist the Tribunal
- 270. Chairperson and votes of members
- 271. Adjournment
- 272. Proceedings open to public
- 273. Publication of names etc.
- 274. Rights of appearance and representation
- 275. Assistance of interpreters
- 276. Inspection etc. of medical records
- 277. Administration of oath
- 278. Production of evidence
- 279. Records of proceedings before the Tribunal
- 280. Record of determinations etc.

CHAPTER 10 - JURISDICTION OF SUPREME COURT

- 281. Appeals to the Court
- 282. Nomination of assessors
- 283. Functions of assessors on hearing of appeals
- 284. Power of the Court on appeals
- 285. Court may order discharge or transfer of patient
- 286. Other jurisdiction of the Court not affected

CHAPTER 11 - MISCELLANEOUS

- 287. Restrictions on holding of certain offices
- 288. Legal representation of mentally ill persons etc.
- 289. Disclosure of information
- 290. Withholding of certain correspondence of patients and other persons
- 291. Contempt of Tribunal etc.
- 292. Assistance of interpreters
- 293. Information as to follow-up care after discharge
- 294. Exculpation from liability of police
- 295. Service of notices etc.
- 296. Amendment of certain documents
- 297. Offences in relation to certain certificates
- 298. 111-treatment etc. of patients
- 299. Proceedings for offences
- 300. Information as to types and dosages of medications

Mental Health 1990

- 301. Annual report
- 302. Regulations
- 303. Savings, transitional and other provisions
- 304. Report by Minister

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE ACT

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO EXAMINATION OR
OBSERVATION OF PERSON

SCHEDULE 3 - MEDICAL CERTIFICATE AS TO EXAMINATION OF
PRISONER

SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE
PSYCHOSURGERY REVIEW BOARD

SCHEDULE 5 - PROVISIONS RELATING TO PRINCIPAL OFFICIAL
VISITOR AND OFFICIAL VISITORS

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF THE
TRIBUNAL

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

MENTAL HEALTH ACT 1990 No. 9

NEW SOUTH WALES



Act No. 9, 1990

An Act to make provision with respect to the care, treatment and control of mentally ill and mentally disordered persons and other matters relating to mental health; and for other purposes. [Assented to 1 June 1990]

See also Mental Health (Criminal Procedure) Act 1990; Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990.

The Legislature of New South Wales enacts:

CHAPTER 1 —INTRODUCTORY

Short title

1. This Act may be cited as the Mental Health Act 1990.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. In this Act or in a particular provision of this Act, the following expressions have the meanings set out in the dictionary in Schedule 1:

administration of a treatment to a person	medical superintendent
affected person	member
appeal	mental illness
assessor	mentally disordered person
authorised applicant	mentally ill person
authorised hospital	near relative
authorised officer	nearest relative
behaviour	official visitor
Board	patient
Chief Health Officer	patient's account
community counselling order	person who administers a treatment
community treatment order	person who performs psychosurgery
competent interpreter	premises
continued treatment patient	President
court	prison
Deputy President	psychiatric case manager
determination of the Tribunal	psychosurgery
Director	Psychosurgery Review Board
	responsible medical officer

Director-General	responsible person
exercise of a function	special medical treatment
forensic patient	surgical operation
function	taking to and detaining
guardian	in a hospital
health care agency	temporary patient
hospital	treatment plan
imprisonment	Tribunal
informal patient	welfare officer

CHAPTER 2 - OBJECTS ETC.

Care, treatment and control of mentally ill and mentally disordered persons

4 (1) The objects of this Act in relation to the care, treatment and control of persons who are mentally ill or mentally disordered are:

- (a) to provide for the care, treatment and control of those persons; and
- (b) to facilitate the care, treatment and control of those persons through community care facilities and hospital facilities; and
- (c) to facilitate the provision of hospital care for those persons on an informal and voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis; and
- (d) while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care.

(2) It is the intention of Parliament that the provisions of this Act are to be interpreted and that every function, discretion and jurisdiction conferred or imposed by this Act is, as far as practicable, to be performed or exercised so that:

- (a) persons who are mentally ill or who are mentally disordered receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given; and

- (b) in providing for the care and treatment of persons who are mentally ill or who are mentally disordered, any restriction on the liberty of patients and other persons who are mentally ill or mentally disordered and any interference with their rights, dignity and self-respect are kept to the minimum necessary in the circumstances.

Additional administrative objects of Act

5. In addition to the objects set out in section 4 the objects of this Act are:

- (a) to establish the Mental Health Review Tribunal; and
- (b) to provide for the appointment and functions of official visitors, authorised officers and welfare officers; and
- (c) to complement the operation of the Disability Services and Guardianship Act 1987, but not, except as provided by that Act, to affect the operation of that Act; and
- (d) to ensure that persons who are mentally ill or mentally disordered are informed of the provisions of this Act; and
- (e) to provide, as far as practicable, for proceedings under this Act before the Tribunal, a Magistrate or the Psychosurgery Review Board to be conducted with as little formality and legal technicality and form as the circumstances of the case permit.

Objectives of the Department

6. (1) The objectives of the Department of Health under this Act in relation to mental health services are to establish, develop, promote, assist and encourage mental health services which

- (a) develop, as far as practicable, standards and conditions of care and treatment for persons who are mentally ill or mentally disordered which are in all possible respects at least as beneficial as those provided for persons suffering from other forms of illness; and
- (b) take into account the various religious, cultural and language needs of those persons; and
- (c) are comprehensive and accessible; and
- (d) permit appropriate intervention at an early stage of mental illness; and

- (e) support the patient in the community and liaise with other providers of community services.

(2) It is also an objective of the Department of Health under this Act to ensure that patients and other persons who are mentally ill or mentally disordered are, in accordance with this Act, informed of their legal rights and other entitlements under this Act and, in so doing, to make all reasonable efforts to ensure that the relevant provisions of this Act are explained to those persons in the language, mode of communication or terms that they are most likely to understand.

Functions of the Director-General

7. The functions of the Director-General under this Act are:

- (a) to ensure that provision is made for the care, treatment, control and rehabilitation of persons who are mentally ill or mentally disordered; and
- (b) to promote the establishment of community mental health services for the purpose of enabling the treatment in the community wherever possible of persons who are mentally ill or suffering from the effects of mental illness or who are mentally disordered; and
- (c) to promote research into mental illness; and
- (d) to assist in the training and education of persons responsible for the care and treatment of persons who are mentally ill or mentally disordered; and
- (e) to make recommendations and reports to the Minister with respect to matters affecting the accommodation, maintenance, care, treatment, control and welfare of persons who are mentally ill or mentally disordered; and
- (f) to submit recommendations to the Minister concerning amendments to this Act or the regulations; and
- (g) to promote informed public opinion on matters relating to mental health by publishing reports and information concerning mental health and to promote public understanding of and involvement in measures for the prevention, treatment and care of mental illness and the care, protection, control and rehabilitation of persons who are mentally ill or who are mentally disordered.

CHAPTER 3 - MENTALLY ILL AND MENTALLY DISORDERED PERSONS

Criteria for involuntary admission etc. as mentally ill person or mentally disordered person

8 A person is a mentally ill person or a mentally disordered person for the purpose of

- (a) the involuntary admission of the person to a hospital or the detention of the person in a hospital under this Act; or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a hospital or other place,

if, and only if, the person satisfies the relevant criteria set out in this Chapter.

Mentally ill persons

9. (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm,

and a person is also a mentally ill person if the person is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious financial harm or serious damage to the person's reputation.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person is to be taken into account.

(3) In this section, "**damage to the person's reputation**" includes damage to the person's reputation among those with whom the person has important personal relationships, where the damage is likely to cause lasting or irreparable harm to any such relationship.

Mentally disordered persons

10. A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm; or
- (b) for the protection of others from serious physical harm.

Certain words or conduct may not indicate mental illness or disorder

11. (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following.

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy,
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity;
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct;
- (j) that the person has developmental disability of mind;
- (k) that the person takes or has taken alcohol or any other drug;
- (l) that the person engages in or has engaged in anti-social behaviour.

(2) Nothing in this Chapter prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

CHAPTER 4 - ADMISSION TO, AND CARE IN, HOSPITALS

PART 1 - VOLUNTARY ADMISSION TO HOSPITALS

Admission on own request

12. (1) A person may be admitted to a hospital as an informal patient on an oral or a written application made by the person to the medical superintendent

(2) A person under guardianship within the meaning of the Disability Services and Guardianship Act 1987 may be admitted to a hospital as an informal patient on an oral or a written application made by the the person's guardian to the medical superintendent that is approved in writing by the Guardianship Board constituted under that Act either before the application is made or as soon as practicable after it is made.

Informal patient under 16 years of age

13. If a person under the age of 16 years is admitted to a hospital as an informal patient, the medical superintendent must, as soon as practicable after admission, do all such things as are reasonably practicable to notify the person's parents or guardian of the person's admission.

Informal patient of 14 or 15 years of age

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

Admission etc. of person under 14 years of age

15. (1) A person under the age of 14 years must not be admitted to a hospital as an informal patient if, at or before the time at which the

person seeks to be so admitted, a parent of the person has notified the medical superintendent that he or she objects to the person's being so admitted.

(2) If a parent of a person under the age of 14 years who has been admitted to a hospital as an informal patient notifies the medical superintendent that he or she objects to the person's receiving care or treatment at the hospital, the medical superintendent must discharge the person.

Persons under guardianship

16. (1) A person under guardianship within the meaning of the Disability Services and Guardianship Act 1987 must not be admitted to a hospital as an informal patient if, at or before the time at which the person seeks to be so admitted, the guardian of the person has notified the medical superintendent that he or she objects to the person's being so admitted.

(2) If the guardian of a person under guardianship within the meaning of the Disability Services and Guardianship Act 1987 who has been admitted to a hospital as an informal patient notifies the medical superintendent that he or she objects to the person's receiving care or treatment at the hospital, the medical superintendent must discharge the person.

Medical superintendent may refuse to admit person

17. The medical superintendent may refuse to admit a person to a hospital as an informal patient if the medical superintendent is not satisfied that the person is likely to benefit from care or treatment as an informal patient.

Other functions of medical superintendent concerning informal patients

18. A medical superintendent may
- (a) discharge an informal patient; or
 - (b) if, having regard to the condition of an informal patient, the medical superintendent considers it proper to do so, do all such things as may be necessary to cause the patient to be admitted to and detained in a hospital under Part 2.

Review of decisions made by medical officer

19. (1) A person who is refused admission to a hospital as an informal patient under this Part, or who is discharged from a hospital under section 18, by a medical officer nominated by the medical superintendent may apply to the medical superintendent for a review of that decision.

(2) On receiving an application for a review of a decision, the medical superintendent must review the decision as soon as practicable and:

- (a) in the case of a person refused admission - confirm the refusal or admit the person as an informal patient or take such other action under this Act as the medical superintendent thinks fit; or
- (b) in the case of a person who is discharged - confirm the person's discharge as an informal patient or admit the person as an informal patient or take such other action under this Act as the medical superintendent thinks fit.

PART 2 - INVOLUNTARY ADMISSION TO HOSPITALS

Division 1- Admission to and detention in hospitals

Detention of persons generally

20. A person must not be admitted to, or detained in or continue to be detained in, a hospital under this Part unless the medical superintendent is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the person.

Detention on certificate of medical practitioner

21. (1) A person may be taken to and detained in a hospital (other than an authorised hospital) on the certificate of a medical practitioner:

- (a) who has personally examined or personally observed the person immediately before or shortly before completing the certificate; and
- (b) who is of the opinion that the person is a mentally ill person or a mentally disordered person; and
- (c) who is satisfied that no other appropriate means for dealing with the person are reasonably available, and that involuntary admission and detention are necessary; and

- (d) who is not a near relative of the person.
- (2) The certificate is to be in the form set out in Part 1 of Schedule 2.
- (3) A medical practitioner who gives any such certificate and who has (directly or indirectly) a pecuniary interest in any authorised hospital, or has a near relative, partner or assistant who has such an interest, must, on giving the certificate, disclose that fact and give particulars of the interest in the certificate.
- (4) A person may not be admitted to or detained in a hospital on a certificate:
 - (a) certifying that the person is a mentally ill person - unless the person is so admitted within 5 days after the day on which the certificate is given; or
 - (b) certifying that the person is a mentally disordered person - unless the person is so admitted within 1 day after the day on which the certificate is given.

Assistance by police

- 22. (1) A medical practitioner who gives a certificate under section 21 and who is of the opinion:
 - (a) that the condition of the person in respect of whom the certificate is given is such that the assistance of a member of the Police Force is required to take the person to hospital; and
 - (b) that no other means of taking the person to a hospital (other than an authorised hospital) are reasonably available,may endorse the certificate in the form set out in Part 2 of Schedule 2.
- (2) A member of the Police Force to whose notice any such endorsement is brought must, as soon as practicable:
 - (a) apprehend and take or assist in taking the person in respect of whom the certificate is given to a hospital (other than an authorised hospital); or
 - (b) cause or make arrangements for some other member of the Police Force to apprehend or take or assist in taking the person to a hospital (other than an authorised hospital).

(3) A member of the Police Force may enter premises, if need be by force, for the purpose of apprehending any such person, and may apprehend any such person, without the warrant of a justice.

Detention on request of relative or friend

23. (1) A person may be detained in a hospital (other than an authorised hospital) on a written request made by a relative or friend of the person to the medical superintendent.

(2) The medical superintendent may not detain any such person unless the medical superintendent is satisfied that, because of the distance required to be travelled in order to have the person examined by a medical practitioner and the urgency of the circumstances, it is not reasonably practicable to seek to have the person detained under section 21.

Detention after apprehension by police

24. (1) If a member of the Police Force finds a person in a public place who appears to be mentally disturbed and the member of the Police Force has reasonable grounds for believing:

- (a) that the person is committing or has recently committed an offence and that it would be beneficial to the welfare of the person that the person be dealt with in accordance with this Act rather than otherwise in accordance with law; or
- (b) that the person has recently attempted to kill himself or herself or that it is probable that the person will attempt to kill himself or herself or attempt to cause serious bodily harm to himself or herself,

the member of the Police Force may apprehend the person and take the person to a hospital (other than an authorised hospital).

(2) A member of the Police Force may apprehend any such person without the warrant of a justice.

Detention on order of court

25. A person may be taken to and detained in a hospital (other than an authorised hospital) in accordance with an order made under section 33 of the Mental Health (Criminal Procedure) Act 1990.

Detention on information of welfare officer

26. A person may be detained in a hospital (other than an authorised hospital) if the person is accompanied to the hospital by a welfare officer who, in writing, informs the medical superintendent that the welfare officer believes the person to be a mentally ill person or a mentally disordered person.

Detention following order for medical examination etc.

27. (1) If the appropriate person is satisfied, by evidence on oath
- (a) that a person may be a mentally ill person or a mentally disordered person; and
 - (b) that, because of physical inaccessibility, the person could not, but for the making of an order under this section, be personally examined or personally observed,

the appropriate person may, by order, authorise a medical practitioner and any other person (including a member of the Police Force) who may be required to assist the medical practitioner to visit and to personally examine or personally observe the person.

(2) A person so authorised may enter premises, if need be by force, in order to enable the examination or observation to be carried out.

(3) A person who is examined or observed in accordance with this section may be detained in accordance with section 21.

(4) A medical practitioner authorised under this section is required to notify in writing the appropriate person who made the order of any action taken under the order as soon as practicable after the action is taken.

(5) In this section, "**appropriate person**" includes a Magistrate and a person who is employed in the Attorney General's Department and who is a person or a member of a class or description of persons prescribed for the purposes of this section.

Refusal to detain

28. The medical superintendent must refuse to detain a person under this Division if the medical superintendent is of the opinion that the person is not a mentally ill person or a mentally disordered person.

Examination on detention at hospital

29. (1) A person taken to and detained in a hospital under this Division must be examined, as soon as practicable (but not more than 4 hours) after the person's arrival at the hospital, by the medical Superintendent.

(2) A person must not be detained (except as provided by section 37) after the examination unless the medical superintendent certifies that, in the opinion of the medical superintendent, the person is a mentally ill person or a mentally disordered person.

Information to be given to detained person

38. Before certifying under section 29 that a person is a mentally ill person or a mentally disordered person, the medical superintendent must give to the person an oral explanation and a written statement (in the prescribed form) of the person's legal rights and other entitlements under this Act.

Treatment of patients

31. (1) A person (including the medical superintendent of a hospital), in administering or authorising the administration of any medication to a person taken to and detained in a hospital under this Division:

- (a) must have due regard to the possible effects of the administration of the medication; and
- (b) must prescribe the minimum medication, consistent with proper care, to ensure that the person is not prevented from communicating adequately with any other person who may be engaged to represent the person at an inquiry under section 41 (Inquiry concerning detained person).

(2) The medical superintendent of a hospital may, subject to this Act, give, or authorise the giving of, such treatment (including any medication) as the medical superintendent thinks fit to a person detained in the hospital in accordance with this Act.

Further examination at hospital

32. (1) If the medical superintendent has, under section 29, certified that a person is a mentally ill person or a mentally disordered person, the medical superintendent must, as soon as practicable after certifying

the person, cause the person to be examined by another medical practitioner who is, if the medical superintendent is not a psychiatrist, a psychiatrist.

(2) If the medical superintendent of a hospital (not being a medical officer, nominated by the medical superintendent, attached to the hospital) did not, under section 29, examine the person admitted to and detained in the hospital, the medical superintendent may, subject to subsection (1), be the examining medical practitioner referred to in that subsection.

(3) If the medical practitioner who examines a person under subsection (1) is of the opinion that the person is not a mentally ill person or a mentally disordered person, the medical superintendent must, as soon as practicable after being notified of that opinion, cause the person to be examined by a medical practitioner who is a psychiatrist.

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

Consequence of further examination

33. (1) If after examination under section 32 by a medical practitioner of a person taken to and detained in a hospital the medical practitioner is of the opinion that the person is a mentally ill person or a mentally disordered person, the medical practitioner must advise the medical superintendent accordingly in the prescribed form.

(2) If after examination of a person under section 32 by 2 medical practitioners neither medical practitioner is of the opinion that the person is a mentally ill person or a mentally disordered person, the person must not (except as provided by section 37) be further detained in the hospital

(3) A medical Practitioner who furnishes advice under subsection (1) in respect of a person is wherever practicable required to be available, on reasonable notice, to attend an inquiry held under section 41 concerning the person in order to give evidence concerning the person.

(4) A medical practitioner who furnishes advice under subsection (1) and who has (directly or indirectly) a pecuniary interest in any authorised hospital, or has a near relative, partner or assistant who has

such an interest, must, on furnishing the advice, disclose that fact and give particulars of the interest in the advice.

Formation of opinion as to mental illness etc.

34. The medical superintendent or other medical practitioner, in forming an opinion under section 29 or 32 as to whether a person is a mentally ill person or a mentally disordered person, may take into account, in addition to his or her own observations, any other available evidence which he or she considers reliable and relevant.

Limited detention of mentally disordered persons

35. (1) A person who has, under section 29, been certified to be a mentally disordered person must not be detained in the hospital for a continuous period in excess of 3 days (not including weekends and public holidays) on the ground that the person is a mentally disordered person.

(2) The medical superintendent of a hospital must examine a mentally disordered person detained in the hospital at least once every 24 hours.

(3) If, on examination of a person detained as a mentally disordered person, a medical superintendent is of the opinion that the person is not a mentally disordered person or that other care of a less restrictive kind is appropriate and reasonably available to the person, the person must not (except as provided by section 37) be further detained in the hospital.

(4) A person must not be admitted to and detained in a hospital on the grounds that the person is a mentally disordered person on more than 3 occasions in any 1 month.

Persons detained after apprehension by police etc.

36. (1) This section applies:

- (a) to a person to whom section 24 (1) (a) applies who has been taken to a hospital under section 24; and
- (b) to a person who has been taken to and detained in a hospital pursuant to an order made under section 33 of the Mental Health (Criminal Procedure) Act 1990.

(2) If, after examination under section 29 by the medical superintendent, the medical superintendent decides not to certify a person, the person is to be dealt with in accordance with section 37.

(3) If, after examination of a person under section 32 by 2 medical practitioners, neither medical practitioner is of the opinion that the person is a mentally ill person or a mentally disordered person, the person is to be dealt with in accordance with section 37.

(4) If, after examination of a person under section 35, the medical superintendent is not of the opinion that the person is a mentally disordered person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the person, the person is to be dealt with in accordance with section 37.

(5) If, at any time before an inquiry is held under section 41, the medical superintendent is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to a mentally ill person or a mentally disordered person, the person is to be dealt with in accordance with section 37.

Limited detention of certain persons after examination at hospital

37. (1) This section applies to a person who is, by virtue of section 36, to be dealt with in accordance with this section.

(2) If a member of the Police Force is present at the hospital to ascertain the results of any examination or examinations when the decision not to certify a person is made or the relevant opinions or opinion are or is known to the medical superintendent, the medical superintendent must release the person into the custody of the member of the Police Force.

(3) If a member of the Police Force is not so present, the medical superintendent must, as soon as practicable after that decision is made or the relevant opinions or opinion are or is known to the medical Superintendent, notify a member of the Police Force at the police station nearest to the hospital, or a police station nominated for the purposes of this section by the Commissioner of Police, that the person will not be further detained.

(4) The medical superintendent may, subject to subsection (5), after having considered any matter communicated by a member of the Police Force as to the intended apprehension of the person by a member of the Police Force:

- (a) detain the person pending the apprehension of the person by a member of the Police Force; or
- (b) admit the person, pursuant to an application made by the person in accordance with Part 1, to the hospital as an informal patient; or
- (c) discharge the person, in so far as it may be possible to do so, into the care of a relative or friend of the person who is concerned for the welfare of the person or otherwise discharge the person.

(5) A person may not be detained in a hospital for a period in excess of 1 hour after the decision not to certify the person is made or the relevant opinions or opinion are or is known to the medical superintendent

Division 2 - Inquiries relating to mentally ill persons

Notice of inquiry etc.

38. (1) A medical superintendent must, after receiving advice under section 33 (1) and after complying with this section, bring the person in respect of whom the advice is furnished before a Magistrate as soon as practicable.

(2) On receiving advice under section 33 (1), the medical superintendent must:

- (a) inform the person in respect of whom the advice is furnished of the medical superintendent's duty to do all such things as are reasonably practicable to give notice as referred to in subsection (3); and
- (b) obtain, or make all reasonable efforts to obtain, from the person the information required to enable the giving of that notice.

(3) The medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of the medical superintendent's intention to bring the person in respect of whom any such advice is furnished before a Magistrate:

- (a) the nearest relative, if there is one, of the person or a relative nominated by the person;

- (b) the person's guardian, if any;
 - (c) any personal friend or friends of the person, up to 2 in number.
- (4) Notice need not be given to the nearest relative or any personal friend of the person if the person objects to it being given.

Dress

39. The medical superintendent is to ensure that, so far as is reasonably practicable, a person in respect of whom advice under section 33 (1) is furnished is, when brought before the Magistrate, dressed in street clothes.

Termination of detention

40. (1) If, at any time before a person is brought before a Magistrate under section 38, the medical superintendent is of the opinion:

- (a) that the person has ceased to be a mentally ill person; or
- (b) that other care of a less restrictive kind is appropriate and reasonably available to the person,

the medical superintendent must release the person from detention in the hospital.

(2) A medical superintendent may, immediately on releasing a person, admit that person as an informal patient.

Inquiry concerning detained person

41. (1) A Magistrate is required to hold an inquiry in respect of the person brought before the Magistrate under section 38.

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

(3) The medical superintendent who brings the person before the Magistrate is to make all such arrangements as may be necessary to ensure that all appropriate medical witnesses appear before the Magistrate and other relevant medical evidence concerning the person is placed before the Magistrate.

(4) An inquiry is to be open to the public unless the person brought before the Magistrate or any representative of the person objects and the Magistrate upholds the objection.

(5) A person brought before the Magistrate, being a person who is unable to communicate adequately in English but who is able to communicate adequately in another language, is entitled to be assisted, when appearing before the Magistrate, by a competent interpreter.

Adjournments

42. (1) The Magistrate may, from time to time, adjourn the inquiry for a period not exceeding 14 days.

(2) Without limiting subsection (1), the Magistrate may adjourn the inquiry if the Magistrate is not satisfied:

- (a) that the person in respect of whom the inquiry is held has been informed of the duty imposed under section 38 on the medical superintendent relating to the giving of the notice specified in that section; or
- (b) that the notice specified in the section has been given or all such things as are reasonably practicable have been done to give that notice.

Representation and appearances at inquiries

43. (1) At an inquiry

- (a) the person brought before the Magistrate is, unless the person decides that he or she does not want to be represented, to be represented by a barrister or solicitor or, with the leave of the Magistrate, by another person of his or her choice; and
- (b) any other person appearing before the Magistrate may, with the leave of the Magistrate, be represented by a barrister or solicitor.

(2) A person who is the nearest relative, if there is one, the guardian or a personal friend of, or a relative nominated by, the person brought before the Magistrate may, with the leave of the Magistrate, appear at an inquiry.

(3) A Magistrate may not grant leave under subsection (2) unless it would, in the opinion of the Magistrate, be in the best interests of the person brought before the Magistrate to do so.

Publication of names etc,

44. (1) The name of a person who is involved in any inquiry before a Magistrate may not, except with the approval of the Magistrate and

the consent of the person or any representative of the person, be published or broadcast.

(2) A report (other than an official report) of any such inquiry may not include information which identifies or may lead to the identification of any person whose name is prohibited by this section from being published or broadcast.

(3) A person must not:

- (a) publish or broadcast the name of a person whose name is prohibited by this section from being published or broadcast; or
- (b) publish or broadcast a report that contravenes this section.

Maximum penalty 50 penalty units.

Inspection etc. of medical records

45. (1) A person brought before a Magistrate is, unless the Magistrate otherwise determines, entitled to inspect or otherwise have access to any medical records relating to the person in the possession of any other person.

(2) A representative at an inquiry of a person brought before a Magistrate is entitled, at any time before or during the inquiry, to inspect or otherwise have access to any relevant medical records relating to that person in the possession of any other person.

(3) Subject to any order or direction of the Magistrate, in relation to an inspection under subsection (2) of, or other access under that subsection to, any medical record relating to a person, if a medical practitioner warns the representative of the person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records:

- (a) the representative is to have full and proper regard to that warning; and
- (b) the representative is not obliged to disclose to the person any information obtained by virtue of the inspection or other access.

(4) An order or direction of the Magistrate under this section has effect according to its tenor.

Administration of oath

46. The Magistrate may administer an oath to any person giving evidence in an inquiry.

Production of evidence

47. (1) A Magistrate holding an inquiry may on his or her own motion or on the application of a person brought before the Magistrate or a person given leave to appear under section 43 (2) issue a summons in the prescribed form requiring the person to whom the summons is addressed to do either or both of the following things:

- (a) to attend as a witness at the inquiry;
- (b) to attend at the inquiry and to produce any documents in the possession or under the control of the person relating to the inquiry and specified in the summons.

(2) The regulations may make provision for or with respect to authorising compliance with a summons to produce any documents by the production of the documents at a place specified in the summons at any time before the inquiry at which the documents are required to be produced.

- (3) A person to whom a summons is addressed is entitled to receive:
- (a) if the summons was issued by the Magistrate on his or her own motion, from the principal officer of the hospital where the person to whom the inquiry relates is detained; or
 - (b) if the summons was issued on the application of another person, from that other person,

his or her reasonable costs, including any loss of earnings, incurred by the person in obeying the summons, calculated in accordance with the scales relating to summonses issued out of the District Court.

- (4) A person:
- (a) who is served with a summons addressed to the person under this section; and
 - (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the inquiry specified in the summons and producing anything required by the summons to be produced,

must not, without cause, fail or refuse to obey the summons.

Maximum penalty 50 penalty units.

Records of proceedings

48. (1) Proceedings before a Magistrate in an inquiry are to be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus is not to be transcribed unless:

- (a) the Magistrate, on the application of the person brought before the Magistrate, is of the opinion that sufficient cause is shown to warrant the transcription of the record relating to the matter; or
- (b) the Magistrate directs that the record be transcribed; or
- (c) the transcription of the record is otherwise required by law.

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

Matters to be checked by Magistrate

49. (1) As soon as practicable after the beginning of an inquiry, the Magistrate is required to ask the person in respect of whom the inquiry is held whether the person:

- (a) has been given a written statement, in the prescribed form, of the person's legal rights and other entitlements, as required by section 30; and
- (b) whether the person has been informed of the duty imposed under section 38 on the medical superintendent relating to the giving of the notice specified in that section.

(2) As soon as practicable after the beginning of an inquiry, the Magistrate is required to ascertain from the medical superintendent whether the written statement and notice referred to in subsection (1) have been given or all such things as are reasonably practicable have been done to give that statement or notice, as the case requires.

Matters which must be considered by Magistrate

50. (1) In the course of the inquiry, the Magistrate must consider the reports and recommendations of the medical practitioners under sections 29 (Examination on detention at hospital) and 32 (Further examination at hospital) concerning the person in respect of whom the

inquiry is held and must consider such other information as may be placed before the Magistrate.

(2) In the course of the inquiry, the Magistrate must inquire as to the administration of any medication to the person in respect of whom the inquiry is held and is to take account of the effect of the administration of the medication on the person's ability to communicate.

(3) In determining for the purposes of an inquiry whether a person brought before the Magistrate is a mentally ill person, the Magistrate is to have due regard:

- (a) to any cultural factors relating to the person which may be relevant to the determination; and
- (b) to any evidence given at the inquiry by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.

Result of finding that person is mentally ill

51. (1) If, after holding an inquiry, a Magistrate is satisfied that on the balance of probabilities a person is a mentally ill person, the Magistrate must take the action set out in subsection (2) or subsection (3).

(2) The Magistrate may order the discharge of the person to the care of a relative or friend who satisfies the Magistrate that the person will be properly taken care of or order such other course of action in respect of the person (including a community treatment order) as the Magistrate thinks fit.

(3) If the Magistrate is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available or that for any other reason it is not appropriate to take the action set out in subsection (2), the Magistrate must direct that the person be detained in, or admitted to and detained in, a hospital specified in the direction for further observation or treatment, or both, as a temporary patient for such period (not exceeding 3 months) as the Magistrate, having regard to all the circumstances of the case, specifies.

(4) An order or direction made or given by a Magistrate under this section has effect according to its tenor.

Result of finding that person is not mentally ill

52. (1) If, after holding an inquiry, a Magistrate is not satisfied that on the balance of probabilities a person is a mentally ill person, the Magistrate must order that the person be discharged from the hospital in which the person is detained and any such order has effect according to its tenor.

(2) The Magistrate may, if the Magistrate thinks it in the interests of the person to do so, defer the operation of an order for the discharge of a person for a period not exceeding 14 days.

(3) Nothing in this section prevents the Magistrate from making a community counselling order in respect of the person.

Record of decision

53. (1) An order or direction of a Magistrate pursuant to an inquiry is to be recorded in the form of an instrument in writing and is to include the reasons for the order or direction.

(2) Nothing in this section prevents a Magistrate from giving an order or direction orally.

(3) An order or direction given orally by a Magistrate is to be recorded in accordance with this section.

Classification of persons as informal patients

54. A medical superintendent may, at any time before an inquiry under section 41 is held in respect of the person, classify a person admitted to and detained in a hospital under this Part as an informal patient but only if:

- (a) the patient, in the opinion of the medical superintendent, is likely to benefit from care or treatment as an informal patient; and
- (b) the patient agrees to being classified as an informal patient or is admitted in accordance with section 12 (2).

Division 3 - Temporary patients and continued treatment patients

Notice of temporary patient's rights of appeal

55. If a direction is given by a Magistrate under section 51 (3) in respect of a person, the medical superintendent of the hospital in

which the person was detained immediately before the giving of the direction must, as soon as practicable after the direction is given, give or cause to be given to the person a statement, in the prescribed form, of the rights of appeal conferred on the person, as a temporary patient, by or under this Act

Bringing of certain temporary patients before the Tribunal

56. (1) If it appears that a temporary patient will, immediately before the expiration of the period of detention directed in respect of the patient under section 51, continue to be detained in a hospital as a temporary patient after the period has expired, the medical superintendent is required, as soon as practicable before the expiration of that period, to cause the patient to be brought before the Tribunal.

(2) The medical superintendent is to ensure that, so far as is reasonably practicable, a temporary patient is, when brought before the Tribunal, dressed in street clothes.

Determination by the Tribunal

57. (1) If a temporary patient is brought before the Tribunal under section 56, the Tribunal must determine whether the patient is a mentally ill person.

(2) In the course of making its determination, the Tribunal must inquire as to the administration of any medication to the temporary patient and is to take account of the effect of the administration of the medication on the patient's ability to communicate and must consider such other information as may be placed before it.

(3) If the Tribunal determines that the patient is a mentally ill person and is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the patient, the Tribunal must determine whether the patient should be:

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

(4) If the Tribunal does not determine that the patient is a mentally ill person or is of the opinion that other care of a less restrictive kind

is appropriate and reasonably available to the patient, the patient must be discharged from the hospital in which the patient is detained.

(5) If the Tribunal does not determine that a patient is a mentally ill person or forms an opinion referred to in subsection (4), the Tribunal may also defer the discharge of the patient for a period not exceeding 14 days.

(6) A determination made by the Tribunal is to be in the prescribed form and has effect according to its tenor.

Further bringing of certain temporary patients before the Tribunal

58. (1) If it appears that a temporary patient will, immediately before the expiration of the period of detention determined in respect of the patient under section 57 (3) (b), continue to be detained in a hospital as a temporary patient, the medical superintendent is required, as soon as practicable before the expiration of that period, to cause the patient to be brought before the Tribunal.

(2) The medical superintendent is to ensure that, so far as is reasonably practicable, a temporary patient is, when brought before the Tribunal, dressed in street clothes.

Further determination by the Tribunal

59. (1) If a temporary patient is brought before the Tribunal under section 58, the Tribunal must determine whether the patient is a mentally ill person.

(2) In the course of making its determination, the Tribunal must inquire as to the administration of any medication to the temporary patient and is to take account of the effect of the administration of the medication on the patient's ability to communicate and must consider such other information as may be placed before it.

(3) If the Tribunal determines that the patient is a mentally ill person and is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the patient, the Tribunal must classify the patient as a continued treatment patient.

(4) If the Tribunal does not determine that the patient is a mentally ill person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the patient, the patient must be discharged from the hospital in which the patient is detained.

(5) If the Tribunal does not determine that a patient is a mentally ill person or forms an opinion referred to in subsection (4), the Tribunal may also defer the discharge of the patient for a period not exceeding 14 days.

(6) A determination made by the Tribunal is to be in the prescribed form and has effect according to its tenor.

PART 3 - REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PERSONS (OTHER THAN FORENSIC PATIENTS) IN HOSPITALS

Application of Part

60. This Part does not apply to forensic patients.

Medical examination of continued treatment patients

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

Review of continued treatment patients by the Tribunal

62. (1) The Tribunal must review, at least once every 6 months, the case of each continued treatment patient in order to determine whether the patient is a mentally ill person who should continue to be detained.

(2) If the Tribunal determines that the patient is a mentally ill person and is of the opinion that no other care of a less restrictive kind is appropriate and reasonably available to the patient, the patient must, subject to this Part, continue to be detained in a hospital for further observation or treatment, or both, as a continued treatment patient.

(3) If the Tribunal does not determine that the patient is a mentally ill person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the patient, the patient must be discharged from the hospital in which the patient is detained.

(4) If the Tribunal does not determine that a patient is a mentally ill person or forms an opinion referred to in subsection (3), the Tribunal may also defer the discharge of the patient for a period not exceeding 14 days.

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

Review of informal patients by the Tribunal

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

(2) The Tribunal may, as a consequence of reviewing the case of a patient, order the discharge of the patient from a hospital and may, in any such case, defer the discharge of the patient for a period not exceeding 14 days.

(3) The medical superintendent of a hospital must notify the Tribunal of the name of any informal patient of the hospital whose case the Tribunal is required by this section to review.

Classification of certain patients as informal patients

64. A medical superintendent may, at any time, classify a temporary patient or a continued treatment patient as an informal patient but only if:

- (a) the patient, in the opinion of the medical superintendent, is likely to benefit from care or treatment as an informal patient; and
- (b) the patient agrees to being classified as an informal patient or is admitted in accordance with section 12 (2).

Discharge of informal patients

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

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

(3) Notice must be given by the medical superintendent of the discharge of any informal patient who is under guardianship within the meaning of the Disability Services and Guardianship Act 1987 to the guardian of the patient.

Discharge of temporary patients and continued treatment patients

66. (1) A medical superintendent must discharge a temporary patient or a continued treatment patient if, in the opinion of the medical superintendent, the patient has ceased to be a mentally ill person or other care of a less restrictive kind is appropriate and reasonably available to the person.

(2) A medical superintendent may, immediately on discharging a person as a temporary patient or a continued treatment patient under this section or section 20 (Detention of persons generally), admit that person as an informal patient.

Discharge etc. of certain patients on patient's application

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

(2) On receiving any such application, the medical superintendent may discharge the patient or exercise the functions conferred on the medical superintendent under section 64.

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

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

(2) On receiving any such application, the medical superintendent may discharge the patient:

- (a) if the relative or friend gives the medical superintendent an undertaking, in writing, that the patient will be properly taken care of; and
- (b) if the medical superintendent is satisfied that adequate measures will, so far as is reasonably practicable, be taken to prevent the patient from causing harm to himself or herself or others; and

- (c) if the patient is a person under guardianship within the meaning of the Disability Services and Guardianship Act 1987 - if the person's guardian consents to the application.

Appeal against refusal to discharge

69. (1) If a medical superintendent has refused an application under section 67 or 68 for the discharge of a patient, or has failed to determine such an application within 3 working days after the making of the application, the person making the application or any other person appointed by the patient may, in accordance with the regulations, appeal, orally or in writing, against the refusal or failure to the Tribunal.

(2) If the appeal is made orally, the prescribed person must immediately make a record of the appeal.

(3) If an appeal is made, the medical superintendent must furnish to the Tribunal a report concerning the patient which includes the medical superintendent's reasons for refusing to discharge the patient or failing to determine the application.

Determination of appeal

70. (1) The Tribunal, in determining an appeal made under section 69, has and may exercise the functions of the medical superintendent with respect to the application that has given rise to the appeal and may make an order accordingly.

(2) In addition to determining the appeal, the Tribunal may, having regard to:

- (a) the length of time between the date of the last determination under this Act that the patient was a mentally ill person and the date of the appeal; and
- (b) the frequency of appeals made under section 69 by or on behalf of the patient; and
- (c) the last report concerning the patient furnished by the medical superintendent under section 69; and
- (d) any other matter that the Tribunal considers relevant,

determine that no further right of appeal may be exercised by or on behalf of the patient under section 69 to the Tribunal before the date on which the patient will next be brought before the Tribunal under

this Act or the date on which the patient's case will next be reviewed by the Tribunal under this Act, as the case requires.

Leave of absence

71. If a medical superintendent is of the opinion that it will benefit the health of:

- (a) a person detained under Part 2 in respect of whom an inquiry has not been held under section 41 and who has not been discharged or classified as an informal patient; or
 - (b) a temporary patient or a continued treatment patient,
- the medical superintendent may allow the person or patient to be absent from a hospital for such period and subject to such conditions, if any, as the medical superintendent thinks fit.

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

72. (1) If a patient has, pursuant to section 71, been absent from a hospital for a continuous period of not less than 28 days, the medical superintendent must inquire into the welfare and mental health of the patient with a view to determining whether the patient should be immediately discharged.

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

(3) Nothing in this section affects section 74.

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

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

Discharge of certain absent patients on certificate of medical practitioner

74. If, in respect of a patient who is absent from a hospital pursuant to section 62 or 71, a medical practitioner furnishes to the medical Superintendent, before the date on which the period for which the patient's absence is allowed expires, a certificate to the effect that, in

the opinion of the medical practitioner, the detention of the patient in the hospital is no longer necessary, the medical Superintendent may, on receiving the certificate, discharge the patient.

Medical superintendent may order apprehension of certain absent patients

75. (1) A patient who is absent from hospital pursuant to section 62 or 71 and who fails to return to the hospital by the date on which the period for which the patient's absence is allowed expires or to comply with a condition of that absence may, at any time after the failure, at the direction of the medical superintendent, be apprehended and dealt with in accordance with section 76.

(2) This section does not apply to a patient who has been discharged under section 72 or 73.

Absence of patient without leave

76. A temporary patient or a continued treatment patient or other person who absents himself or herself from a hospital, otherwise than in accordance with this Part, may be apprehended at any time:

- (a) by the medical superintendent or any other suitably qualified person employed in the hospital; or
- (b) by a member of the Police Force; or
- (c) by a person authorised by the Minister or the medical superintendent; or
- (d) by a person assisting that medical superintendent, other suitably qualified person so employed, member of the Police Force or person so authorised,

and, on being apprehended, is to be conveyed to and detained in the hospital from which the patient or other person absented himself or herself.

Absence of patient with permission

77. The medical superintendent may allow a temporary patient or a continued treatment patient to be absent from a hospital for such period and subject to such conditions, if any, as the medical superintendent thinks fit in order to receive medical treatment.

Transfer of patients between hospitals

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

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

(3) Except as provided by subsection (4), an authorised officer or medical superintendent is required, before making an order under subsection (1) or arrangements under subsection (2), to do all such things as are reasonably practicable to give notice:

- (a) to the nearest relative, if there is one, of the patient or a relative nominated by the patient; or
- (b) if there is no such relative, to a personal friend of the patient who is either known as, or is said by the patient to be, his or her personal friend,

of the proposal to transfer the patient and the reasons for the transfer.

(4) If the transfer of a patient under this section arises from circumstances constituting in the opinion of an authorised officer or medical superintendent, as the case requires, an emergency, notice as referred to in subsection (3) is to be given by the authorised officer or medical superintendent as soon as practicable after the transfer is made.

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

CHAPTER 5 - FORENSIC PATIENTS

PART 1 - RELATIONSHIP OF CHAPTER TO OTHER LEGISLATION

Other legislation relating to criminal proceedings involving persons who may be mentally ill or suffering from some other mental condition

79. The Mental Health (Criminal Procedure) Act 1990 contains provisions relating to persons involved in criminal proceedings who may be mentally ill or suffering from some other mental condition. Some functions of the Tribunal relating to such persons are contained in this Chapter.

PART 2 - REVIEW OF FORENSIC PATIENTS

Tribunal to review cases of persons found unfit to be tried

80. (1) This section applies:

- (a) to an accused person who has been found, after an inquiry by a court, to be unfit to be tried for an offence and ordered (under section 17 of the Mental Health (Criminal Procedure) Act 1990) to be detained in a hospital or other place; and
- (b) to an accused person in respect of whom, after a special hearing by a court, a limiting term has been imposed and who has been ordered (under section 27 of the Mental Health (Criminal Procedure) Act 1990) to be detained in a hospital or other place.

(2) The Tribunal must, as soon as practicable after the making of any such order, review the person's case and determine whether, in its opinion:

- (a) the person has become fit to be tried for an offence; and
- (b) the safety of the person or any member of the public will be seriously endangered by the person's release.

(3) If the Tribunal is of the opinion that a person has become fit to be tried for an offence, it must notify the Attorney General accordingly and at the same time furnish a copy of the notification to the Director of Public Prosecutions.

(4) If the Tribunal is of the opinion that a person has not become fit to be tried for an offence and is satisfied, on the evidence available to it, that the safety of the person or any member of the Public will not be seriously endangered by the person's release, the Tribunal must make a recommendation to the Minister for the person's release.

Tribunal to review cases of persons found not guilty by reason of mental illness

81. (1) This section applies:

- (a) to a person found, after a special hearing by a court, to be not guilty of an offence by reason of mental illness and ordered (under the Mental Health (Criminal Procedure) Act 1990) to be detained in strict custody in a hospital or other place; and
- (b) to a person found, after a trial by a court or on an appeal, to be not guilty by reason of mental illness and ordered (under section 39 of the Mental Health (Criminal Procedure) Act 1990 or section 7 (4) of the Criminal Appeal Act 1912) to be detained in strict custody in a hospital or other place.

(2) The Tribunal must, as soon as practicable after the making of any such order, review the person's case and, as soon as practicable after the review, make a recommendation to the Minister:

- (a) as to the person's detention, care or treatment; or
- (b) if the Tribunal is satisfied, on the evidence available to it, that the safety of the person or any member of the public will not be seriously endangered by the person's release, as to the person's release (either unconditionally or subject to conditions).

Tribunal to review cases of forensic patients

82. (1) The Tribunal may, at any time, and must, at least once every 6 months, review the case of each forensic patient and make a recommendation to the Minister.

- (a) as to the patient's continued detention, care or treatment in a hospital, prison or other place; or
- (b) in the case of a patient subject to a determination that the patient is unfit to be tried for an offence, as to the fitness of the patient to be tried for an offence; or
- (c) as to the patient's release (either unconditionally or subject to conditions).

(2) The Tribunal must review the case of a forensic patient and make a recommendation to the Minister under this section if requested to do so by the Minister, the Attorney General, the Minister for Corrective Services, the Chief Health Officer or a medical superintendent

(3) If, in the case of a forensic patient subject to a determination that the patient is unfit to be tried for an offence, the Tribunal is, for the purpose of making a recommendation under this section, of the opinion that the patient has become fit to be tried for an offence, it must notify the Attorney General accordingly.

(4) The Tribunal may not recommend the release of a forensic patient unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered by the person's release.

(5) The Tribunal may not recommend the release of a forensic patient who is remanded in custody under section 10 (3) (c) of the Mental Health (Criminal Procedure) Act 1990 pending an inquiry into the question of the person's unfitness to be tried for an offence.

Notice of recommended releases

83. (1) On receiving a recommendation under section 80 or 82 for the release of a person, the Minister must notify the Attorney General of the recommendation and at the same time furnish a copy of the notification to the Director of Public Prosecutions.

(2) The Director of Public Prosecutions must, within 21 days after the date of any such notification, indicate to the Attorney General whether the Director intends to proceed with criminal charges against the person concerned.

Release of persons after review

84. (1) If, within 30 days after the date of being notified under section 83 of a recommendation for the release of a person, the Attorney General has indicated an objection to the person's release on the ground that:

- (a) the person has served insufficient time in custody or under detention; or
 - (b) the Attorney General or the Director of Public Prosecutions intends to proceed with criminal charges against the person,
- the prescribed authority may not order the person's release.

(2) If, within 30 days after the date of any such notification, the Attorney General has not indicated any such objection to the person's release, the prescribed authority must, subject to the regulations, make an order (either unconditionally or subject to conditions) for the person's release.

(3) Before ordering the person's release, the prescribed authority must inform the Minister for Police and Emergency Services of the date of the person's release.

(4) If a recommendation is made under section 81 for a person's release, the prescribed authority may, subject to the regulations, make an order (either unconditionally or subject to conditions) for the person's release.

Treatment etc. of persons found not guilty by reason of mental illness and forensic patients after review by Tribunal

85. (1) On a recommendation being made in respect of a person under section 81 or 82, the prescribed authority may, subject to the regulations, except if the person's release is recommended, make an

order for the person's detention, care or treatment in the place (being a hospital, prison or other place) and in the manner specified in the order.

(2) As a consequence of the review of the case of a forensic patient under this Part, the Tribunal may make a recommendation to the Minister as to the transfer of the patient to a hospital, prison or other place and the prescribed authority may, subject to the regulations, make an order accordingly.

Review of persons transferred from prisons

86. (1) The Tribunal must, as soon as practicable after a person is transferred to a hospital under section 97 or 98:

- (a) review the case of the person; and
- (b) make a recommendation to the prescribed authority as to the person's continued detention, care or treatment in the hospital.

(2) The Tribunal, or any member of the Tribunal on behalf of the Tribunal, must, in respect of:

- (a) a person whose trial for an offence has not been completed; and
- (b) a person who is subject to a finding that the person is unfit to be tried for an offence and in respect of whom a special hearing under section 19 of the Mental Health (Criminal Procedure) Act 1990 has not been conducted,

in addition to the review of the case of the person under this section, informally review the person's case each month in order to determine whether the legal proceedings pending in respect of the person are delayed and, in the event of any delay, to take such action as the Tribunal or member thinks fit.

(3) If a person is transferred from a prison to a hospital under section 97 or 98, the Tribunal may, at any time, make a recommendation to the prescribed authority that the person be transferred to a prison.

(4) If a recommendation is made under this section to the prescribed authority in respect of a person, the prescribed authority may, subject to the regulations, make an order for the person's detention, care or treatment in the place (being a hospital, prison or other place) and in the manner specified in the order.

Review of persons to be transferred from prisons

87. (1) If a person in respect of whom an order under section 97 or 98 is made is not transferred to a hospital within the prescribed period after the order is made, the Tribunal must:

- (a) informally review the person's case each month until such time as the person is transferred to a hospital or the Tribunal recommends that the person not be so transferred; and
- (b) make a recommendation to the prescribed authority as to the person's detention, care or treatment.

(2) If a recommendation is made under this section to the prescribed authority in respect of a person, the prescribed authority may, subject to the regulations, make an order for the person's detention, care or treatment in the place (being a hospital, prison or other place) and in the manner specified in the order.

Powers of Tribunal

88. The Tribunal, or any member on behalf of the Tribunal, may, for the purposes of section 86 or 87, communicate with such persons, take such action and make such recommendations as the Tribunal or member thinks fit.

Classification as continued treatment patient

89. (1) The Tribunal, after reviewing under this Chapter 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 19 of the Mental Health (Criminal Procedure) Act 1990; or
- (b) a person who, while serving a sentence of imprisonment has been transferred to a hospital from a prison,

may classify the person as a continued treatment patient.

(2) If, after reviewing under this Chapter the case of any such person the Tribunal classifies the person as a continued treatment patient, it is not necessary for the Tribunal to make any recommendation that would otherwise be required to be made as a consequence of the review.

**PART 3 - OTHER PROVISIONS RELATING
TO FORENSIC PATIENTS**

Leave of absence on review of case

90. (1) The Tribunal may, as a consequence of the review of the case of a forensic patient, and if of the opinion that it will benefit the health of the patient to do so, make a recommendation to the Minister that the patient be allowed to be absent from a hospital for such period and subject to such terms and conditions, if any, as the Tribunal thinks fit.

(2) If any such recommendation is made in respect of a forensic patient, the prescribed authority may, subject to the regulations, make an order allowing the patient to be absent from a hospital for such period and subject to such terms and conditions, if any, as are specified in the order.

(3) The Tribunal may not make a recommendation unless it is satisfied that, having regard to the leave proposed to be granted, the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.

Leave of absence may be granted by authorised officer

91. (1) An authorised officer may, on the recommendation of the medical superintendent of a hospital, allow a forensic patient detained in the hospital to be absent from the hospital for such period and subject to such conditions, if any, as the authorised officer thinks fit.

(2) An authorised officer may not grant leave of absence unless the authorised officer is satisfied that, having regard to the leave proposed to be granted, the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.

(3) An authorised officer must not grant leave of absence if the Tribunal has previously, under similar circumstances, refused to recommend that leave of absence in similar terms be granted to the patient.

Special leave of absence in emergencies

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

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

(2) On receiving an application from a forensic patient, the medical superintendent may, if the medical superintendent is of the opinion that, having regard to the leave proposed, no serious danger to the patient or any member of the public is likely to result if the special leave of absence is granted, recommend to the Director-General that the leave be granted.

(3) The Director-General may approve any such recommendation and grant, subject to such terms and conditions as the Director-General thinks fit, special leave of absence to a forensic patient.

Breach of condition of order for release

93. (1) If it appears to the prescribed authority that a person:
- (a) has committed a breach of an order made under section 84 (Release of persons after review) for the person's release; or
 - (b) has committed a breach of a condition of leave of absence or special leave of absence granted under this Part; or
 - (c) who is subject to the conditions of an order under section 84 or who is on leave of absence or special leave of absence granted under this Part, has suffered a deterioration of mental condition and become a serious danger to himself or herself or to any member of the public by reason of the person's mental condition,

the prescribed authority may make an order for the person's apprehension and detention, care or treatment in the place (being a hospital, prison or other place) and in the manner specified in the order.

(2) A member of the Police Force to whose notice an order is brought must, as soon as practicable:

- (a) apprehend and take or assist in taking the person in respect of whom the order is made to the place specified in the order; or

- (b) cause or make arrangements for some other member of the Police Force to apprehend and take or assist in taking the person to that place.
- (3) A member of the Police Force may enter premises, if need be by force, for the purpose of apprehending the person and apprehend the person without the warrant of a justice.
- (4) If a credible person, on oath before a justice, shows reasonable cause to suspect that a person in respect of whom an order is made is outside the State, the justice may issue a warrant for the apprehension of the person in respect of whom the order is made.

Reinvestigation by Tribunal

- 94. (1) A person who is apprehended under section 93 may request the Tribunal to investigate the evidence on which the order for the person's apprehension was made and any other evidence which may be adduced by the person.
- (2) The Tribunal may, following any such investigation, make such recommendation as it thinks fit concerning the person to the prescribed authority.

Security conditions for forensic patients

- 95. (1) Except as provided by subsection (3), a forensic patient detained in a hospital, prison or other place or absent in accordance with this Part is to be subject to such security conditions as an authorised officer may consider necessary.
- (2) A forensic patient may be transported to and from such places as may be necessary or convenient for the administration of this Act in accordance with such security conditions as an authorised officer may consider necessary.
- (3) A forensic patient detained in any part of the Long Bay Prison Hospital that is a hospital within the meaning of this Act is to be subject to such security conditions as the Director-General of Corrective Services may consider necessary.
- (4) For the purposes of subsection (3):
 - (a) any part of the Long Bay Prison Hospital that is a hospital within the meaning of this Act is to be taken to be a prison within the meaning of the Prisons Act 1952; and

- (b) a forensic patient who is detained in such a hospital is to be taken to be a prisoner within the meaning of that Act and that Act and the regulations made under that Act, with such modifications and to the extent specified by the regulations, apply to such a patient.

Requests for transfer to prison

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

(2) The Tribunal, after considering any such request, may make the recommendation requested by the forensic patient or may refuse to make that recommendation.

(3) If the Tribunal makes a recommendation under this section at the request of a forensic patient, the prescribed authority may, subject to the regulations, make an order for the patient's transfer to a prison.

Transfer of mentally ill prisoners to hospitals

97. (1) If it appears to the Chief Health Officer, acting personally, on the certificates, in the form set out in Schedule 3, of 2 medical practitioners, one of whom is a psychiatrist, that a person imprisoned in a prison is mentally ill (whether or not the person is suffering from a mental illness within the meaning of this Act), the Chief Health Officer may order that the person be transferred to a hospital.

(2) The Chief Health Officer must notify the Tribunal in writing of any order made under this section.

Transfer of other prisoners to hospitals

98. (1) Without affecting section 97, if it appears to the Chief Health Officer, acting personally, on the certificates, in the form set out in Schedule 3, of 2 medical practitioners, one of whom is a psychiatrist, that a person imprisoned in a prison is suffering from a mental condition for which treatment is available in a hospital, the Chief Health Officer may, with the consent in writing of the person, order that the person be transferred to a hospital.

(2) The Chief Health Officer must notify the Tribunal in writing of any order made under this section.

(3) This section does not apply to a person suffering from mental illness or who has a developmental disability of mind.

Transfer of forensic patients between hospitals

99. (1) An authorised officer may order the transfer of a forensic patient detained in a hospital to any other hospital.

(2) Such an order is to be in writing signed by the authorised officer and is sufficient authority for the transfer ordered.

Effect on sentence etc. of detention in hospital

100. If a person is transferred, under this Chapter, from a prison to a hospital or other place, the period of the person's detention in the hospital or other place is, for the purposes of the person's sentence and parole, to be treated as if it were a period of imprisonment in a prison.

Termination of classification as forensic patient of person found not guilty by reason of mental illness

101. (1) This section applies:

- (a) to a person found, after a special hearing by a court, to be not guilty of an offence by reason of mental illness and ordered (under the Mental Health (Criminal Procedure) Act 1990) to be detained in strict custody in a hospital or other place; and
- (b) to a person found, after a trial by a court or on an appeal, to be not guilty by reason of mental illness and ordered (under section 39 of the Mental Health (Criminal Procedure) Act 1990 or section 7 (4) of the Criminal Appeal Act 1912) to be detained in strict custody in a hospital or other place.

(2) Any such person ceases to be a forensic patient:

- (a) on unconditional release by order of the prescribed authority, or
- (b) if the person has been released by order of the prescribed authority subject to conditions—on the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with,

whichever first occurs.

Termination of classification as forensic patient of person awaiting special hearing

102. A person who:

- (a) is subject to a finding that the person is unfit to be tried for an offence; and
- (b) in respect of whom a special hearing under section 19 of the Mental Health (Criminal Procedure) Act 1990 has not been held,

ceases to be a forensic patient on release by order of the prescribed authority following advice by the Attorney General that the person will not be further proceeded against by the Attorney General or the Director of Public Prosecutions in respect of the offence.

Termination of classification as forensic patient of person found guilty of offence after special hearing

103. A person who has been detained in a hospital, prison or other place following a special hearing under section 19 of the Mental Health (Criminal Procedure) Act 1990 ceases to be a forensic patient:

- (a) on the expiry of the limiting term (where that term is less than life) imposed in respect of the person; or
- (b) on unconditional release by order of the prescribed authority following a recommendation of the Tribunal; or
- (c) if the person has been released by order of the prescribed authority subject to conditions - on the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with; or
- (d) on the person being classified as a continued treatment patient, whichever first occurs.

Termination of classification as forensic patient of person who becomes fit to be tried for an offence

104. A person in respect of whom, after a finding that the person is unfit to be tried for an offence, the Tribunal has notified the Attorney General that it is of the opinion that the person has become fit to be tried for an offence (whether or not a special hearing has been conducted under section 19 of the Mental Health (Criminal Procedure) Act 1990 in respect of the offence) ceases to be a forensic patient:

- (a) on a finding, at a further inquiry by a court as to the person's unfitness held on the request of the Attorney General, that the person is fit to be tried for the offence; or
- (b) if the Attorney General advises the Minister that the person will not be further proceeded against by the Attorney General or the Director of Public Prosecutions in respect of the offence - on the person's release from detention pursuant to section 29 of the Mental Health (Criminal Procedure) Act 1990,

whichever first occurs.

Termination of classification as forensic patient of person serving a fixed term of imprisonment

105. A person who, while serving a fixed term of imprisonment, has been transferred to a hospital from a prison ceases to be a forensic patient

- (a) on the expiry of the fixed term; or
- (b) on unconditional release by the order of the prescribed authority following a recommendation of the Tribunal; or
- (c) if the person has been released by order of the prescribed authority subject to conditions—on the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with; or
- (d) on being classified by the Tribunal as a continued treatment patient; or
- (e) on being transferred to a prison,

whichever first occurs.

Termination of classification as forensic patient of person serving sentence of imprisonment for life

106. A person who, while serving a sentence of imprisonment for life, being a sentence imposed otherwise than pursuant to a special hearing under section 19 of the Mental Health (Criminal Procedure) Act 1990, has been transferred to a hospital from a prison ceases to be a forensic patient

- (a) on unconditional release by order of the prescribed authority following a recommendation of the Tribunal; or
- (b) if the person has been released by order of the prescribed authority subject to conditions—on the expiry of any time

specified in the conditions as being a time during which those conditions, or any of them, are to be complied with; or

(c) on being transferred to a prison,
whichever first occurs.

Termination of classification as forensic patient of person serving minimum term of imprisonment with additional term

107. A person who, while serving a term of imprisonment (other than a fixed term of imprisonment or a sentence of imprisonment for life), has been transferred to a hospital from a prison ceases to be a forensic patient:

- (a) on the expiry of the term of imprisonment; or
- (b) if the minimum term has expired—on unconditional release by order of the prescribed authority following a recommendation of the Tribunal; or
- (c) if the minimum term has expired and the person has been released by order of the prescribed authority subject to conditions—on the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, are to be complied with; or
- (d) on being classified by the Tribunal as a continued treatment patient; or
- (e) on being transferred to a prison,
whichever first occurs.

Termination of classification as forensic patient of person on remand

108. A person on remand who has been transferred to a hospital ceases to be a forensic patient:

- (a) on release (which the Minister is hereby authorised to order or to otherwise ensure) following advice by the Attorney General to the Minister that the person will not be further proceeded against by the Attorney General or the Director of Public Prosecutions in respect of the offence in relation to which the person has been remanded; or

(b) on being transferred to a prison,
whichever first occurs.

Person who ceases to be a forensic patient may be detained as involuntary patient etc.

109. Nothing in this Chapter prevents the application of Chapter 4 to a person who ceases to be a forensic patient.

Absence for medical treatment

110. (1) The medical superintendent of a hospital or an authorised officer may allow a forensic patient to be absent from the hospital for such period and subject to such conditions, if any, as the superintendent or officer thinks fit in order to undergo medical investigation or treatment.

(2) The medical superintendent or authorised officer must immediately notify the Minister of any such absence.

Retaking of escapees

111. (1) A forensic patient who escapes from a hospital may be retaken at any time:

- (a) by the medical Superintendent of the hospital or any other suitably qualified person employed in the hospital and authorised to do so by the medical superintendent; or
- (b) by a member of the Police Force; or
- (c) by a person authorised by the Director-General or the medical superintendent; or
- (d) by a person assisting that medical superintendent, other suitably qualified person so employed and authorised, member of the Police Force or person so authorised,

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

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

Aiding or permitting escape

112. (1) A person must not release or attempt to release a person who is being conveyed to or detained in a hospital under this Chapter.

(2) A medical superintendent or any other person employed in a hospital must not:

- (a) through wilful neglect or connivance, permit any person detained in a hospital under this Chapter to escape from the hospital; or
- (b) abet or connive at the escape of any such person from a hospital.

Maximum penalty

- (a) on conviction on indictment—imprisonment for 3 years; or
- (b) on summary conviction—imprisonment for 1 year or 10 penalty units, or both.

Form, effect etc. of orders under this Chapter

113. (1) An order under this Chapter must be in writing.

(2) An order under this Chapter has effect according to its tenor.

(3) An order that may be made under this Chapter by a prescribed authority for the transfer of a person between a prison and a hospital or other place or between a hospital and a place other than a prison may, in the absence or unavailability, for any cause, of the prescribed authority be made by any Minister of the Crown.

CHAPTER 6 - CARE AND TREATMENT OUTSIDE HOSPITALS

PART 1 - HEALTH CARE AGENCIES

Declaration of health care agencies

114. (1) The Director-General may, by order published in the Gazette, declare:

- (a) that a health service controlled by an area health service constituted under the Area Health Services Act 1986; or
- (b) that a specified health service that is not controlled by an area health service so constituted,

is a health care agency for the purposes of this Act.

(2) The Director-General must not make an order under this section unless the Director-General is satisfied that the health service is able to provide the care and treatment necessary under a community counselling order or a community treatment order and that the health service complies with any standards prescribed for the purposes of this section.

Directors and Deputy Directors

115 (1) In an order declaring a health care agency, the Director-General must appoint the holder of a specified office as the Director of the health care agency and may appoint the holder of a specified office as the Deputy Director of the health care agency.

(2) An office may not be specified unless, in the opinion of the Director-General, it qualifies the holder to exercise the functions conferred or imposed on a Director or Deputy Director by or under this Part.

(3) A person appointed as a Director must be a health professional who is appropriately qualified for the position by education, training and experience.

Psychiatric case managers

116. (1) The Director of a health care agency may appoint an officer or employee of the agency as the psychiatric case manager of an affected person under a community counselling order or a community treatment order.

(2) A person may not be appointed as a psychiatric case manager unless, in the opinion of the Director, the person is qualified to supervise the treatment, and monitor the progress, of the affected person under a community counselling order or a community treatment order.

Same person may hold 2 offices

117. The same person may be both Director or Deputy-Director of a health care agency and a psychiatric case manager.

PART 2 - COMMUNITY COUNSELLING ORDERS

Making of community counselling orders

118. (1) The Tribunal, or a Magistrate holding an inquiry under Chapter 4, may, on the application of an authorised applicant, make a community counselling order to be implemented by a health care agency.

(2) The order must nominate the health care agency which is to implement it and require the affected person, at such reasonable times as are stated in the order:

- (a) to be present at a specified place, being either the nominated health care agency or the residence of the affected person; and
- (b) there receive such medication and therapy, and such rehabilitation and other services, as are provided by the health care agency in accordance with a treatment plan approved by the order.

(3) If a community counselling order has a duration of more than 3 months, the Tribunal or Magistrate must cause a copy of the order to be furnished to the Director-General.

Procedure on application to Tribunal

119. (1) If an application for or to vary a community counselling order is made to the Tribunal, the affected person need not be present at the hearing of the application if the Tribunal is satisfied that the person has been given reasonable notice of the hearing and the person is legally represented at the hearing.

(2) If the affected person is not present at the hearing, any community counselling order made must be made so as to take effect at least 3 days after the hearing.

Conditions precedent to making of community counselling order

120. (1) The Tribunal or Magistrate may not make a community counselling order unless satisfied on the balance of probabilities:

- (a) on the evidence of a psychiatrist or of a medical practitioner appointed by an order under section 123 - that the affected person is likely to become a mentally ill person within 3 months; and

- (b) that subsection (2) applies to the affected person; and
 - (c) that the health care agency which is to implement the order has complied with subsection (3).
- (2) This subsection applies to an affected person if:
- (a) except in the case of an order made by a Magistrate, the person is not detained in a hospital or other place under this Act; and
 - (b) the person has, on more than 1 occasion, refused to accept appropriate treatment; and
 - (c) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness; and
 - (d) the relapse has been followed by mental or physical deterioration justifying involuntary admission to hospital (whether or not there has been such an admission); and
 - (e) care and treatment following involuntary admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.
- (3) This subsection is complied with if a health care agency:
- (a) has made reasonable attempts to maintain contact with the affected person and to have the affected person consent to treatment, counselling or rehabilitation within the community; and
 - (b) has an appropriate treatment plan for the affected person and is capable of implementing the treatment plan.

Treatment plan not required for short term orders

121. If the Tribunal or Magistrate adjourns proceedings relating to an application for a community counselling order, the Tribunal or Magistrate may make a community counselling order, having a duration of not more than 14 days, if satisfied that appropriate treatment will be given to the affected person, even though the health care agency concerned has no appropriate treatment plan for the affected person.

Report required for certain applications

122. (1) If an application for a community counselling order is the first such application made after the expiration of a community

treatment order for the same affected person, a report under section 136 as to the efficacy of the community treatment order must be presented at the hearing of the application.

(2) If the application is not the first such application, a report under section 126 as to the efficacy of any previous community counselling order for the affected person must be presented at the hearing of the application.

Appointment of medical practitioners for purposes of making orders

123. (1) The Director-General may, by order published in the Gazette, appoint a medical practitioner.

- (a) who is not a psychiatrist; and
- (b) who has substantial knowledge of the community psychiatric services available in the locality in which he or she is practising; and
- (c) who has psychiatric experience,

as a medical practitioner for the purposes of section 120.

(2) Before publishing an order, and while the order remains in force, the Director-General must be satisfied that there is no suitable psychiatrist practising in the locality in which the medical practitioner to be appointed by the order is practising.

Duration of community counselling order

124. (1) A community counselling order expires:

- (a) on a date stated in the order that is not later than 6 months after the date of the order, or
- (b) if an expiry date is not stated in the order—6 months after the date of the order; or
- (c) if the affected person is detained in a hospital under this Act or becomes a forensic patient or an informal patient.

(2) In determining the duration of a community counselling order, the Tribunal or Magistrate must take into account the estimated time required:

- (a) to stabilise the condition of the affected person; and
- (b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.

(3) This section does not

- (a) limit the number of applications for a community counselling order that may be made in respect of the same person; or
- (b) prevent the making of an order on any of those applications,

if, at the hearing of such an application, there is presented a report under section 126 as to the efficacy of the last preceding community counselling order.

(4) Nothing in this section prevents the Director of the health care agency from discharging a person from having to comply with a community counselling order if the Director is of the opinion that it is appropriate to do so.

Progress reports

125. (1) If a community counselling order has a duration of more than 3 months, the Director of the health care agency implementing the order must arrange for the psychiatric case manager of the affected person to conduct a clinical review of the progress of the affected person.

(2) The review is to be conducted as soon as practicable after the expiration of 3 months from the making of the order and the psychiatric case manager is to assess the extent to which the objects of the order are being achieved.

(3) The psychiatric case manager must make a written report to the Director on the result of the review and must include in the report his or her opinion as to whether or not the affected person is making satisfactory progress.

(4) If the psychiatric case manager has not reported to the Director within 6 months from the making of the order, the psychiatric case manager must make a written report to the Director as to why the firstmentioned report has not been provided.

(5) The Director must:

- (a) give a copy of the report to the affected person; and
- (b) give a copy of the report to the Director-General together with any written comments the Director wishes to make in relation to the report.

Discharge reports

126. As soon as practicable after the expiration of a community counselling order, the psychiatric case manager of the person formerly subject to the order must make a written report to the Director of the relevant health care agency and the Director-General as to the efficacy of the order.

Breach of community counselling order

127. (1) A breach of a community counselling order occurs if the affected person in any way refuses or fails to comply with the order and the Director of the health care agency implementing the order is of the opinion:

- (a) that the agency has taken all reasonable steps to implement the order, and
- (b) that there is a significant risk of deterioration in the mental or physical condition of the affected person.

(2) If there is a breach of a community counselling order, the Director must:

- (a) make a written record of the opinions referred to in subsection (1), the facts on which they are based and the reasons for forming them; and
- (b) through the psychiatric case manager of the affected person, inform the affected person that any further refusal or failure to comply with the order will result in the person being required to attend the health care agency for counselling or the administration of medication, or both.

Action on further breaches of community counselling order

128. (1) If, after action is taken under section 127, there is a further refusal or failure by the affected person to comply with the community counselling order, the Director of the health care agency may cause the person to be given a written notice:

- (a) requiring the person to attend the health care agency at a specified time for counselling or the administration of medication, or both; and

- (b) warning the person that the assistance of a member of the Police Force may be obtained in order to ensure the attendance of the person in accordance with the notice.
- (2) While at a health care agency as a result of the giving of any such notice, an affected person:
 - (a) may be given medication and may be given counselling as provided by the community counselling order and this Act; and
 - (b) may be assessed by a medical practitioner for involuntary admission to a hospital,

Apprehension of person in breach of community counselling order

129. (1) If an affected person fails to comply with a notice given under section 128, the Director of the health care agency or the psychiatric case manager of the affected person may, in writing, order that the affected person be taken to the health care agency.

(2) The order may be implemented by a member of the staff of the health care agency.

Apprehension by police

130. (1) A member of the Police Force to whose notice an order under section 129 is brought must, as soon as possible, apprehend the affected person and take, or assist in taking, the person to the health care agency specified in the order.

(2) The member of the Police Force may, instead of complying with subsection (1), arrange with another member of the Police Force to do so.

(3) A person apprehended under this section must be taken to the health care agency in such a way as to arrive there without undue delay and, after arrival, may be kept there for not longer than 2 hours.

(4) A member of the Police Force may:

- (a) enter premises, if need be by using reasonable force, to apprehend a person under this section; and

(b) apprehend the person,
without the warrant of a justice.

(5) Subsection (3) does not affect the operation of any other provision of this Act.

PART 3 - COMMUNITY TREATMENT ORDERS

Making of community treatment orders

131. (1) The Tribunal may, on the application of the medical superintendent of a hospital or on reviewing the case of a patient under Part 3 of Chapter 4, make a community treatment order for implementation by a health care agency in relation to a person who is a temporary patient or continued treatment patient in a hospital.

(2) A Magistrate may, on the application of an authorised applicant, make a community treatment order for implementation by a health care agency in relation to a person in respect of whom the Magistrate is holding an inquiry under Chapter 4.

(3) The order must nominate the health care agency which is to implement it and require the affected person, at such reasonable times as are stated in the order:

- (a) to be present at a specified place, being either the nominated health care agency or the residence of the affected person; and
- (b) there receive such medication and therapy, and such rehabilitation and other services, as are provided by the health care agency in accordance with a treatment plan submitted with the application for the order.

Person to be discharged

132. The order detaining an affected person in a hospital is discharged on the making of a community treatment order in respect of the person.

Conditions precedent to making of community treatment order

133. (1) The Tribunal or Magistrate may not make a community treatment order in respect of a person unless:

- (a) in the case of an order made by a Magistrate, the Magistrate would otherwise make an order in respect of the person under section 51 (3) (Result of finding that person is mentally ill); and

- (b) the Tribunal or Magistrate is satisfied that subsection (2) applies or that the person has been for the first time diagnosed as suffering from a mental illness by a psychiatrist or a medical practitioner appointed under section 123; and
 - (c) the Tribunal or Magistrate is satisfied that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care; and
 - (d) the Tribunal or Magistrate is satisfied that a health care agency has an appropriate treatment plan for the affected person and is capable of implementing it.
- (2) This subsection applies if:
- (a) the affected person has previously refused to accept appropriate treatment; and
 - (b) when appropriate treatment has been refused, there has been a relapse into an active phase of mental illness; and
 - (c) the relapse has been followed by mental or physical deterioration justifying involuntary admission to hospital (whether or not there has been such an admission); and
 - (d) care and treatment following involuntary admission resulted, or could have resulted, in an amelioration of, or recovery from, the debilitating symptoms of a mental illness or the short-term prevention of deterioration in the mental or physical condition of the affected person.

Report required for certain applications

134. (1) If an application for a community treatment order is the first such application made after the expiration of a community counselling order for the same affected person, a report under section 126 as to the efficacy of that community counselling order must be presented at the hearing of the application.

(2) If the application is not the first such application, a report under section 136 as to the efficacy of any previous community treatment order for the affected person must be presented at the hearing of the application.

Duration of community treatment orders

135. (1) A community treatment order expires:

- (a) on a date stated in the order that is not later than 3 months after the date of the order; or
- (b) if an expiry date is not stated in the order—3 months after the date of the order; or
- (c) if the affected person is detained in a hospital under this Act (except this Part) or becomes a forensic patient or an informal patient.

(2) In determining the duration of a community treatment order, the Tribunal or Magistrate must take into account the estimated time required:

- (a) to stabilise the condition of the affected person; and
- (b) to establish, or re-establish, a therapeutic relationship between the person and the person's psychiatric case manager.

(3) This section does not:

- (a) limit the number of applications for a community treatment order that may be made in respect of the same person; or
- (b) prevent the making of an order on any of those applications, if, at the hearing of such an application, there is presented a report under section 136 as to the efficacy of the last preceding community treatment order.

Discharge reports

136. As soon as possible after the expiration of a community treatment order, the psychiatric case manager of the person formerly subject to the order must make a written report to the Director of the relevant health care agency as to the efficacy of the order.

Breach of community treatment order

137. (1) A breach of a community treatment order occurs if the affected person in any way refuses or fails to comply with the order and the Director of the health care agency implementing the order is of the opinion:

- (a) that the agency has taken all reasonable steps to implement the order; and

- (b) that there is a significant risk of deterioration in the mental or physical condition of the affected person.
- (2) If there is a breach of a community treatment order, the Director must:
 - (a) make a written record of the opinions referred to in subsection (1), the facts on which they are based and the reasons for forming them; and
 - (b) through the psychiatric case manager of the affected person, inform the affected person that any further refusal to comply with the order will result in the person being taken to the health care agency or an appropriate hospital and treated there.

Action on further breaches of community treatment order

138. (1) If, after action is taken under section 137, there is a further refusal or failure by the affected person to comply with the community treatment order, the Director of the health care agency may cause the person to be given a written notice:

- (a) requiring the person to accompany a member of the staff of the health care agency for treatment in accordance with the order or to a specified hospital; and
 - (b) warning the person that the assistance of a member of the Police Force may be obtained in order to ensure compliance with the order.
- (2) While at a health care agency as a result of the giving of any such notice, an affected person:
- (a) may be given treatment in accordance with the community treatment order; and
 - (b) may be assessed by a medical practitioner for involuntary admission to a hospital.

Apprehension of person in breach of community treatment order

139. (1) If an affected person refuses or fails to comply with a notice given under section 138, the Director of the health care agency or the psychiatric case manager of the affected person may, in writing, order that the affected person be taken to the health care agency, or to a specified hospital, as stated in the notice.

(2) The order may be implemented by a member of the staff of the health care agency.

Apprehension by police

140. (1) A member of the Police Force to whose notice an order under section 139 is brought must, as soon as possible, apprehend the affected person and take, or assist in taking, the person to the health care agency or the hospital specified in the order.

(2) The member of the Police Force may, instead of complying with subsection (1), arrange for another member of the Police Force to do so.

(3) A person apprehended under this section must be taken to the health care agency or the specified hospital in such a way as to arrive there without undue delay.

(4) A member of the Police Force may

- (a) enter premises, if need be by using reasonable force, to apprehend a person under this section; and
- (b) apprehend the person, without the warrant of a justice.

Procedure at health care agency

141. A person who is taken to a health care agency under section 139 or 140:

- (a) may be released after treatment if treatment is accepted; or
- (b) may be taken to a hospital by a member of the Police Force if treatment is refused.

Procedure at hospital

142. On the arrival at a hospital of an affected person taken there by virtue of an order under section 139 or under section 141 after refusing treatment at a health care agency

- (a) the person is to be given the prescribed notice of his or her rights to apply for a review of the order, to lodge an appeal or to apply for discharge from the hospital; and
- (b) the person is to be given treatment in accordance with the community treatment order; and
- (c) the medical superintendent must review the person's mental condition.

Effect of review by medical superintendent

143. (1) If a medical superintendent, on reviewing the mental condition of an affected person under section 142, determines that the affected person is a mentally ill person or a mentally disordered person for whom no other care of a less restrictive kind is appropriate or reasonably available:

- (a) in the case of a mentally ill person, a direction is to be taken to have been given under section 51 (3) for detention of the person in the hospital until the expiration of the community treatment order; or
 - (b) in the case of a mentally disordered person, the person may be detained in accordance with section 35, but only until the community treatment order expires or the period of detention permitted by that section expires, whichever is the earlier.
- (2) The affected person must be released from the hospital:
- (a) if the medical superintendent determines that the person is not a mentally ill person or a mentally disordered person or is of the opinion that other care of a less restrictive kind is appropriate and reasonably available to the person; or
 - (b) if the person is detained under this section and, at any time before expiration of the community treatment order, the medical superintendent decides that release from the hospital is appropriate,

but release from the hospital under this section does not affect the continuity of the community treatment order.

(3) An affected person may not be detained under this section after the expiration of the community treatment order, but this subsection does not affect the operation of any other provision of this Act.

PART 4-GENERAL

Reports

144. (1) The Director of each health care agency must, as directed by the Minister, report on the operation of this Chapter in relation to community counselling orders and community treatment orders required to be implemented by the health care agency.

(2) The report is to be made to the Principal official visitor appointed under Chapter 8.

Duty of affected person

145. The affected person under a community counselling order or a community treatment order must comply with the order in so far as it relates to the person but this section is not intended to create an offence.

Powers and duties of health care agencies

146. (1) The Director of a health care agency implementing a community counselling order or a community treatment order may take all reasonable steps to have medication administered, and to provide services, in accordance with the order.

(2) Subject to section 128, appropriate medication may be administered to an affected person without his or her consent if it is administered without the use of more force than would be required to administer that medication if the person had consented to its administration.

(3) For the purposes of the implementation by a health care agency of a community counselling order or a community treatment order at the residence of the affected person, a member of the staff of the health care agency may, without the consent of the affected person, enter the land, but not the dwelling, at the place of residence.

Use of drugs

147. (1) The Director of a health care agency is to keep under review the prescription and use of drugs in connection with the community counselling orders and community treatment orders being implemented by the agency.

(2) At the request of:

- (a) the affected person under a community counselling order or a community treatment order; or
- (b) if the affected person consents, a person who would be entitled to apply for such an order in relation to the person,

the Director of the health care agency implementing the order must provide particulars of the kind and dosages of medication which are being administered, or have recently been administered, to the affected person.

Variation or revocation of order

148. (1) Application may be made to the Tribunal for the variation or revocation of a community counselling order or a community treatment order.

(2) An application may be made only

(a) if there has been a substantial or material change in the circumstances surrounding the making of the order; or

(b) if relevant information not available when the order was made has become available.

(3) An application may be made:

(a) by the affected person; or

(b) by the psychiatric case manager implementing the order; or

(c) by a person who could have applied for the order.

(4) An order may be varied only if the order, as varied, could be made in relation to the affected person.

(5) The regulations may make provision with respect to applications under this section and the orders which may be made by the Tribunal in respect of any such application.

Revocation by Director

149. The Director of a health care agency may revoke a community counselling order or a community treatment order if of the opinion that the affected person is not likely to benefit from a continuation of the order.

Delegation

150. The Director of a health care agency may delegate a function conferred or imposed by this Chapter on the Director (other than this power of delegation) to the Deputy Director.

Appeals

151. (1) The affected person under a community counselling order or a community treatment order made by the Tribunal may at any time appeal to the Court on any question of law or fact arising from the order or its making in accordance with section 281.

(2) The affected person under a community counselling order or a community treatment order made by a Magistrate may at any time appeal to the Tribunal on any question of law or fact arising from the order or its making.

(3) The regulations may make provision with respect to appeals to the Tribunal under this section and the orders which may be made by the Tribunal in respect of any such appeal.

**CHAPTER 7 - MEDICAL OR THERAPEUTIC TREATMENTS
RELATING TO MENTAL ILLNESS OR
GIVEN TO PATIENTS**

PART 1 - TREATMENTS FOR MENTAL ILLNESS

Division 1 - Psychosurgery

Psychosurgery Review Board

152. (1) There is constituted by this Act a corporation with the corporate name of the Psychosurgery Review Board.

(2) Schedule 4 has effect with respect to the constitution, membership and meetings of the Board.

Psychosurgery on patients to be performed only with consent of Board

153. A person must not perform psychosurgery on a patient, except in accordance with a consent of the Board.

Maximum penalty 50 penalty units.

Consent of patient required

154. Except as otherwise provided by this Division, a person must not perform psychosurgery on a patient who has not given informed consent to the performance of psychosurgery on him or her.

Maximum penalty 50 penalty units.

Requirements for obtaining informed consent

155. (1) Before the consent of a patient is obtained to the performance on the patient of psychosurgery:

- (a) a fair explanation must be made to the patient of the techniques or procedures to be followed, including an identification and explanation of any technique or procedure about which there is

- not sufficient data to recommend it as a recognised treatment or to reliably predict the outcome of its performance; and
- (b) a full description must be given, without exaggeration or concealment, to the patient of the possible attendant discomforts and risks, if any; and
 - (c) a full description must be given to the patient of the benefits, if any, to be expected; and
 - (d) a full disclosure must be made, without exaggeration or concealment, to the patient of appropriate alternative treatments, if any, that would be advantageous for the patient; and
 - (e) an offer must be made to the patient to answer any inquiries concerning the procedures or any part of them; and
 - (f) notice must be 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; and
 - (g) a full disclosure must be 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; and
 - (h) notice must be 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; and
 - (i) any question relating to the techniques or procedures to be followed that is asked by the patient must have been answered and the answers must appear to have been understood by the patient.
- (2) The regulations are to prescribe forms to be used for the purpose of setting out in writing the matters required by subsection (1) to be explained, described, disclosed, offered or notified and an oral explanation of the matters dealt with in the forms must be given to the person concerned in a language with which the person is familiar.
- (3) A patient is, for the purposes of this Division, to be taken to have given informed consent to the performance on the patient of psychosurgery if the person has given a free, voluntary and written consent after this section has been complied with.

Persons presumed incapable of giving informed consent

156. (1) The following classes of persons are conclusively presumed to be incapable of giving informed consent to the performance on them of psychosurgery:

- (a) persons under the age of 18 years;
- (b) persons convicted of any crime and under sentence in respect of the conviction, whether in custody or not and whether the sentence has been suspended or not;
- (c) persons awaiting trial on a criminal charge, whether in custody or not;
- (d) persons released on licence after serving some portion of a sentence in respect of a conviction for crime;
- (e) persons convicted of any crime, who are on probation or parole;
- (f) persons convicted of any crime, who have escaped from lawful custody,
- (g) persons released on recognizance in respect of a criminal charge, whether or not they have been found guilty in respect of that charge, during the period of that recognizance;
- (h) persons under arrest in respect of a criminal charge;
- (i) temporary patients, continued treatment patients or forensic patients.

(2) This section does not bind the Court in making a finding under section 175.

Application for permission to perform psychosurgery

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

- (2) An application must specify
 - (a) the applicant's name and address; and
 - (b) the name and address of the patient; and
 - (c) the name and address of the patient's nearest relative, if any; and
 - (d) whether, in the applicant's opinion, the patient is capable of giving informed consent to the psychosurgery; and

- (e) whether, in the applicant's opinion, the patient has given informed consent to the psychosurgery or whether the applicant is in doubt that the patient has given that consent; and
- (f) the exact nature of the psychosurgery proposed to be performed; and
- (g) the clinical indications for the psychosurgery, and
- (h) the name or names of the person or persons proposing to perform the psychosurgery, and
- (i) the name of the hospital or institution in which it is proposed to perform the psychosurgery; and
- (j) such other particulars as may be prescribed.

Procedure for convening hearing of application

158. (1) The President of the Board must, within 10 days after receiving an application for consent to perform psychosurgery, convene a meeting of the Board for the purpose of hearing and determining the application.

(2) The hearing of an application is to commence within 31 days after the date the application is received.

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

Attendance and representation at hearing

159. At the hearing before the Board of an application for consent to perform psychosurgery.

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

Hearing open to public

160. The hearing of an application to the Board for consent to perform psychosurgery is to be open to the public unless the patient

or any representative of the patient objects and the Board upholds the objection.

Hearing of application

161. On the hearing of an application to the Board for consent to perform psychosurgery, the Board may make such inquiries and conduct such examinations with respect to the application as it thinks fit.

Publication of names etc.

162. (1) The name of a person who is the subject of an application to the Board for consent to perform psychosurgery may not, except with the approval of the Board or the consent of the person or any representative of the person, be published or broadcast.

(2) A report (other than an official report) of any such hearing may not include information which identifies or may lead to the identification of any person whose name is prohibited by this section from being published or broadcast.

(3) A person must not:

- (a) publish or broadcast the name of a person whose name is prohibited by this section from being published or broadcast; or
- (b) publish or broadcast a report which contravenes this section.

Maximum penalty 50 penalty units.

Assistance by interpreters

163. A person the subject of an application to the Board for consent to perform psychosurgery who is unable to communicate adequately in English but who is able to communicate adequately in another language is entitled to be assisted, when appearing before the Board, by a competent interpreter.

Inspection etc. of medical records

164. (1) A person the subject of an application to the Board for consent to perform psychosurgery is, unless the Board otherwise determines, entitled to inspect or otherwise have access to any medical records relating to the person in the possession of any other person.

(2) A representative of such a person at the hearing of the application is entitled, at any time before or during the hearing, to

inspect or otherwise have access to any medical records relating to the person in the possession of any other person.

(3) Subject to any order or direction of the Board, in relation to an inspection under subsection (2) of, or other access under that subsection to, any medical record relating to a person, if a medical practitioner warns the representative of the person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records:

- (a) the representative is to have full and proper regard to that warning; and
- (b) the representative is not obliged to disclose to the person any information obtained by virtue of the inspection or other access.

(4) An order or direction of the Board under this section has effect according to its tenor.

Administration of oath

165. The President or Deputy President of the Board may administer an oath to any person giving evidence in a hearing before the Board.

Production of evidence

166. (1) The Board may, of its own motion or on the application of a person who has made an application to the Board for consent to perform psychosurgery, issue a summons in the prescribed form requiring the person to whom the summons is addressed to do either or both of the following things:

- (a) to attend as a witness at the hearing of the application;
- (b) to attend at the hearing and to produce any documents in the possession or under the control of the person relating to the hearing and specified in the summons.

(2) The regulations may make provision for or with respect to authorising compliance with a summons to produce any documents by the production of the documents at a place specified in the summons at any time before the hearing at which the documents are required to be produced.

- (3) A person to whom a summons is addressed is entitled to receive:
 - (a) if the summons was issued by the Board of its own motion, from the Board; or

(b) if the summons was issued on the application of a person whose application is being heard by the Board, from the person, his or her reasonable costs, including any loss of earnings, incurred by the person in obeying the summons, calculated in accordance with the scales relating to summonses issued out of the District Court.

(4) A person:

(a) who is served with a summons addressed to the person under this section; and

(b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the hearing specified in the summons and producing anything required by the summons to be produced,

must not, without cause, fail or refuse to obey the summons.

Maximum penalty 50 penalty units.

Records of proceedings

167. (1) Proceedings before the Board in a hearing are to be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus is not to be transcribed unless:

(a) the Board, on the application of the person who has made, or the patient who is the subject of, an application to the Board, is of the opinion that sufficient cause is shown to warrant the transcription of the record relating to the matter; or

(b) the President or Deputy President of the Board directs that the record be transcribed; or

(c) the transcription of the record is otherwise required by law.

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

Record of decision

168. (1) Every decision of the Board in respect of any application being heard by it is to be recorded in the form of an instrument in writing signed by the President or Deputy President of the Board and

is to include the reasons for the decision of each member with respect to the matter.

(2) Nothing in this section prevents the Board from giving a decision in respect of any application being heard by it orally and any such oral decision is to be recorded in accordance with subsection (1).

(3) A copy of any written instrument recording a decision of the Board with respect to an application is to be supplied by the Board to the applicant or the patient the subject of the application.

Circumstances in which Board may consent to psychosurgery

169. The Board may consent to an application to perform psychosurgery on a patient if, after hearing the application and after making such inquiries and conducting such examinations with respect to the application as it thinks fit, it is satisfied that:

- (a) the patient the subject of the application is capable of giving informed consent to the psychosurgery; and
- (b) the patient has given that consent; and
- (c) the psychosurgery has clinical merit and is appropriate for the patient; and
- (d) the person or persons proposing to undertake the performance of the psychosurgery is or are properly qualified to do so; and
- (e) the hospital or institution in which it is proposed to perform the psychosurgery is a proper place in which to perform it; and
- (f) all other reasonable treatments for the patient have been adequately and skilfully administered without sufficient resulting benefits to the patient; and
- (g) there do not appear to be any other considerations that should be taken into account.

Form of consent

170. A consent of the Board (including a consent given under section 176) must specify

- the name of the patient; and
- the name or names of the person or persons proposing to perform the psychosurgery, and
- the exact nature of the psychosurgery proposed to be performed; and

- (d) the name of the hospital or institution in which it is proposed to perform the psychosurgery, and
- (e) the period within which the psychosurgery is to be performed.

Circumstances in which Board must refuse to consent to psychosurgery

171. (1) The Board must refuse to consent to an application to perform psychosurgery on a patient if, after hearing the application and making such inquiries and conducting such examinations with respect to the application as it thinks fit, it is satisfied that the patient the subject of the application is capable of giving informed consent to the psychosurgery and has not given that consent.

(2) The Board must refuse to consent to such an application if it is not satisfied as to any one or more of the matters specified in section 169(c)–(g).

Notice of decision

172. (1) The Board must give notice, in writing, of a consent (including a consent given under section 176) to the applicant for the consent, the patient and the patient’s barrister or solicitor, if any, within 7 days after the date on which the consent is given.

(2) The Board must give notice, in writing, of a refusal to give a consent to the applicant for the consent as soon as practicable after the refusal is made.

(3) A notice of refusal must state the Board’s reasons for refusing to give the consent.

Lapse of consent

173. A consent of the Board (including a consent under section 176) lapses if the psychosurgery the subject of the consent is not performed within the period specified in the consent.

Board may state case for Court’s opinion

174. (1) The Board may state a case for the Court if, after hearing an application for consent to perform psychosurgery on a patient and making such inquiries and conducting such examinations as it thinks fit:

- (a) it is not satisfied that the patient the subject of the application is capable of giving informed consent to the psychosurgery; and

- (b) it is satisfied as to the matters specified in section 169 (c)–(g); and
 - (c) it is satisfied that the patient has not indicated any opposition to the psychosurgery.
- (2) The stated case may ask the Court to determine:
- (a) whether the patient is capable of giving informed consent to the psychosurgery, and
 - (b) whether the patient has given that consent; and
 - (c) if the Court determines that the patient is not capable of giving that consent, whether the Court should give that consent on behalf of the patient.

Determination of stated case

175. If the Court, after hearing a case stated for its determination in respect of an application to the Board for its consent to the performance of psychosurgery on a patient, finds that the patient:

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

Granting of consent on remission of application

176. On the remission of an application to the Board by the Court, the Board must consent to the application.

Report of operation etc.

177. (1) A person who performs psychosurgery on a patient pursuant to a consent of the Board must, within 14 days after performing the psychosurgery, furnish to the Board a report in writing as to the operation and its outcome.

(2) The medical superintendent or person in charge, as the case may be, of the hospital or other place at which the psychosurgery is

performed must, within 30 days after the psychosurgery is performed, furnish to the Board the discharge summary relating to the patient on whom the psychosurgery was performed.

(3) A psychiatric report in writing as to the outcome of the performance of psychosurgery on a patient must be furnished to the Board within 30 days after the performance of the psychosurgery

- (a) by the applicant for consent, if the applicant is a psychiatrist; and
- (b) by the psychiatrist treating the patient, if the psychiatrist is not the applicant.

(4) A psychiatric report in writing as to the outcome of the performance of psychosurgery on a patient must be furnished to the Board 6 months after the performance of the psychosurgery by the psychiatrist treating the patient.

(5) A person must not, after furnishing such a report, fail or refuse, for any cause, to furnish to the Board such information as the person has in relation to the patient and as the Board may request.

Maximum penalty 10 penalty units.

Review and research

178. (1) The Board is, for the purpose of advancing research into psychosurgery, to review, as often as it thinks fit, the case of each patient on whom psychosurgery has been performed.

(2) For the purposes of exercising its functions under this section, the Board may make or cause to be made such observations of patients and make such arrangements for the gathering and recording of information as it thinks fit.

Division 2 - Electro convulsive therapy and certain prescribed treatments

Application of Division

179. This Division applies to the following treatments:

- (a) electro convulsive therapy,
- (b) such operations or medical or therapeutic treatments as may be prescribed for the purposes of this Division.

Administration of treatment

180. (1) A person who is not a medical practitioner must not administer to another person a treatment to which this Division applies.

(2) A medical practitioner must not administer to a person a treatment to which this Division applies, otherwise than in accordance with this Division.

Maximum penalty 50 penalty units.

Persons who must be present during administration of electro convulsive therapy

181. A medical practitioner must not administer electro convulsive therapy to a person unless, during the administration of the electro convulsive therapy, not less than 2 medical practitioners are present (of whom the medical practitioner administering the electro convulsive therapy may be one):

- (a) one of whom is experienced in the administration of electro convulsive therapy; and
- (b) the other or one other of whom is experienced in the administration of anaesthesia.

Maximum penalty 50 penalty units.

Places at which treatment may be administered

182. A medical practitioner must not administer to a person a treatment to which this Division applies, otherwise than at:

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

Maximum penalty 50 penalty units.

Requirements for obtaining informed consent

183. (1) Before the consent of a person is obtained to the administration to the person of a treatment to which this Division applies:

- (a) a fair explanation must be made to the person of the techniques or procedures to be followed, including an identification and explanation of any technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to reliably predict the outcome of its performance; and

- (b) a full description must be given, without exaggeration or concealment, to the person of the possible attendant discomforts and risks (including possible loss of memory), if any; and
- (c) a full description must be given to the person of the benefits, if any, to be expected; and
- (d) a full disclosure must be made, without exaggeration or concealment, to the person of appropriate alternative treatments, if any, that would be advantageous for the person; and
- (e) an offer must be made to the person to answer any inquiries concerning the procedures or any part of them; and
- (f) notice must be given to the person that the person is free to refuse or to withdraw consent and to discontinue the procedures or any of them at any time; and
- (g) a full disclosure must be made to the person of any financial relationship between the person proposing the administration of the treatment or the medical practitioner who proposes to administer the treatment, or both, and the hospital or institution in which it is proposed to administer the treatment; and
- (h) notice must be given to the person that the person has the right to obtain legal and medical advice and to be represented before giving consent; and
- (i) any question relating to the techniques or procedures to be followed that is asked by the person must have been answered and the answers must appear to have been understood by the person.

(2) The regulations are to prescribe forms to be used for the purpose of setting out in writing the matters required by subsection (1) to be explained, described, disclosed, offered or notified and an oral explanation of the matters dealt with in the forms must be given to the person concerned in a language with which the person is familiar.

(3) A person is, for the purposes of this Division, to be taken to have given informed consent to the performance on the person of a treatment to which this Division applies if the person has given a free, voluntary and written consent after this section has been complied with.

Persons presumed incapable of giving informed consent

184. A person is presumed to be incapable of giving informed consent to the administration to the person of a treatment to which this Division applies if, before, or at, the time at which the consent is sought, the person has received medication which, at the time the consent is sought, impairs the person's ability to give that consent.

Circumstances in which treatment may be administered with consent - persons other than involuntary patients

185. A medical practitioner may administer a treatment to which this Division applies to a person, other than a temporary patient, continued treatment patient, forensic patient or any other person under detention in a hospital:

- (a) if the person is capable of giving informed consent to the administration to the person of the treatment and has given that consent, in writing, in the prescribed form; and
- (b) if 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that, after considering the person's clinical condition, history of treatment and any appropriate alternative treatments, they are of the opinion that the treatment is a reasonable and proper treatment to be administered to the person and is necessary or desirable for the safety or welfare of the person.

Circumstances in which treatment may be administered without consent to patients - emergencies

186. (1) A medical practitioner may administer a treatment to which this Division applies to a temporary patient, continued treatment patient, forensic patient or any other person under detention in a hospital:

- (a) if the patient or person is, in the opinion of the medical superintendent (not being a medical officer nominated by the medical superintendent), incapable of giving informed consent to the administration to the patient or person of the treatment or is capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the patient or person; and
- (b) if 2 medical practitioners, at least one of whom is a psychiatrist, and the medical superintendent (not being a medical officer

nominated by the medical superintendent) certify, in writing, that, after considering the patient's or person's clinical condition, history of treatment and any appropriate alternative treatments, they are of the opinion that the treatment is a reasonable and proper treatment to be administered to the patient or person and necessary immediately in order to save the life of the patient or person.

(2) Nothing in this section prevents treatment from being administered to a person after an inquiry held on an application being made to the Tribunal under this Division.

(3) A medical practitioner who administers treatment to a patient under this section must make a written report (including copies of relevant medical records) about the treatment to the Tribunal.

Circumstances in which treatment may be administered to involuntary patients etc.

187. A medical practitioner may administer a treatment to which this Division applies to a temporary patient, continued treatment patient, forensic patient or any other person under detention in a hospital if, after an inquiry under this Division, the Tribunal makes a determination under section 194.

Application to Tribunal to administer treatment with consent to patient

188. If:

- (a) a temporary patient, continued treatment patient, forensic patient or any other person under detention in a hospital is, in the opinion of the medical superintendent, capable of giving informed consent to the administration to the patient or person of a treatment to which this Division applies and has given that consent, in writing, in the prescribed form; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that, after considering the patient's or person's clinical condition, history of treatment and any appropriate alternative treatments, they are of the opinion that the treatment is a reasonable and proper treatment to be administered to the patient or person and necessary or desirable for the safety or welfare of the patient or person,

the medical superintendent may apply to the Tribunal to determine the validity of the patient's or person's consent.

Application to Tribunal to administer electro convulsive therapy without consent to patient

189. If:

- (a) a temporary patient, continued treatment patient, forensic patient or any other person under detention in a hospital is, in the opinion of the medical superintendent (not being a medical officer nominated by the medical superintendent), incapable of giving informed consent to the administration to the patient or person of electro convulsive therapy or capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the patient or person; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that, after considering the patient's or person's clinical condition, history of treatment and any appropriate alternative treatments, they are of the opinion that electro convulsive therapy is a reasonable and proper treatment to be administered to the patient or person and necessary or desirable for the safety or welfare of the patient or person,

the medical superintendent may apply to the Tribunal to determine whether the administration of electro convulsive therapy is necessary or desirable for the safety or welfare of the patient or person.

Notice of inquiry to obtain consent

190. (1) On making an application under section 188 or 189 in respect of a patient or person, the medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to give notice to the following persons of the application:

- (a) the nearest relative, if there is one, of the patient or person or a relative nominated by the patient or person;
- (b) the patient's or person's guardian, if any;
- (c) any personal friend or friends of the patient or person, up to 2 in number, who are known as his or her personal friends.

(2) Notice may not be given to any person in respect of an application under section 188 except with the consent of the patient.

Inquiry

191. (1) On an application under section 188, the Tribunal must, as soon as practicable, hold an inquiry to determine the validity of the consent of the patient or person the subject of the application and may, if appropriate, further determine the matters set out in subsection (2).

(2) On an application under section 189, the Tribunal must, as soon as practicable, hold an inquiry to determine whether the administration of electro convulsive therapy is necessary or desirable for the safety or welfare of the patient or person the subject of the application.

(3) The medical superintendent must ensure that, so far as is reasonably practicable, the patient or person the subject of the application is, when appearing before the Tribunal, dressed in street clothes.

Matters to be checked by Tribunal

192. (1) As soon as practicable after the beginning of an inquiry, the Tribunal is required to ascertain from the patient or person the subject of the application being heard whether the patient or person:

- (a) has been informed of the duty imposed under section 190 on the medical superintendent; and
- (b) has been informed of the nature and possible results of the inquiry and, if the patient or person has not or appears not to have been so informed, the Tribunal must so inform the patient or person.

(2) As soon as practicable after the beginning of an inquiry, the Tribunal is required to ascertain from the medical superintendent whether the notice under section 190 has been given or all such things as are reasonably practicable have been done to give that notice.

Matters which must be considered by Tribunal

193. (1) In the course of the inquiry, the Tribunal must consider the certificates of the medical practitioners under section 188 or 189, as the case may be, concerning the patient or person the subject of the application and must consider such other information as may be placed before the Tribunal.

(2) In the course of the inquiry, the Tribunal must inquire as to the administration of any medication to the patient or person and is to take

account of the effect of the administration of the medication on the patient's or person's ability to communicate.

Result of inquiry

194. (1) The Tribunal may, after holding an inquiry on an application being made under section 188 concerning a patient or person, determine that the patient or person:

- (a) is capable of giving informed consent to the administration to the patient or person of a treatment to which this Division applies; and
- (b) has given that consent.

(2) The Tribunal may, after holding an inquiry on an application being made under section 188 or 189 concerning a patient or person, determine:

- (a) that the patient or person is incapable of giving informed consent to the administration to the patient or person of electro convulsive therapy, or is capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the patient or person; and
- (b) that, having regard to the patient's or person's clinical condition, history of treatment and any other appropriate treatments, the electro convulsive therapy is necessary or desirable for the safety or welfare of the patient or person.

Refusal of treatment by medical superintendent

195. A medical superintendent (not being a medical officer nominated by the medical superintendent) may refuse to allow the administration to a person of a treatment to which this Division applies, even though the Tribunal has made a determination, in accordance with section 194, as to the person.

Register

196. (1) A register, in the prescribed form, for the purpose of recording information relating to the administration of treatments to which this Division applies, is to be kept or caused to be kept:

- (a) in relation to a hospital—by the medical superintendent; or
- (b) in relation to a place approved by the Director-General under section 182—by a person specified by the Director-General.

(2) The medical superintendent or person specified by the Director-General, as the case requires, must, before the administration of a treatment to which this Division applies, enter, or cause to be entered, in the register such particulars in relation to the administration of that treatment as are required to complete an entry in that register.

(3) If the particulars of a treatment to which this Division applies as administered are different from the particulars entered, in relation to the administration of the treatment, in the register, the medical superintendent or person specified by the Director-General, as the case requires, must note the differences and the explanation for the differences in the register.

(4) A member of the Tribunal, the Principal official visitor, an official visitor or an authorised officer may, at any time, inspect a register.

Division 3 - Prohibited treatments

Prohibited treatments

197. A person must not administer to or perform on another person:

- (a) deep sleep therapy, or
- (b) insulin coma therapy; or
- (c) an operation or treatment prescribed for the purposes of this section.

Maximum penalty 50 penalty units.

Administration of drugs - generally

198. A medical practitioner must not administer or cause to be administered to a person, in relation to any mental illness from which the person is or is suspected to be suffering or in relation to any mental condition of the person, a dosage or dosages of a drug or drugs which, having regard to proper professional standards, is or are excessive or inappropriate.

Maximum penalty 50 penalty units.

Administration of drugs in hospitals

199. The medical superintendent is to establish and maintain an internal review system within the hospital to monitor and review the prescription and utilisation of drugs in use within the hospital in terms

of frequency of administration, dosage, intended and unintended effects and appropriateness of use.

PART 2 - TREATMENTS CARRIED OUT ON PATIENTS

Application of Part

200. This Part does not apply

- (a) to the performance of psychosurgery, or
- (b) to the administration of electro convulsive therapy, or
- (c) to the performance or administration of an operation or a medical or therapeutic treatment prescribed for the purposes of Division 2 of Part 1.

Cases of emergency

201. (1) A prescribed person may consent to the performance of a surgical operation on a temporary patient, continued treatment patient, forensic patient (suffering from mental illness) or any other person under detention in a hospital:

- (a) if the patient or other person is, in the opinion of the prescribed person, incapable of giving consent to the performance of a surgical operation on him or her or is capable of giving that consent but refuses to give that consent or neither gives nor refuses to give that consent; and
- (b) if the prescribed person is of the opinion that it is necessary, as a matter of urgency, to perform a surgical operation on the patient or other person in order to save the life of the patient or other person or to prevent serious damage to the health of the patient or other person.

(2) A prescribed person may consent to the performance of a surgical operation on an informal patient or a forensic patient (not suffering from mental illness):

- (a) if the patient is, in the opinion of the prescribed person, incapable of giving consent to the performance of a surgical operation on him or her; and
- (b) the prescribed person is of the opinion that it is necessary, as a matter of urgency, to perform a surgical operation on the patient in order to save the life of the patient or to prevent serious damage to the health of the patient.

(3) Except where the circumstances of the case render it impracticable, a consent given by a prescribed person must be in writing and signed by the prescribed person.

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

Effect of consent

202. A consent given under section 201 in relation to a patient or other person has the same effect as if it were given:

- (a) in the case of a patient or other person of or above the age of 14 years - by the patient or other person as if the patient or other person had capacity to give the consent; or
- (b) in the case of a patient or other person under the age of 14 years - by the parents or guardian of the patient or other person.

Notice of operation to be given

203. If a surgical operation is performed on a patient or other person pursuant to the consent of a prescribed person, the medical superintendent must, as soon as practicable after the performance of the surgical operation:

- (a) do all such things as are reasonably practicable to cause notice to be given to the nearest relative, if any, of the patient or other person of the performance of the surgical operation; and
- (b) cause notice to be given to the Tribunal of the performance of the surgical operation.

Special medical treatment

204. (1) A person must not carry out special medical treatment on a patient otherwise than in accordance with this Part.

Maximum penalty on indictment: imprisonment for 7 years.

(2) A medical practitioner may carry out special medical treatment on a patient:

- (a) if the medical practitioner is of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the patient in order to save the patient's life or to prevent serious damage to the patient's health; or

(b) if the Tribunal consents to the carrying out of the treatment.

(3) Consent to the carrying out of special medical treatment on a patient must not be granted if the patient is under the age of 16 years.

Applications for consent to the carrying out of certain operations and treatments other than in an emergency

205. (1) A medical superintendent may apply to the Tribunal or an authorised officer for consent to the performance of a surgical operation, or to the Tribunal for consent to the carrying out of special medical treatment, on a temporary patient, continued treatment patient, forensic patient (suffering from mental illness) or any other person under detention in a hospital.

(a) if, in the case of a proposed surgical operation, the patient or person is, in the opinion of the medical superintendent, incapable of giving consent to the performance of the surgical operation on him or her or is capable of giving that consent but refuses to give that consent or neither gives nor refuses to give that consent; and

(b) if, in any case, the medical superintendent is of the opinion that it is desirable, having regard to the interests of the patient or other person, to perform a surgical operation or carry out the special medical treatment on the patient or other person.

(2) A medical superintendent may apply to the Tribunal or an authorised officer for consent to the performance of a surgical operation, or to the Tribunal for consent to the carrying out of special medical treatment, on an informal patient or a forensic patient (not suffering from mental illness):

(a) if, in the case of a proposed surgical operation, the patient is, in the opinion of the medical superintendent, incapable of giving consent to the performance of the surgical operation on him or her, and

(b) if, in any case, the medical superintendent is of the opinion that it is desirable, having regard to the interests of the patient, to perform a surgical operation or carry out the special medical treatment on the patient.

(3) The medical superintendent must, in accordance with the regulations, do all such things as are reasonably practicable to cause notice to be given, in writing, to the nearest relative, if any, of the patient or person of the intention of the medical superintendent to

obtain the consent of an authorised officer or the Tribunal, as the case requires, to the performance of a surgical operation, or the carrying out of special medical treatment, on the patient or person.

Application for consent

206. (1) At any time after the expiration of 14 days from the date on which notice in respect of a patient or other person is given under section 205, the medical superintendent may make an application referred to in that section.

(2) An application in respect of a patient or other person is to be made:

- (a) if the nearest relative of the patient or other person agrees, in writing, to the performance of the surgical operation or the treatment being carried out - to an authorised officer; or
- (b) if the nearest relative of the patient or other person does not agree, in writing, to the performance of the surgical operation or to the treatment being carried out or there is no nearest relative of the patient or other person - to the Tribunal.

Hearing and determination of application

207. (1) An authorised officer or the Tribunal, as the case requires, is to hear and determine an application made under section 206.

(2) If an authorised officer or the Tribunal determines any such application by granting consent to the performance of a surgical operation or the carrying out of special medical treatment, as the case may be, on a patient or other person, the consent has the same effect as if it were given:

- (a) in the case of a patient or other person of or above the age of 14 years - by the patient or other person as if the patient or other person had capacity to give the consent; or
- (b) in the case of a patient or other person under the age of 14 years - by the parents or guardian of the patient or other person.

**CHAPTER 8 - ESTABLISHMENT AND ADMINISTRATION
OF HOSPITALS**

PART 1 - HOSPITALS

Division 1 - Hospitals other than authorised hospitals

Establishment of hospitals other than authorised hospitals

208. (1) The Director-General, by order published in the Gazette:

- (a) may declare any premises specified or described in the order, being premises to which this section applies, to be a hospital; and
- (b) may, in the same or another order so published, assign a name to the premises so specified or described.

(2) The Director-General may, by order published in the Gazette, change the name assigned to any premises specified or described in such an order.

(3) Premises to which this section applies are:

- (a) premises which belong to or are under the control of the Crown or a person acting on behalf of the Crown; and
- (b) a hospital under the control of an area health service constituted under the Area Health Services Act 1986; and
- (c) an incorporated hospital within the meaning of the Public Hospitals Act 1929, or a separate institution within the meaning of that Act; and
- (d) where the person to whom premises belong or who has control of premises, by an instrument in writing given to the Director-General, agrees to the premises being premises to which this section applies - those premises.

Appointment of medical superintendents

209. The Director-General may, by instrument in writing, appoint a medical practitioner as medical superintendent of a hospital, other than an authorised hospital.

Appointment of deputy medical superintendents

210. (1) The Director-General may, by instrument in writing, appoint a medical practitioner as deputy medical superintendent of a hospital, other than an authorised hospital.

(2) The deputy medical superintendent of a hospital, other than an authorised hospital, has the functions of the medical superintendent of the hospital during the absence, for any cause whatever, of the medical superintendent or during a vacancy in the office of medical superintendent.

Division 2 - Authorised hospitals

Application for licence

211. (1) A person may apply to the Director-General for a licence to keep premises as a hospital for the admission, care and treatment of patients.

(2) An application:

- (a) must be in the prescribed form; and
- (b) must be accompanied by a plan of the premises in respect of which the licence is sought and the prescribed fee.

Grant or refusal of licence

212. (1) The Director-General may grant an application under section 211 or may refuse to grant the application.

(2) If the Director-General grants the application, the Director-General:

- (a) must specify the maximum number of patients who may be kept or treated at the hospital; and
- (b) must specify any other terms and conditions to which the licence is subject, as the Director-General thinks fit; and
- (c) must issue to the applicant a licence in the prescribed form.

Duration of licence

213. A licence remains in force until it is cancelled in accordance with this Division.

Annual statement and licence fee

214. A licensee must, on or before 1 July in each year:

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

(b) pay to the Director-General the prescribed annual licence fee.

Duplicate licence

215. If the Director-General is satisfied that a licence has been lost, destroyed or damaged, the Director-General may, on payment of the prescribed fee, issue a duplicate licence to the licensee.

Cancellation of licences - generally

216. The Director-General may cancel a licence:

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

Cancellation of licences - failure to show cause

217. (1) The Director-General may, by notice in writing served on the holder of a licence, require the holder to show cause, by a date and time specified in the notice (being a date not less than 1 month after the date of service of the notice), why the licence should not be cancelled.

(2) If, by the date and time referred to in the notice the holder of the licence has not shown sufficient cause why the licence should not be cancelled, the Director-General may cancel the licence.

Variation of licence

218. (1) The holder of a licence may, at any time, apply to the Director-General for the variation of any term or condition to which the licence is subject,

(2) The Director-General, pursuant to an application:

- (a) may vary any term or condition to which a licence is subject; or
- (b) may refuse to grant the application

(3) If the Director-General varies any term or condition to which a licence is subject, the variation has effect according to its tenor.

Medical supervision

219. (1) The holder of a licence must, if the authorised hospital in respect of which the licence is held

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

(2) Without affecting subsection (1), the holder of a licence must, if the authorised hospital in respect of which the licence is held has 100 or fewer patients, make such arrangements as may be approved by the Director-General for the provision of emergency medical services to those patients.

Appointment of medical superintendent

220. The holder of a licence must appoint a medical practitioner approved by the Director-General as medical superintendent of the authorised hospital.

Duties of medical superintendent

221. The medical superintendent of an authorised hospital must cause to be kept such records and furnish to the Director-General such particulars as are prescribed in respect of the admission, treatment, discharge, removal, absence with or without leave or death of each patient admitted to the hospital.

Appointment of deputy medical superintendent

222. The holder of a licence must appoint a medical practitioner as deputy medical superintendent of the authorised hospital.

Functions of deputy medical superintendent

223. The deputy medical superintendent of an authorised hospital has the functions of the medical superintendent of the hospital during the absence, for any cause whatever, of the medical superintendent or during a vacancy in the office of medical superintendent.

Offence where hospital no longer authorised

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

Maximum penalty: 50 penalty units.

Certain private hospitals to be licensed

225. A person must not conduct a private hospital within the meaning of the Private Health Establishments Act 1982 at which a person is being treated primarily for a mental illness, unless the firstmentioned person is the holder, in addition to any licence required under that Act in respect of that private hospital, of a licence granted under this Division.

Maximum penalty 50 penalty units.

PART 2 - OFFICIAL VISITORS AND OTHER OFFICERS

Appointment of Principal official visitor

226. The Minister may, by instrument in writing, appoint a person, being a medical practitioner, barrister, solicitor or other suitably qualified or interested person, to be the Principal official visitor.

Functions of Principal official visitor

227. The Principal official visitor:

- (a) must assist in the exercise by official visitors of the functions conferred or imposed on them by or under this Act; and
- (b) may, in relation to any hospital or health care agency, exercise any such function; and
- (c) must, in accordance with such directions as are given by the Minister, report to the Minister as to the exercise of the functions of the Principal official visitor and of official visitors.

Appointment of official visitors

228. (1) Except where, because of the unavailability of suitably qualified or interested persons, it is not, in the opinion of the Minister, appropriate to do so, the Minister must, by instrument in writing, appoint, for each hospital or health care agency, 2 or more official visitors, 1 of whom is to be a medical practitioner and 1 of whom is to be a suitably qualified or interested person.

(2) A person may be appointed as an official visitor to more than 1 hospital or health care agency.

General provisions relating to the Principal official visitor and official visitors

229. Schedule 5 has effect with respect to the Principal official visitor and official visitors.

Inspection of hospitals

230. (1) Any 2 or more official visitors, 1 being a medical practitioner, must visit the hospital or health care agency, as the case may be, at least once each month, with or without any previous notice, at such time of the day or night and for such length of time as they think fit.

(2) The official visitors, when visiting the hospital or health care agency, as the case may be, must, so far as practicable, inspect every part of the hospital or health care agency at least once each month and make such inquiries as they think necessary as to the care, treatment and control of informal patients and the patients or persons detained in the hospital or subject to a community counselling order or community treatment order and being treated by the health care agency.

(3) The official visitors must:

- (a) examine and sign the registers, books, records and other documents produced to them in accordance with section 231; and
- (b) on each visit to the hospital or health care agency, as the case may be, enter in the official visitors book the fact of their visit with such observations as they think fit; and

- (c) in accordance with such arrangements as may be made with the Principal official visitor, report to the Principal official visitor as soon as practicable after each visit.

Access etc. to be given to official visitors

231. The medical superintendent or Director of the health care agency, as the case may be, must:

- (a) allow the official visitors to have access to and to inspect every part of the hospital or health care agency, as the case may be; and
- (b) permit the official visitors to see and to interview each informal patient at the hospital, each patient or person detained in the hospital or each affected person under a community counselling order or a community treatment order being treated by the health care agency; and
- (c) give full and true answers to the best of the medical superintendent's or Director's knowledge to all questions which the official visitors may ask in relation to the hospital or health care agency, the patients and other persons or affected persons; and
- (d) produce to the official visitors such registers, books, records, orders, certificates and other documents relating to the admission, care, treatment and control of the patients and other persons and the discharge of persons from the hospital as may be required by the official visitors; and
- (e) furnish all such returns relating to any matter referred to in paragraph (d) as may be required by the official visitors.

Other functions of official visitors

232. An official visitor has such other functions as are conferred or imposed on an official visitor by or under this Act.

Reports to Minister

233. Nothing in this Part prevents an official visitor from reporting to the Minister with respect to any matter arising from or relating to the exercise by the official visitor of the official visitor's functions.

Request by patient etc. in hospital to see official visitor

234. (1) A patient or person detained in a hospital or an affected person under a community counselling order or a community treatment order being treated by a health care agency may notify the medical superintendent or Director of the health care agency, as the case requires, orally or in writing, that the patient or person desires to see an official visitor.

(2) Within 7 days after the receipt of any such notification from a patient or person, the medical superintendent or Director must inform an official visitor of the patient's or person's desire to see an official visitor.

Appointment of authorised officers

235. The Director-General may, by instrument in writing, appoint as authorised officers:

- (a) 1 or more officers employed within the Department of Health; and
- (b) 1 or more employees of an incorporated hospital within the meaning of the Public Hospitals Act 1929, or a separate institution within the meaning of that Act; and
- (c) 1 or more employees of an area health service constituted under the Area Health Services Act 1986.

Functions of authorised officers

236. (1) An authorised officer has the functions conferred or imposed on authorised officers by or under this Act.

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

(3) An authorised officer is, in exercising the functions of an authorised officer, subject to the control and direction of the Director-General.

Inspection etc. of hospitals

237. (1) The Director-General must cause every hospital to be visited and inspected from time to time by authorised officers, with or

without any previous notice and at such time of the day or night as the Director-General thinks fit.

(2) An authorised officer.

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

(b) must make such inspections, investigations and inquiries as are directed by the Director-General,

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

Powers of authorised officer visiting hospital

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

(a) to furnish to the authorised officer such information as the authorised officer requires concerning any of the matters with respect to which an authorised officer is, by or under this Act, authorised to make inspections, investigations and inquiries;

(b) to attend and give evidence before the authorised officer concerning any such matters;

(c) to produce all books, documents or other records in the person's custody or under the person's control concerning any such matters.

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

(3) A person must not, without showing just cause:

(a) refuse or neglect to comply with a requirement made under this section; or

(b) fail to answer truly and fully a question put to the person by an authorised officer in the exercise by the authorised officer of the functions of an authorised officer.

Maximum penalty 50 penalty units.

Information may not be used to incriminate

239. Any information furnished or evidence given pursuant to a requirement made under section 238 is not, if the person furnishing the information or giving the evidence objected, at the time of furnishing

the information or giving the evidence, to doing so on the ground that it may tend to incriminate the person or might be used in any proceedings against the person under this Act, admissible in any prosecution against the person for any offence (not being an offence for a breach of section 238) or admissible in any such proceedings.

Restriction on exercise of functions of certain authorised officers

240. (1) An authorised officer may not sign a certificate or recommendation for the admission of a person to, or for the further observation or treatment of a person in, a hospital.

(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 may 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.

Prohibited interests of authorised officers

241. An authorised officer must not knowingly have a pecuniary interest, directly or indirectly, in an authorised hospital.

Maximum penalty: 50 penalty units.

Appointment of welfare officers

242. The Director-General may appoint such persons as the Director-General thinks necessary to be welfare officers for the purposes of this Act.

Functions of welfare officers

243. (1) It is a function of a welfare officer to escort and convey or to assist in escorting and conveying to a hospital, on the direction of the

medical superintendent, a temporary patient, continued treatment patient or forensic patient:

- (a) who has been granted leave of absence from a hospital; and
 - (b) who has suffered a breakdown in mental health; and
 - (c) whose return to the hospital is desirable on account of the breakdown.
- (2) Other functions of a welfare officer are:
- (a) to escort and convey or to assist in escorting and conveying patients from a hospital to another hospital or to a public hospital; and
 - (b) to visit patients who have been granted leave of absence from a hospital; and
 - (c) to visit the relations and friends of patients who have been granted leave of absence from a hospital for the purpose of advising them on matters relating to the welfare of those patients; and
 - (d) such functions, including functions in relation to community health care, as are conferred or imposed on welfare officers by or under this Act or as are assigned to the welfare officer by an authorised officer or a medical superintendent

PART 3 - PATIENTS FUNDS AND ACCOUNTS

Trust funds

244. (1) The Director-General, in relation to each hospital other than an authorised hospital, and the medical superintendent of an authorised hospital must establish and maintain, in a bank approved by the Treasurer:

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

(2) The Director-General, in relation to each hospital other than an authorised hospital, must establish and maintain, in a bank approved by the Treasurer, an Interest Account.

Patients Trust Fund

245. (1) Money received by the responsible person from a patient for custody on behalf of the patient or from some other person for the

benefit, use or enjoyment of a specified patient, is to be paid into the Patients Trust Fund.

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

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

Withdrawals from patients' accounts

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

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

Discharge or death of patient

247. After the discharge or death of a patient the management of whose estate has been committed to the Protective Commissioner, the responsible person must pay to the Protective Commissioner any money standing to the credit of the patient in the patient's account.

Patients' accounts to form one fund

248. (1) Subject to this Act, money standing to the credit of patients' accounts in respect of those hospitals which:

- (a) are incorporated hospitals within the meaning of the Public Hospitals Act 1929; or
- (b) are separate institutions within the meaning of the Public Hospitals Act 1929; or
- (c) are under the control of an area health service constituted under the Area Health Services Act 1986,

is to constitute one fund.

(2) The fund may be invested by the Director-General in accordance with and subject to the Trustee Act 1925 or in any other form of investment approved by the Treasurer.

Payments to and from Interest Account

249. (1) There is to be paid into the Interest Account:

- (a) income from the investment of the fund constituted under section 248; and
- (b) any capital gain made on the realisation of the investment.

(2) There is to be paid out of the Interest Account:

- (a) any loss incurred on the realisation of the investment of the fund constituted under section 248; and
- (b) at such time or times as the Director-General may determine, such management fees of the Director-General as the Director-General may determine.

Distribution of Interest Account

250. The Director-General must, at least once a year, after making the payments referred to in section 249 (2), distribute the funds of the Interest Account by crediting those funds to each patient's account proportionately according to:

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

Patients Amenities Account

251. (1) There is to be paid into the Patients Amenities Account:

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

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

CHAPTER 9 - MENTAL HEALTH. REVIEW TRIBUNAL

PART 1 - THE TRIBUNAL

Constitution of the Tribunal

252. (1) There is constituted by this Act a Tribunal to be called the Mental Health Review Tribunal.

(2) The Tribunal is to consist of members appointed by the Governor, of whom:

- (a) 1 is to be a full-time member appointed as the President of the Tribunal; and
- (b) 1 or more may be full-time members appointed as the Deputy President or Deputy Presidents of the Tribunal; and
- (c) the remaining members (if any) may be appointed as full-time or part-time members.

(3) Schedule 6 has effect with respect to the Tribunal.

Additional provisions relating to members

253. (1) The members (including the President and any Deputy President) are to be appointed from the following classes of persons:

- (a) barristers and solicitors;
- (b) psychiatrists;
- (c) persons having, in the opinion of the Governor, other suitable qualifications or experience, including at least 1 person selected from a group of persons who are nominated by consumer organisations.

(2) The members are to include 1 or more women and 1 or more persons of ethnic background and a different person is to be appointed to satisfy each of those qualifications, even though a person so appointed may possess both of those qualifications.

(3) If, at the time at which an appointment is required to be made of a person selected from a group of persons who are nominated by consumer organisations no such group has been nominated, the Governor may appoint to be a member, instead of the person required

to be appointed from the group, a person who, in the opinion of the Governor, has suitable qualifications or experience.

Seal of the Tribunal

254. The Tribunal is to have a seal of which judicial notice is to be taken.

Functions of the Tribunal

255. The Tribunal has the functions conferred or imposed on it by or under this Act or any other legislation.

Registrar and other officers of the Tribunal

256. (1) A Registrar and such staff as may be necessary to enable the Tribunal to exercise its functions are to be employed under the Public Sector Management Act 1988.

(2) The Registrar has such functions as are conferred or imposed on the Registrar by or under this Act or any other legislation or by the Tribunal in the exercise of its functions.

Authentication of documents

257. Every document requiring authentication by the Tribunal is sufficiently authenticated without the seal of the Tribunal if it is signed by the President or a Deputy President.

Judicial notice of certain signatures

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

Certain proceedings prohibited

259. No proceedings lie against the Tribunal, a member of the Tribunal or a member of staff of the Tribunal for or on account of any act, matter or thing done or ordered to be done or omitted or suffered to be done by the Tribunal, member or member of staff, and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this or any other Act, if the Tribunal, member or member of staff has acted in good faith.

Application of the Defamation Act 1974

260. For the purposes of section 18 of the Defamation Act 1974, the proceedings of the Tribunal are to be taken to be an inquiry within the meaning of that section.

Annual report

261. (1) As soon as practicable after 1 March, but on or before 1 June, in each year, the President must prepare and forward to the Minister a report as to the exercise by the Tribunal of its functions and, in relation to persons taken to hospital under Part 2 of Chapter 4 the matters set out in subsection (2).

(2) The matters to be included relating to persons taken to hospitals are:

- (a) the number of persons so taken and the provisions of this Act under which they were so taken; and
- (b) the number of persons detained as mentally ill persons or mentally disordered persons; and
- (c) the number of persons in respect of whom an inquiry under section 41 was held; and
- (d) the number of persons detained as temporary patients; and
- (e) the number of persons classified as continued treatment patients.

(3) The report is also to include such other matters as the Minister may direct or as may be prescribed.

(4) The Minister must lay the report, or cause it to be laid, before each House of Parliament as soon as practicable after receiving the report.

(5) A report made under the Annual Reports (Departments) Act 1985 in respect of the Department of Health may include any report required to be made under this section.

Service of documents on Tribunal

262. (1) A document may be served on the Tribunal by leaving it at, or by sending it by post to:

- (a) the office of the Tribunal; or
- (b) if the Tribunal has more than 1 office - any of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on any person or the Tribunal in any other manner.

Delegation

263. (1) The President may delegate to an authorised person any of the functions of the President, other than this power of delegation.

(2) A delegate may sub-delegate to an authorised person any function delegated by the President if the delegate is authorised in writing to do so by the President.

- (3) In this section, "**authorised person**" means:
 - (a) a member; or
 - (b) the Registrar of the Tribunal; or
 - (c) a person of a class prescribed by the regulations.

PART 2 - PROCEEDINGS OF THE TRIBUNAL

Composition of the Tribunal generally

264. In the exercise of its functions (other than those relating to forensic patients), the Tribunal is to be constituted by the following members nominated by the President:

- (a) the President, a Deputy President or a member who is a barrister or solicitor;
- (b) a member who is a psychiatrist;
- (c) a member who (not being a barrister, solicitor or psychiatrist) has other suitable qualifications or experience.

Composition of the Tribunal for dealing with forensic patients

265. In the exercise of its functions relating to forensic patients, the Tribunal is to be constituted by the following members nominated by the President:

- (a) the President or a Deputy President;
- (b) a member who is a psychiatrist;
- (c) a member (not being a psychiatrist or a barrister or solicitor) who has other suitable qualifications or experience.

Meetings of the Tribunal

266. If sufficient members have been appointed, more than 1 meeting of the Tribunal may be held at the same time.

Procedure at meetings of the Tribunal

267. (1) Meetings of the Tribunal are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and the regulations and as the proper consideration of the matters before the Tribunal permit.

(2) In determining any matter relating to a forensic patient or other patient or a person detained in a hospital, the Tribunal is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and as the proper consideration of the matter before the Tribunal permits.

(3) Subject to the regulations, and without limiting the generality of subsection (2), the Tribunal may, in determining any matter relating to a forensic patient or other patient or a person detained in a hospital, obtain the assistance of any person having professional or other qualifications relevant to any issue arising in respect of the matter and may receive in evidence the certificate of any such person.

(4) Subject to this Part and the regulations, the procedure for the calling of, and for the conduct of business at, any meeting of the Tribunal is to be as determined by the Tribunal.

Determination whether a person is a mentally ill person etc.

268. (1) A member must not determine, for the purposes of this Act, that a person is a mentally ill person or a mentally disordered person unless the member is satisfied that on the balance of probabilities the person is a mentally ill person or a mentally disordered person.

(2) In determining, for the purposes of this Act, whether a person is a mentally ill person, a member is to give due regard:

- (a) to any cultural factors relating to the person which may be relevant to the determination; and
- (b) to any evidence given to the Tribunal by an expert witness concerning the person's cultural background and its relevance to any question of mental illness.

Appointment of person to assist the Tribunal

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

Chairperson and votes of members

270. At a meeting of the Tribunal:

- (a) the President, Deputy President or a member who is a barrister or solicitor, as the case may be, nominated by the President is to preside as chairperson of the meeting; and
- (b) except as provided by paragraph (c), questions arising at the meeting are to be determined by a majority of votes of the members present and voting; and
- (c) the decision of the chairperson of the meeting on any question of law or procedure which may arise at that meeting is to be the decision of the Tribunal; and
- (d) the chairperson of the meeting has, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

Adjournment

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

Proceedings open to public

272. The proceedings of the Tribunal are to be open to the public unless:

- (a) a person having a matter before the Tribunal (not being a person appointed to assist the Tribunal in respect of the matter) or any representative of the person objects; and
- (b) the Tribunal upholds the objection.

Publication of names etc.

273. (1) The name of a person who is the subject of a matter heard before or being reviewed by the Tribunal may not, except with the approval of the Tribunal and the consent of the person or any representative of the person, be published or broadcast.

(2) A report (other than an official report) of any matter heard before or being reviewed by the Tribunal may not include information which identifies or may lead to the identification of any person whose name is prohibited by this section from being published or broadcast,

(3) A person must not:

- (a) publish or broadcast the name of a person whose name is prohibited by this section from being published or broadcast; or
- (b) publish or broadcast a report which contravenes this section.

Maximum penalty 50 penalty units.

Rights of appearance and representation

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

(2) A person appointed to assist the Tribunal in a matter may appear before the Tribunal in relation to any matter in respect of which the person is appointed.

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

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

Assistance of interpreters

275. A person having any matter before the Tribunal who is unable to communicate adequately in English but who is able to communicate adequately in another language is entitled to be assisted, when appearing before the Tribunal in relation to the matter, by a competent interpreter.

Inspection etc. of medical records

276. (1) A patient or person having any matter before the Tribunal is, unless the Tribunal otherwise determines, entitled to inspect or otherwise have access to any medical records in the possession of any person relating to the patient or person.

(2) A representative of a person having any matter before the Tribunal is entitled, at any time before or during the consideration of that matter by the Tribunal, to inspect or otherwise have access to any medical records in the possession of any person relating to the firstmentioned person.

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

- (a) if a medical practitioner warns the representative of the person that it may be harmful to communicate to the person, or any other person, specified information contained in those medical records, the representative is to have full and proper regard to that warning, and
- (b) the representative is not obliged to disclose to the person any information obtained by virtue of the inspection or other access.

(4) An order or direction of the Tribunal under this section has effect according to its tenor.

Administration of oath

277. The President or a Deputy President or the chairperson of a meeting of the Tribunal may administer an oath to any person giving evidence before the Tribunal.

Production of evidence

278. (1) The Tribunal may of its own motion or on the application of a person having any matter before the Tribunal issue a summons in the prescribed form requiring the person to whom the summons is addressed to do either or both of the following things:

- (a) to attend as a witness at a meeting of the Tribunal;
- (b) to attend at a meeting of the Tribunal and to produce any documents in the possession or under the control of the person relating to any matter before the Tribunal and specified in the summons.

(2) For the purposes of subsection (1), a summons is issued by the Tribunal if it is signed by the President or a Deputy President.

(3) The regulations may make provision for or with respect to authorising compliance with a summons to produce any documents by the production of the documents at a place specified in the summons

at any time before the meeting of the Tribunal at which the documents are required to be produced.

- (4) A person to whom a summons is addressed is entitled to receive:
- (a) if the summons was issued by the Tribunal of its own motion, from the Tribunal; or
 - (b) if the summons was issued by the Tribunal on the application of a person having any matter before the Tribunal, from the person,

his or her reasonable costs, including any loss of earnings, incurred by the person in obeying the summons, calculated in accordance with the scales relating to summonses issued out of the District Court.

- (5) A person:
- (a) who is served with a summons addressed to the person under this section; and
 - (b) to whom, at the time of service, is tendered an amount that is sufficient to cover the person's travelling and other out-of-pocket expenses in attending the meeting of the Tribunal specified in the summons and producing anything required by the summons to be produced,

must not, without cause, fail or refuse to obey the summons.

Maximum penalty 50 penalty units.

Records of proceedings before the Tribunal

279. (1) Proceedings before the Tribunal are to be recorded (unless the parties otherwise agree) but any such record which is made by means of shorthand, stenotype or sound-recording apparatus is not to be transcribed unless:

- (a) the Tribunal, on the application of a person having a matter before the Tribunal, is of the opinion that sufficient cause is shown to warrant the transcription of the record relating to the matter; or
- (b) the President directs that the record be transcribed; or
- (c) the transcription of the record is otherwise required by law.

(2) Any transcription so made is, except as to such part, if any, of the transcription as is specified by the Tribunal, to be supplied to a person appearing before the Tribunal on payment of the prescribed fee, being

a fee corresponding to the fee referred to in section 73 (2) of the Justices Act 1902 for copies of depositions.

Record of determinations etc.

280. (1) Every determination or recommendation of the Tribunal in respect of any matter before it at any meeting of the Tribunal must be recorded in the form of an instrument in writing signed by the chairperson of that meeting and must, if requested by any party to the proceedings, include the reasons for the determination or recommendation of each member with respect to the matter.

(2) Nothing in this section prevents the Tribunal from giving an oral determination or making an oral recommendation in respect of any matter before it.

(3) An oral determination given or recommendation made is to be recorded in accordance with subsection (1).

(4) A copy of any written instrument recording a determination or recommendation of the Tribunal in respect of a person is to be supplied by the Registrar of the Tribunal to the person or the person's representative on payment to the Registrar of the prescribed fee.

(5) The Tribunal may waive payment of the fee referred to in subsection (4).

CHAPTER 10 - JURISDICTION OF SUPREME COURT

Appeals to the Court

281. A person having any matter before the Tribunal who is dissatisfied with

- (a) a determination of the Tribunal made with respect to the person; or
- (b) the failure or refusal of the Tribunal to make a determination with respect to the person in accordance with the provisions of this Act,

may, subject to and in accordance with the rules of the Court, appeal to the Court against the determination, failure or refusal.

Nomination of assessors

282. (1) The Minister must, from time to time, nominate in writing to the Chief Justice a panel of persons who, in the opinion of the

Minister, have appropriate qualifications and sufficient experience to act as assessors in the hearing of appeals by the Court under this Chapter.

(2) A nomination made under this section is to be accompanied:

- (a) by the consent, in writing, of the person nominated to the nomination; and
- (b) by an oath taken by the person nominated, in the prescribed form.

(3) Sections 11, 11A and 12 of the Oaths Act 1900 apply to and in respect of an oath required to be taken under this section as if the oath were an oath required to be taken under Part 2 of that Act.

Functions of assessors on hearing of appeals

283. (1) If the Court considers it appropriate to do so, the Court may be assisted, in the hearing and deciding of an appeal, by 2 assessors selected by the Court from the panel nominated by the Minister.

(2) An assessor referred to in subsection (1) is to sit with the Court in the hearing of an appeal and has power to advise, but not to adjudicate, on any matter relating to the appeal.

Power of the Court on appeals

284. (1) In addition to any other functions and discretions that the Court has apart from this section, the Court has, for the purposes of hearing and disposing of an appeal, all the functions and discretions which the Tribunal had in respect of the matter the subject of the appeal.

(2) An appeal is to be by way of a new hearing and new evidence or evidence in addition to, or in substitution for, the evidence given in relation to the determination of the Tribunal, or the failure or refusal of the Tribunal to make a determination, in respect of which the appeal is made may be given on the appeal.

(3) In making its decision in respect of an appeal, the Court is to have regard to the provisions of this Act and such other matters as it considers to be relevant.

(4) The decision of the Court on an appeal is, for the purposes of this or any other Act or instrument, to be taken to be, where

appropriate, the final determination of the Tribunal and is to be given effect to accordingly.

(5) The Tribunal or any member of the Tribunal is not liable for any costs relating to the determination of the Tribunal, or the failure or refusal of the Tribunal to make a determination, in respect of which the appeal is made, or the appeal.

Court may order discharge or transfer of patient

285. (1) If the Court receives information on oath or the Court has reason or cause to suspect:

- (a) that a person who is not a mentally ill person or a mentally disordered person is detained in a hospital; or
 - (b) that other care of a less restrictive kind is appropriate and reasonably available to a mentally ill person or a mentally disordered person detained in a hospital; or
 - (c) that a forensic patient is wrongly detained in a hospital,
- the Court must order the medical superintendent to bring the person before the Court for examination at a time specified in the order.

(2) If, on examination of a person (other than a forensic patient) under this section, the medical superintendent is unable to prove on the balance of probabilities:

- (a) that a person is a mentally ill person or a mentally disordered person; or
 - (b) if the person is a mentally ill person or a mentally disordered person, that no other care of a less restrictive kind is appropriate and reasonably available to the person,
- the Court must order that the person be immediately discharged from the hospital in which the person is detained.

(3) If, on the examination of a forensic patient under this section, the medical superintendent is unable to prove that the patient is not wrongly detained in the hospital, the Court must order that the person be immediately transferred to a prison.

Other jurisdiction of the Court not affected

286. Nothing in this Chapter derogates from or otherwise affects the jurisdiction of the Court under any other Act or law.

CHAPTER 11 - MISCELLANEOUS

Restrictions on holding of certain offices

287. (1) A person may not hold more than one of the following offices at the same time:

- (a) medical superintendent;
- (b) Principal official visitor or official visitor;
- (c) authorised officer;
- (d) welfare officer;
- (e) member of the Tribunal;
- (f) Magistrate, but only where the holder of the office is holding an inquiry under Chapter 4.

(2) Nothing in this section prevents a person who holds the office of a medical superintendent from being appointed to or holding the office of an authorised officer if the functions of the authorised officer are not exercised or able to be exercised in respect of the hospital of which the person is the medical superintendent.

(3) If a person contravenes this section, nothing invalidates any act of the person during the period of the contravention.

(4) A person who contravenes this section may be removed from any office held or purported to be held by the person and referred to in subsection (1), other than the office of member of the Tribunal, by the Minister.

Legal representation of mentally ill persons etc.

288. For the purposes of this Act, the fact that a person is suffering from mental illness or is suffering from a mental condition that is neither a mental illness nor a developmental disability of mind is presumed not to be an impediment to the representation of the person by a barrister or solicitor before the Tribunal, at an inquiry before a Magistrate under this Act, or before the Court or the Psychosurgery Review Board.

Disclosure of information

289. A person must not disclose any information obtained in connection with the administration or execution of this Act or the regulations unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
 - (b) in connection with the administration or execution of this Act; or
 - (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings; or
 - (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
 - (e) with other lawful excuse.
- Maximum penalty 50 penalty units.

Withholding of certain correspondence of patients and other persons

290. (1) A postal article addressed by a patient or person detained in a hospital and delivered by the patient or person for dispatch may be withheld by the medical superintendent if the addressee has given notice in writing to an appropriate person on behalf of the hospital (including the medical superintendent) requesting that communications addressed to the addressee by the patient or person be withheld.

(2) This section does not apply to a postal article addressed by a patient or person detained in a hospital:

- (a) to the Minister, or
- (b) to a member of Parliament, other than the Minister, or
- (c) to the Protective Commissioner or Deputy Protective Commissioner, or
- (d) to the governing authority of the hospital; or
- (e) to a person or authority having power to discharge the patient or person from the hospital; or
- (f) to the Ombudsman or Deputy Ombudsman; or
- (g) to a prescribed person.

(3) Except as provided by this section, it is not lawful to prevent or impede the delivery to a patient or person detained in a hospital of a postal article addressed to the patient or person or the delivering for dispatch of a postal article addressed by such a patient or person.

Contempt of Tribunal etc.

291. A person must not refuse, neglect or for any reason fail to obey or comply with an order, direction, decision or determination, under this Act, of the Tribunal, a Magistrate or the Psychosurgery Review Board.

Maximum penalty 50 penalty units.

Assistance of interpreters

292. A medical practitioner, when conducting an examination of a person for the purposes of this Act who is unable to communicate adequately in English but who is able to communicate adequately in another language, must, so far as is reasonably practicable, arrange for a competent interpreter to be present during the examination.

Information as to follow-up care after discharge

293. If a patient is discharged from a hospital, the medical superintendent must do all such things as are reasonably practicable to ensure that the person discharged is provided with appropriate information as to such follow-up care as may be available.

Exculpation from liability of police

294. A member of the Police Force is not liable for any injury or damage caused by the member of the Police Force in the exercise, in good faith, of a function conferred or imposed on the member of the Police Force by or under this Act.

Service of notices etc.

295. (1) A notice or other instrument issued, made or given for the purposes of this Act or the regulations is to be served:

- (a) by delivering it personally to the person to whom it is addressed;
or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person apparently of or above the age of 16 years for the person to whom it is addressed; or
- (c) by post.

(2) If the person to whom the notice or other instrument is addressed is a corporation, the notice or instrument may be served:

- (a) by delivering it personally to a person who is or apparently is concerned in the management of the corporation; or
 - (b) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person apparently of or above the age of 16 years; or
 - (c) by post.
- (3) Nothing in this section affects section 262.

Amendment of certain documents

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

(2) A document amended in accordance with this section is to be taken to have had effect in its amended form on and from its original date.

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

- (a) may order the discharge of the person admitted to the hospital by virtue of the document; or
- (b) may do such things as are necessary to obtain a document in substitution for that document.

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

Offences in relation to certain certificates

297. A medical practitioner must not

- (a) sign a certificate in the form set out in Part 1 of Schedule 2 or in Schedule 3 without having personally examined or personally observed, on the date specified in the certificate, the person to whom the certificate relates for the purpose of ascertaining the condition of the person; or

- (b) wilfully make a false or misleading statement in a certificate referred to in paragraph (a).

Maximum penalty 50 penalty units.

Ill-treatment etc. of patients

298. A medical superintendent or any other person employed in a hospital must not wilfully strike, wound, ill-treat or wilfully neglect a patient or person detained in a hospital.

Maximum penalty (for each offence) 50 penalty units or imprisonment for 6 months, or both.

Proceedings for offences

299. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Proceedings for an offence under section 204 (Special medical treatment) are to be dealt with on indictment.

Information as to types and dosages of medications

300. The medical superintendent or a medical officer nominated by the medical superintendent must:

- (a) on the request of a patient or person detained in a hospital; or
- (b) on the request of a representative, appointed in accordance with this Act, of any patient or person, detained in a hospital,

provide the patient, person or representative, as the case requires, with particulars of the types of medication and the dosages of each type which are currently being administered or which have recently been administered to the patient or person.

Annual report

301. (1) The Director-General must, as soon as practicable after 30 June in each year, cause to be prepared and forwarded to the Minister a report as to:

- (a) the care of the patients and persons detained in each hospital; and

- (b) the state and condition of each hospital; and
 - (c) important administrative and policy issues; and
 - (d) such other matters as the Director-General thinks fit,
- for the 12 months preceding that date.

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

(3) A report made under the Annual Reports (Departments) Act 1985 in respect of the Department of Health may include any report required to be made under this section.

Regulations

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

(2) In particular, the regulations may make provision for or with respect to:

- (a) the design, construction, equipping, furnishing, maintenance, administration and staffing of, and the provision of facilities and services by, hospitals; and
- (b) the functions, responsibilities, obligations and liabilities of medical superintendents and medical officers; and
- (c) the exercise by the Principal official visitor and the official visitors of their functions; and
- (d) matters relating to meetings of the Tribunal, to inquiries before Magistrates under this Act and to meetings of the Psychosurgery Review Board; and
- (e) the establishment and functions of a registry or registries to assist in the administration of the Tribunal and the Psychosurgery Review Board and in the holding of inquiries under this Act; and
- (f) the practice and procedure of the Tribunal; and
- (g) protecting the privacy of patients and persons under detention in hospitals; and

- (h) standards of patient care; and
 - (i) the establishment, in relation to a hospital, of a patient care review committee and the functions of such a committee; and
 - (j) matters relating to the rights and privileges of patients and persons under detention in hospitals, including matters relating to the information to be given, on their admission to a hospital or otherwise, to patients and persons as to their rights and privileges as patients or as persons under detention in hospitals; and
 - (k) matters relating to the visiting of patients and persons under detention in hospitals; and
 - (l) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act; and
 - (m) prescribing the keeping and form of such books, records, registers or other documents, or the furnishing of such reports or statistics, as may be necessary or convenient for the administration of this Act, including records of attendances of competent interpreters.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Savings, transitional and other provisions

303. Schedule 7 has effect.

Report by Minister

304. (1) Within 2 years after the day appointed for the commencement of this Act (or, if different days are appointed for the commencement of different provisions of this Act, within 2 years after the first day so appointed), the Minister is required to prepare and to make available to the public a report as to the operation of this Act.

(2) The Minister is required to include in the report the nature of any amendments proposed to be made to this Act.

(3) The Minister is required to furnish a copy of the report to each member of the Legislative Assembly and the Legislative Council within the period for compliance with subsection (1).

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE ACT

(Sec. 3)

administration of a treatment to a person, in Division 2 of Part 1 of Chapter 7, includes the performance of an operation on the person;

affected person means a person in respect of whom a community counselling order or a community treatment order has been applied for or made;

appeal, in Chapter 10, means an appeal under section 281;

assessor, in Chapter 10, means a person nominated as an assessor under section 282;

authorised applicant, in relation to **an application for a community counselling order or community treatment order**, means:

- (a) the affected person; or
- (b) a near relative of, or a relative nominated by, the affected person; or
- (c) a medical practitioner who is familiar with the clinical history of the affected person; or
- (d) a person prescribed by the regulations as being authorised to make such an application;

authorised hospital means premises in respect of which a licence has been granted to any person under Division 2 of Part 1 of Chapter 8;

authorised officer, in relation to **any function conferred or imposed on an authorised officer by this Act**, means a person appointed under section 235 to be an authorised officer and who is entitled to exercise that function;

behaviour, in the definition of **psychosurgery**, does not include:

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

but does include rage attacks, whether or not associated with epilepsy;

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

Board, in Chapter 7, means the Psychosurgery Review Board;

Chief Health Officer means the Chief Health Officer of the Department of Health;

community counselling order means a community counselling order made under section 118 and for the time being in force;

community treatment order means a community treatment order made under section 131 and for the time being in force;

competent interpreter means a person approved by the Director-General for the purposes of this definition or a person who has such qualifications as may be approved by the Director-General for the purposes of this definition;

continued treatment patient means a temporary patient who is classified as a continued treatment patient under section 57 or 59 or a forensic patient who is classified as a continued treatment patient under section 89;

Court means the Supreme Court;

Deputy President, in Chapter 9 and Schedule 6, means a person appointed, for the time being, as a Deputy President of the Tribunal;

determination of the Tribunal, in Chapters 9 and 10, includes an order, direction or decision of the Tribunal;

Director, in relation to a **health care agency**, means the person who, in an order for the time being in force under section 115, is appointed as Director of the agency and, if a Deputy Director is appointed, includes the Deputy Director;

Director-General means the Director-General of the Department of Health;

exercise of a function includes, where the function is a duty, a reference to the performance of the duty;

forensic patient means:

- (a) a person who is detained in a hospital, prison or other place pursuant to an order under section 10 (3) (c), 17 (3), 25, 27 or 39 of the Mental Health (Criminal Procedure) Act 1990 or

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

section 7 (4) of the Criminal Appeal Act 1912 (including that subsection as applied by section 5AA (5) of that Act); or

- (b) a person who is detained in a hospital pending the person's committal for trial for an offence or pending the person's trial for an offence; or
- (c) a person who has been transferred to a hospital while serving a sentence of imprisonment and who has not been classified by the Tribunal as a continued treatment patient;

function includes a power, authority and duty;

guardian, in relation to **the exercise of any function under this Act by the guardian of a person under guardianship within the meaning of the Disability Services and Guardianship Act 1987**, means a guardian who is able to exercise that function;

health care agency means a hospital or other health care service declared by an order under section 114 to be a health care agency;

hospital means:

- (a) any premises the subject of an order in force under section 208 by which the premises are declared to be a hospital; or
- (b) an authorised hospital;

imprisonment includes penal servitude;

informal patient means:

- (a) a person who has been admitted to a hospital under section 12; or
- (b) a person who has been classified as an informal patient under section 54 or 64;

medical superintendent, in relation to:

- (a) **a hospital, other than an authorised hospital**, means the medical practitioner appointed, under section 209, as medical superintendent of the hospital; and
- (b) **an authorised hospital**, means the medical practitioner appointed, under section 220, as medical superintendent of the authorised hospital,

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

and, in Chapter 4, sections 142 and 143 and Division 2 of Part 1 of Chapter 7, includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital or authorised hospital, as the case may be;

member, in Chapter 9 and Schedule 6, means a person appointed, for the time being, as a member of the Tribunal;

member, in Schedule 4, means member of the Psychosurgery Review Board;

mental illness means a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to in paragraphs(a)–(d);

mentally disordered person, for the purposes of this Act set out in section 8, means a person who satisfies the relevant criteria set out in Chapter 3;

mentally ill person, for the purposes of this Act set out in section 8, means a person who satisfies the relevant criteria set out in Chapter 3;

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

nearest relative, in relation to a **patient** (in Division 1 of Part 1 of Chapter 7) or in relation to a **patient or a person under detention in a hospital** (in Part 2 of Chapter 7), means:

- (a) if the patient or person is married and not separated from his or her spouse by order of a court or by agreement - the patient's or person's spouse; or

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

- (b) except as provided by paragraph (c), if the patient or person is not married or is married, but is separated from his or her spouse by order of a court or by agreement, the parents or the surviving parent of the patient or person; or
- (c) if the patient or person is not married but
 - (i) in the case of a man, is living with a woman as her husband on a bona fide domestic basis - the woman; or
 - (ii) in the case of a woman, is living with a man as his wife on a bona fide domestic basis - the man; or
- (d) if it is ascertained, or not able to be ascertained, that the patient or person has no spouse, de facto spouse or surviving parent, or no particulars of the name and whereabouts of any such spouse, de facto spouse or surviving parent may be ascertained - such person, if any, as, in the opinion of the person concerned to identify the nearest relative, has the care, or custody of the patient or person,

but, if the person is a person under guardianship within the meaning of the Disability Services and Guardianship Act 1987, means the person's guardian;

official visitor, in Schedule 5, includes the Principal official visitor;

patient (except in Division 1 of Part 1 of Chapter 7) means a person who is admitted to a hospital in accordance with this Act and who is in the hospital following the person's admission, and includes a person so admitted while absent from a hospital either with or without leave of absence;

patient, in Division 1 of Part 1 of Chapter 7, means a person on whom psychosurgery is or is intended to be performed;

patient's account, in Part 3 of Chapter 8, means the account kept in relation to a patient under section 245 (2);

person who administers a treatment, in Division 2 of Part 1 of Chapter 7, includes a person who causes a treatment to be administered and a person who knowingly permits a treatment to be administered;

person who performs psychosurgery, in Division 1 of Part 1 of Chapter 7, includes a person who causes psychosurgery to be performed and a person who knowingly permits psychosurgery to be performed;

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

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

President, in Chapter 9 and Schedule 6, means the person appointed, for the time being, as the President of the Tribunal;

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

psychiatric case manager means an officer or an employee of a health care agency who is appointed as the psychiatric case manager of an affected person;

psychosurgery means:

- (a) the creation of 1 or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or procedure, when it is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person; or
- (b) the use for such a purpose of intracerebral electrodes to produce such a lesion or lesions, whether on the same or separate occasions; or
- (c) the use on 1 or more occasions of intracerebral electrodes primarily for the purpose of influencing or altering the thoughts, emotions or behaviour of a person by stimulation through the electrodes without the production of a lesion in the brain of the person,

but does not include a neurological procedure carried out for the relief of symptoms of Parkinson's disease;

Psychosurgery Review Board means the body of that name constituted under Division 1 of Part 1 of Chapter 7;

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

responsible person, in Part 3 of Chapter 8, means:

- (a) in relation to a hospital, other than an authorised hospital - the Director-General; and
- (b) in relation to an authorised hospital - the medical superintendent of the authorised hospital;

SCHEDULE 1 - DICTIONARY OF TERMS USED IN THE
ACT - *continued*

special medical treatment, in Part 2 of Chapter 7, means:

- (a) a treatment, procedure, operation or examination that is intended, or is reasonably likely, to have the effect of rendering permanently infertile the person on whom it is carried out; or
- (b) any other medical treatment that is declared by the regulations to be special medical treatment;

surgical operation, in Part 2 of Chapter 7, means a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation;

taking to and detaining in a hospital includes, in relation to a **person who is at, but not detained in accordance with this Act in, a hospital**, the detaining of a person in a hospital;

temporary patient means a person in respect of whom a direction given under section 51 (3) or a determination made under section 57 is in force;

treatment plan, in Chapter 6, means a plan that states:

- (a) in general terms, an outline of proposed treatment, counselling, management, rehabilitation and other services to be provided; and
- (b) in specified terms, the method by which, the frequency with which, and the place at which, the services would be provided, to implement a community counselling order or a community treatment order;

Tribunal means the Mental Health Review Tribunal constituted under Chapter 9;

welfare officer means a person appointed to be a welfare officer under section 242.

**SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON**

(Secs. 21, 22)

MENTAL HEALTH ACT 1990

PART 1

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

of do hereby certify that

on the day of 19....

immediately before or shortly before completing this certificate, at..

.....
(state place where examination/observation took place)

I personally examined/personally observed.....

..... for a period of...
(name of person in full)

.....
(state length of examination/observation)

and I am of the opinion that the person examined/observed by me is a mentally ill person suffering from mental illness/or a mentally disordered person and that there are reasonable grounds for believing/the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care/care, treatment or control of the person is necessary

- (a) in the case of any mentally ill person:
 - (i) for the person's own protection from serious physical harm; or
 - (ii) for the protection of others from serious physical harm; or
- (b) in the case of a mentally ill person who is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

presence of that symptom - for the person's own protection from serious financial harm or serious damage to the person's reputation; or

(c) in the case of a mentally disordered person:

- (i) for the person's own protection from serious physical harm; or
- (ii) for the protection of others from serious physical harm.

I have satisfied myself, by such inquiry as is reasonable having regard to the circumstances of the case, that the person's involuntary admission to and detention in a hospital are necessary and that no other care of a less restrictive kind is appropriate and reasonably available to the person.

Incidents and/or abnormalities of behaviour and conduct (a) observed by myself and (b) communicated to me by others (state name, relationship and address of each informant) are:

(a)

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

(b)

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

The general medical and/or surgical condition of the person is as follows:

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

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

The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

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

I am not a near relative of the person.

I have/do not have a pecuniary interest, directly or indirectly, in an authorised hospital. I have/do not have a near relative/partner/assistant who has such an interest. Particulars of the interest are as follows:

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

Made and signed this day of 19

Signature

PART 2

If the assistance of a member of the Police Force is required, this part of the Form should be completed.

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

I am of the opinion, in relation to

.....
(name of person in full)

- (a) that the condition of the person is such that the assistance of a member of the Police Force is required in order to take the person to a hospital; and
- (b) that no other means of taking the person to a hospital are reasonably available.

Made and signed this day of 19 ...

Signature

NOTES:

1. Chapter 3 of the Mental Health Act 1990 states:

Criteria for involuntary admission etc, as mentally ill person or mentally disordered person

8. A person is a mentally ill person or a mentally disordered person for the purpose of:

- (a) the involuntary admission of the person to a hospital or the detention of the person in a hospital under this Act; or
- (b) determining whether the person should be subject to a community treatment order or be detained or continue to be detained involuntarily in a hospital,

if, and only if, the person satisfies the relevant criteria set out in this Chapter.

Mentally ill persons

9. (1) A person is a mentally ill person if the person is suffering from mental illness and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary

- (a) for the person's own protection from serious physical harm; or

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

(b) for the protection of others from serious physical harm, and a person is also a mentally ill person if the person is suffering from mental illness which is characterised by the presence in the person of the symptom of a severe disturbance of mood or the symptom of sustained or repeated irrational behaviour indicating the presence of that symptom and, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious financial harm or serious damage to the person's reputation.

(2) In considering whether a person is a mentally ill person, the continuing condition of the person is to be taken into account.

(3) In this section, "**damage to the person's reputation**" includes damage to the person's reputation among those with whom the person has important personal relationships, where the damage is likely to cause lasting or irreparable harm to any such relationship.

Mentally disordered persons

10. A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary:

- (a) for the person's own protection from serious physical harm;
or
- (b) for the protection of others from serious physical harm.

Certain words or conduct may not indicate mental illness or disorder

11. (1) A person is not a mentally ill person or a mentally disordered person merely because of any one or more of the following:

- (a) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular political opinion or belief;

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

- (b) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express or has expressed or refused or failed to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular political activity;
- (f) that the person engages in or refuses or fails to engage in, or has engaged in or refused or failed to engage in, a particular religious activity;
- (g) that the person engages in or has engaged in sexual promiscuity
- (h) that the person engages in or has engaged in immoral conduct;
- (i) that the person engages in or has engaged in illegal conduct;
- (j) that the person has developmental disability of mind;
- (k) that the person takes or has taken alcohol or any other drug;
- (l) that the person engages in or has engaged in anti-social behaviour.

(2) Nothing in this Chapter prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness or other condition of disability of mind.

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

SCHEDULE 2 - MEDICAL CERTIFICATE AS TO
EXAMINATION OR OBSERVATION OF PERSON - *continued*

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

3. In the Mental Health Act 1990 "mental illness" is defined as follows:

mental illness means a condition which seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms:

- (a) delusions;
- (b) hallucinations;
- (c) serious disorder of thought form;
- (d) a severe disturbance of mood;
- (e) by sustained or repeated irrational behaviour indicating the presence of any of the symptoms referred to in paragraphs (a)–(d).

4 In the Mental Health Act 1990 "near relative" is defined as follows:

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

5. For admission purposes, this certificate is valid only for a period of 5 days, in the case of a person who is a mentally ill person, or 1 day, in the case of a person who is a mentally disordered person, after the date on which the certificate is given.

SCHEDULE 3 - MEDICAL CERTIFICATE AS TO
EXAMINATION OF PRISONER

(Secs. 97, 98)

MENTAL HEALTH ACT 1990

I (*Medical Practitioner/Psychiatrist)
(name in full - use block letters)

of..... do hereby certify

SCHEDULE 3 - MEDICAL CERTIFICATE AS TO
EXAMINATION OF PRISONER - *continued*

that on the day of 19

at.....

(state name of prison where examination took place)

separately from any other medical practitioner, I personally
examined..... and I am of the

(name of prisoner in full)

the opinion that *he/she is *mentally ill/suffering from a mental
condition for which treatment is available in a hospital.

I have formed this opinion on the following grounds:

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

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

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

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

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

Signature

* Delete whichever does not apply.

SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD

(Sec. 152)

Members

1. (1) The Board is to consist of 7 part-time members appointed by the Minister.

(2) The members are to consist of:

- (a) a person appointed by the Minister as President of the Board, being
 - (i) a barrister of not less than 5 years' standing; or
 - (ii) a solicitor of not less than 7 years' standing, or
 - (iii) a barrister or solicitor of less than 5 years' or 7 years' standing, respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when not on the roll of barristers or on the roll of barristers when not on the roll of solicitors; and
- (b) a neurosurgeon selected from a panel of 3 neurosurgeons nominated by the Royal Australasian College of Surgeons; and
- (c) a neurologist or a neuroscientist, being a neurologist or a neuroscientist selected from a panel of 3 neurologists or neuroscientists nominated by the Royal Australasian College of Physicians; and
- (d) a clinical psychologist selected from a panel of 3 clinical psychologists nominated by the Australian Psychological Society and
- (e) a person selected from a panel of 3 persons nominated by the New South Wales Council for Civil Liberties; and
- (f) 2 psychiatrists, 1 of whom is to be selected from a panel of 3 psychiatrists nominated by the Australian and New Zealand College of Psychiatrists.

(3) If a nomination of a panel of persons is not made within the time or in the manner specified by the Minister in a notice in writing given to the body entitled to nominate the panel, the Minister may appoint to be a member, instead of the person required to be appointed from that panel, a person who, in the opinion of the Minister, holds an appropriate qualification.

SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND
MEETINGS OF OF THE PSYCHOSURGERY REVIEW
BOARD - *continued*

Deputy President

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

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

Deputies

3. (1) The Minister may, from time to time, appoint as the deputy of a member a person who holds the same qualifications, if any, and is nominated in the same manner, if any, as the person for whom he or she is the deputy.

(2) In the absence of a member, the member's deputy:

(a) is, if available, to act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be a member.

(3) Subject to clause 2 (2), the deputy of a member who is President or Deputy President of the Board has the member's functions as President or Deputy President, as the case may be.

(4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Term of office of member

4 (1) Subject to this Schedule, a member is to hold office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

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

SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND
MEETINGS OF THE PSYCHOSURGERY REVIEW
BOARD - *continued*

Remuneration of and allowances for members

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

Vacancy in office of member

6. (1) The office of a member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) engages directly in the practice of psychosurgery; or
- (i) holds office as a member for a total period in excess of 8 years.

(2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

7. If the office of a member becomes vacant, a person who holds the same qualification, if any, and is nominated in the same manner, if any, as the member whose office has become vacant is, subject to this Act, to be appointed to fill the vacancy.

**SCHEDULE 4 - CONSTITUTION, MEMBERSHIP AND
MEETINGS OF THE PSYCHOSURGERY REVIEW
BOARD - *continued***

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 5 - PROVISIONS RELATING TO PRINCIPAL
OFFICIAL VISITOR AND OFFICIAL VISITORS**

(Sec. 229)

Terms of office

1. Subject to this Schedule, an official visitor holds office for such period (not exceeding 3 years) as may be specified in the official visitor's instrument of appointment but is eligible (if otherwise qualified) for re-appointment

Remuneration

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

SCHEDULE 5 - PROVISIONS RELATING TO PRINCIPAL
OFFICIAL VISITOR AND OFFICIAL VISITORS - *continued*

Vacancy in office of member

3. (1) The office of an official visitor becomes vacant if the official visitor:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (f) becomes a mentally incapacitated person; or
- (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
- (h) being the Principal official visitor or an official visitor appointed for an authorised hospital, has a pecuniary interest, directly or indirectly, in an authorised hospital; or
- (i) signs a certificate or request for the admission of a person to a hospital or attends professionally on a patient in a hospital.

(2) The Minister may remove an official visitor from office at any time.

Effect of certain other Acts

4. (1) The Public Sector Management Act 1988 does not apply to the appointment of an official visitor and an official visitor is not, as an official visitor, subject to that Act (except Part S).

SCHEDULE 5 - PROVISIONS RELATING TO PRINCIPAL OFFICIAL, VISITOR AND OFFICIAL VISITORS - *continued*

- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of an official visitor or from accepting and retaining any remuneration payable to the person under this Act as an official visitor.

(3) The office of an official visitor is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF THE TRIBUNAL

(Sec. 252 (3))

Qualifications

1. (1) A person is qualified to be appointed as the President or a Deputy President if the person is:

- (a) a barrister of not less than 5 years' standing or
- (b) a solicitor of not less than 7 years' standing or
- (c) a barrister or solicitor of less than 5 years' or 7 years' standing, respectively, where at all times during a continuous period of not less than 7 years that person was on the roll of solicitors when not on the roll of barristers or on the roll of barristers when not on the roll of solicitors.

(2) A person may not be appointed as the President or a Deputy President unless the person has been in practice as a barrister or a solicitor, or has held some judicial or legal office under the Crown in right of the Commonwealth or this State or any other State or a Territory of the Commonwealth, within 2 years immediately preceding the person's appointment.

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

Term of office of members

2. Subject to this Schedule, a member is to hold office for such period (not exceeding 7 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment

Duties of full-time members

3. A full-time member must devote the whole of his or her time to the duties of the office of member, except as permitted by this Act or except with the consent of the Minister.

Remuneration and allowances for members

4. (1) The President, a Deputy President and any other full-time member are entitled to be paid:

- (a) such remuneration as the Governor may from time to time determine in respect of the member; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the member.

(2) A part-time member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

Deputy Presidents

5. (1) A Deputy President, while holding office as a Deputy President, has, subject to the conditions of appointment specified in the instrument of appointment and to any direction given by the President, the powers, authorities, privileges and immunities of and is to perform the duties of the President

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

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

Deputies

6. (1) The Minister may, from time to time, appoint as the deputy of a member, a person who holds the same qualifications, if any, as are required to be held by the person for whom he or she is the deputy.

(2) In the absence of a member, the member's deputy

(a) is, if available, to act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be the member.

(3) Subject to clause 5 (1), the deputy of a member who is the President or a Deputy President has the member's functions as President or Deputy President, as the case may be.

(4) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Vacancy in office of member

7. (1) The office of a member becomes vacant if the member:

(a) dies; or

(b) completes a term of office and is not re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or

(e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

(f) becomes a mentally incapacitated person; or

(g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

an offence which, if committed in New South Wales, would be an offence so punishable; or

(h) being a full-time member, engages in any paid employment outside the duties of the office of member, except with the consent of the Minister.

(2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

8. If the office of a member becomes vacant, a person who holds the same qualification, if any, as the member whose office has become vacant is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

9. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; and

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as such a part-time member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

Preservation of rights of member previously public servant etc.

10. (1) In this clause:

"statutory body" means any body declared under clause 12 to be a statutory body for the purposes of this Schedule;

"superannuation scheme" means a scheme, fund or arrangement established by an Act under which any superannuation or retirement benefits are provided.

(2) This clause applies to a member who, immediately before being appointed as a member, was:

- (a) an officer of the Public Service or a Teaching Service; or
- (b) a contributor to a superannuation scheme; or
- (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.

(3) Subject to the terms of the member's appointment, the member:

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

as if the member had continued to be such an officer, contributor or person during his or her service as a member.

(4) Service as a member is to be regarded as service as an officer or employee for the purpose of any law under which any such rights accrued or were accruing, under which he or she continues to contribute to any such superannuation scheme or by which any such entitlement is conferred.

(5) For the purposes of the superannuation scheme to which the member is entitled to contribute under this clause, the member is to be regarded as an officer or employee and the Health Administration Corporation is to be regarded as the employer.

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

(6) If a member would, but for this subclause, be entitled under subclause (3) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:

- (a) he or she is not so entitled on becoming (whether on appointment as a member or at any later time while holding office as a member) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (5) 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.

(7) Subclause (6) does not prevent the payment to a member (on 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.

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

Member entitles to re-appointment fo former employment in certain cases

11. (1) In this clause, "**statutory body**" means any body declared under clause 12 to be a statutroy body for the purposes of this Schedule.

(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; and
- (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,

is 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

SCHEDULE 6 - PROVISIONS RELATING TO MEMBERS OF
THE TRIBUNAL - *continued*

be, not lower in classification and salary than that which the person held immediately before being appointed as a member.

(3) If 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 has 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 on by the person and by or on behalf of the Government.

Declaration of statutory bodies

12. 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.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS

(Sec. 303)

Part 1 - General

Definitions

1. In this Schedule:

"**appointed day**", in relation to a provision of this Schedule (except Part 3), means the day on which the provision commences;

"**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.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, the Mental Health (Criminal Procedure) Act 1990 and the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990.

(2) Without limiting subclause (1), the regulations may continue in force an Act or a provision of an Act repealed by Schedule 1 to the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990 until such date as may be specified in the regulations, in the same manner as if that Act or provision had not been repealed.

(3) In the event of an inconsistency between an Act or provision continued in force by subclause (2) and a provision of this Act, the Mental Health (Criminal Procedure) Act 1990, the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990 or the Protected Estates Act 1983, this Act, the Mental Health (Criminal Procedure) Act 1990, the Miscellaneous Acts (Mental Health) Repeal and Amendment Act 1990 or the Protected Estates Act 1983, as the case may be, prevails to the extent of the inconsistency.

(4) Any provision of a regulation made under this section may, if the regulations so provide, take effect from the date of assent to this Act or a later day.

(5) To the extent to which any such provision 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; 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.

General savings

3. (1) Any act, matter or thing done or omitted to be done under a provision of the 1958 Act or the 1983 Act or Part 11A or 11B of the Crimes Act 1900 and having any force or effect immediately before the

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

commencement of a provision of this Act or the Mental Health (Criminal Procedure) Act 1990 that replaces that provision is, on that commencement, to be considered to have been done or omitted under the provision of this Act or the Mental Health (Criminal Procedure) Act 1990.

- (2) Subclause (1) does not apply
 - (a) to the extent that its application would be inconsistent with another provision of this Schedule or with a provision of a regulation in force under clause 2; or
 - (b) to the extent that its application would be inappropriate in a particular case.

Part 2 - Hospitals, patients etc.

Hospitals

- 4 (1) A place which was, immediately before the appointed day
 - (a) an admission centre; or
 - (b) a mental hospital,

under the 1958 Act is to be taken to be a hospital for the purposes of this Act.

(2) A place which was, immediately before the appointed day, an authorised hospital under the 1958 Act is to be taken to be an authorised hospital for the purposes of this Act.

(3) A licence in force, immediately before the appointed day, under section 11 (1) of the 1958 Act is to be taken to be a licence issued under section 212 of this Act.

Medical superintendents and deputy medical superintendents

5. (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 is to be taken to have been appointed as the medical superintendent of the hospital which, pursuant to clause 4, the admission centre or mental

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

hospital is taken to be, and to have been so appointed under section 209 of this 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 is to be taken to have been appointed as the deputy medical superintendent of the hospital which, pursuant to clause 4, the admission centre or mental hospital is taken to be, and to have been so appointed under section 210 of this Act.

Authorised officers

6. A person whose appointment under section 7 of the 1958 Act or section 28 of the 1983 Act as an authorised officer was in force immediately before the appointed day is to be taken to have been appointed as an authorised officer under section 235 of this Act.

Welfare officers

7. A person whose appointment under section 34 of the 1958 Act or section 33 of the 1983 Act as a welfare officer was in force immediately before the appointed day is to be taken to have been appointed as a welfare officer under section 242 of this Act.

Patients

8. (1) A person who, immediately before the appointed day, was a voluntary patient of an admission centre, mental hospital or authorised hospital is to be taken to be, on and from that day, subject to this Act, an informal patient of the hospital which pursuant to clause 4, the admission centre, mental hospital or authorised hospital is taken 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 is to be taken to be a person who, under Part 2 of Chapter 4 of this Act, has been taken to and detained in the hospital which, pursuant to clause 4, the admission centre is taken to be.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

(3) A person who, immediately before the appointed day, was a temporary patient of a mental hospital or authorised hospital is to be taken to be, on and from that day, subject to this Act, a temporary patient of the hospital which, pursuant to clause 4, the mental hospital or authorised hospital is taken to be.

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

(5) A person who, immediately before the appointed day, was or was taken to be a forensic patient under the 1983 Act is to be taken to be, on and from that day, subject to this Act, a forensic patient under this Act.

Leave of absence

9. (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 is to be taken to be a period of absence allowed to the patient under section 71 of this 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 on which the patient was so allowed to be absent,

may be apprehended and dealt with under this Act.

(3) A period of special leave of absence granted to a forensic patient under section 129 of the 1983 Act which, immediately before the appointed day, had not expired is to be taken to be a period of special leave of absence granted to the patient under section 92 of this Act

(4) A patient who, before the appointed day, has broken any term or condition on which special leave of absence was granted to the patient under section 129 of the 1983 Act may be apprehended and dealt with as provided by section 93 of this Act.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

Unlawful absences

10. (1) A patient (other than a person detained in a mental hospital pursuant to Part 11A or 11B of the Crimes Act 1900) 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 76 of this Act.

(2) A person detained in a hospital pursuant to Part 11A or 11B of the Crimes Act 1900 who, before the appointed day, has escaped from the hospital may be retaken and dealt with as provided by section 111 of this Act.

(3) Any recommendation made, before the appointed day, by the Tribunal that a forensic patient under the 1983 Act be allowed to be absent from a hospital, and any order made by the Minister or a prescribed authority (within the meaning of that Act) as a result of such a recommendation, is to be taken to have been validly made under this Act.

(4) A forensic patient who breaches any term or condition subject to which leave of absence was granted before the appointed day, or who is absent from a hospital after the term of any such leave expires, may be apprehended and dealt with under this Act.

Pending proceedings

11. Any proceedings pending, immediately before the appointed day, under the 1958 Act or the 1983 Act before any court, tribunal or person:

- (a) are to be taken to be proceedings pending before the court, tribunal or person before which or whom those proceedings could be brought under this Act if those proceedings had been commenced on or after that day; and
- (b) are to be continued before and disposed of by the court, tribunal or person referred to in paragraph (a) accordingly.

Trust funds

12. (1) A Patients Trust Fund kept, immediately before the appointed day, under section 101A of the 1958 Act is to be taken to

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

be a Patients Trust Fund established and maintained under section 244 of this Act.

(2) A Patients Amenities Account kept, immediately before the appointed day, under section 101B of the 1958 Act is to be taken to be a Patients Amenities Account established and maintained under section 244 of this Act.

Mental Health Review Tribunal

13. (1) The appointment of a person under the 1983 Act as a member of the Mental Health Review Tribunal is, if the appointment was in force immediately before the appointed day, to be considered to be an appointment under this Act.

(2) Any decision, determination, recommendation or finding made or other thing done by the Mental Health Review Tribunal under the 1983 Act and having any force or effect immediately before the appointed day is to be considered to have been made or done by the Tribunal under this Act.

Psychosurgery Review Board

14. (1) The appointment of a person under the 1983 Act as a member of the Psychosurgery Review Board is, if the appointment was in force immediately before the appointed day, to be considered to be an appointment under this Act.

(2) Any decision, determination or finding made or other thing done by the Psychosurgery Review Board under the 1983 Act and having any force or effect immediately before the appointed day is to be considered to have been made or done by the Board under this Act.

Existing psychosurgery applications and consents etc.

15. (1) An application, made to the Psychosurgery Review Board under Division 1 of Part 10 of the 1983 Act for its consent to the performance of psychosurgery and not determined immediately before the appointed day, is to be dealt with under Division 1 of Part 1 of Chapter 7 of this Act as if the application were made under this Act.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

(2) A consent to an application given under Division 1 of Part 10 of the 1983 Act that has not lapsed immediately before the appointed day:

- (a) has effect as if the consent was granted under Division 1 of Part 1 of Chapter 7 of this Act; and
- (b) if the psychosurgery the subject of the consent is not performed within the time specified in the consent, lapses on the day on which it would have lapsed under the 1983 Act.

Order for transfer from prison to hospital

16. An order made by the Chief Health Officer for the transfer of a person from a prison to a hospital under Part 7 of the 1983 Act, and in force immediately before the appointed day, is to be taken to have been made under this Act and has effect according to its tenor.

Orders by prescribed authorities

17. An order made by a prescribed authority under a provision of Part 7 of the 1983 Act and in force immediately before the appointed day:

- (a) is to be taken to have been made under the corresponding provision of this Act; and
- (b) has effect according to its tenor.

Examination by Supreme Court

18. A person ordered to be brought before the Court for examination under section 139 of the 1983 Act, who is not examined before the appointed day, is to be examined and dealt with under the corresponding provision of this Act.

Assessors

19. The appointment of a person under Part 8 of the 1983 Act as an assessor is, if the appointment was in force before the appointed day, to be considered to be an appointment under this Act.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Part 3 - Estates Act

Definitions

20. (1) Expressions used in this Part have the same meanings as in the Estates Act.

(2) In this Part, "**appointed day**" means 5 August 1985 (the day appointed and notified under section 2 (2) of the Estates Act).

Protected persons and incapable persons under the 1958 Act

21. If, immediately before the appointed day, a person was a protected person, or an incapable person, within the meaning of the 1958 Act, an order is to be taken to have been 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

22. 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 continues in force and may be revoked as if the declaration were made under section 13 of the Estates Act.

Committee of manager appointed under the 1958 Act

23. 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, is to be taken to have been 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

24. If, 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 is to be taken to have been,

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

on the appointed day, committed to the Protective Commissioner under section 22 of the Estates Act.

Patients under the 1958 Act

25. (1) If, immediately before the appointed day, a person was a patient (other than a voluntary patient) within the meaning of the 1958 Act, an order is to be taken to have been made under the Estates Act, on that day, by the Tribunal that the estate of the person was subject to management under the Estates Act and the estate of the person is to be taken to have been committed under the Estates Act, on that day, to the management of the Protective Commissioner.

(2) If:

- (a) before the appointed day, a person had been, 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 is, for the purposes of the Estates Act, to be taken 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 had been, but ceased on that day to be, a patient within the meaning of this Act.

Orders etc. under the 1958 Act

26. An order or direction made or given under Part 11 or 13 of the 1958 Act in respect of a person to whom Part 10 or 11 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 commencement of this clause, is subject to any order or direction made under the Estates Act.

Applications made under the 1958 Act

27. An application made under the 1958 Act and not finally determined before the commencement of this clause:

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

- (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) is, unless withdrawn, to be determined as if it had been made under the Estates Act.

Proclamations under the 1958 Act

28. (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 commencement of this clause, being a proclamation which extended the provisions of that section to a country, is to be taken 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.

(2) A proclamation published in the Gazette under section 100 of the 1958 Act and in force immediately before the commencement of this clause, 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 12 of the 1958 Act is to be taken 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 6 of the Estates Act.

Protective Commissioner and other officers

29. (1) The repeal 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 who holds that office immediately before the commencement of this clause.

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

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Security or recognizance under the 1958 Act

30. Any security or bond given, and any recognizance entered into, under the 1958 Act is to be taken 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

31. 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

32. (1) The trust fund to which money paid into the Treasury under the 1958 Act was credited is to 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.

(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 commencement of this clause is to be taken 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 are, respectively, 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 are the respective balances on that day.

Personal effects and money unclaimed before appointed day

33. 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 are, until recovered from the Treasurer, to be taken to be proceeds or money to which section 44 of the Estates Act applies.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Trust or other interest affected by dealing under the 1958 Act

34. 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.

Certain estates subject to management under the Estates Act

35. (1) If, immediately before the appointed day, the Protective Commissioner was administering the affairs of a voluntary patient under the 1958 Act, the estate of the patient on and from that day, subject to the Estates Act, is to be taken to have become subject to management under section 63 of the Estates Act.

(2) If:

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

the estate of the person is, on and from that day, subject to the Estates Act, to be taken to have become subject to management under section 41 (2) of the Estates Act.

(3) If, under section 61 of the 1958 Act, the Protective Commissioner had the management and care of the property of a mentally ill person detained in a mental hospital, the estate of the person is, on and from the appointed day, to be taken to have become, for the purposes of the Estates Act, subject to management under the Estates Act.

Construction of references relating to the Estates Act

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

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

that day), in any instrument made under an Act or in any other instrument of any kind:

- (a) to a protected person or an incapable person, or both, within the meaning of the 1958 Act - is to be read as a reference to a protected person within the meaning of the Estates Act; or
- (b) to an incapable person or an insane person, or both, within the meaning of the 1898 Act - is to be read as a reference to a protected person within the meaning of the Estates Act; or
- (c) to a committee of an estate or a manager of an estate within the meaning of the 1958 Act - is to be read as a reference to a manager of an estate appointed under the Estates Act; or
- (d) to a committee of a person within the meaning of the 1958 Act - is to be read as a reference to a guardian of a person appointed under the Estates Act; or
- (e) to a committee of an estate or a manager of an estate within the meaning of the 1898 Act - is to be read as a reference to a manager of an estate appointed under the Estates 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), in any instrument made under an Act or in any other instrument of any kind:

- (a) to 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 - is, in so far as it relates to the powers and duties conferred on the Master by or under any Act (other than the Supreme Court Act 1970) or by any order of that Court - is to be read as a reference to the Protective Commissioner; or
- (b) to the Deputy Master in the Protective Jurisdiction of the Supreme Court of New South Wales - is to be read as a reference to the Protective Commissioner; or
- (c) to the Chief Clerk in the Protective Jurisdiction of the Supreme Court of New South Wales or the Protective Chief Clerk - is to be read as a reference to the Deputy Protective Commissioner.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Part 4 - Construction of references

Construction of certain references

37. (1) On and from the appointed day, a reference (however expressed) in any other Act (whether assented to before, on or after that day), in any instrument made under an Act or in any other instrument of any kind

- (a) to an admission centre or a mental hospital, or both, within the meaning of the 1958 Act - is to be read as a reference to a hospital within the meaning of this Act; or
- (b) to an authorised hospital within the meaning of the 1958 Act - is to be read as a reference to an authorised hospital within the meaning of this Act; or
- (c) to 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 - is to be read as a reference to a hospital within the meaning of this Act; or
- (d) to a licensed house within the meaning of the 1898 Act - is to be read as a reference to an authorised hospital within the meaning of this 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), in any instrument made under an Act or in any other instrument of any kind:

- (a) to a mentally ill person within the meaning of the 1958 Act - is to be read as a reference to a mentally ill person within the meaning of Chapter 3 of this Act; or
- (b) to a voluntary patient within the meaning of the 1958 Act - is to be read as a reference to an informal patient within the meaning of this Act; or
- (c) to a temporary patient within the meaning of the 1958 Act - is to be read as a reference to a temporary patient within the meaning of this Act; or
- (d) to a continued treatment patient within the meaning of the 1958 Act - is to be read as a reference to a continued treatment patient within the meaning of this Act; or

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER PROVISIONS - *continued*

- (e) to a person under detention under Part 7 of the 1958 Act - is to be read as a reference to a forensic patient within the meaning of this Act; or
- (f) to a forensic patient within the meaning of the 1983 Act - is to be read as a reference to a forensic patient within the meaning of this Act; or
- (g) to a patient within the meaning of the 1958 Act - is to be read as a reference to a patient (other than an informal patient) within the meaning of this Act; or
- (h) to a person detained in an admission centre under section 12 of the 1958 Act - is to be read as a reference to a person taken to and detained in a hospital under Part 2 of Chapter 4 of this Act; or
- (i) to a patient or an insane patient, or both, within the meaning of the 1898 Act - is to be read as a reference to a patient (other than an informal patient) within the meaning of this Act; or
- (j) to a lunatic within the meaning of the 1898 Act - is to be read as a reference to a mentally ill person within the meaning of Chapter 3 of this 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), in any instrument made under an Act or in any other instrument of any kind:

- (a) to a provision of the 1958 Act or of the 1898 Act - is, except as provided by paragraph (c), to be read as a reference to the corresponding provision, if any, of this Act or of the Estates Act, as the case requires; or
- (b) to the 1958 Act or the 1898 Act - is, except as provided by paragraph (c), to be read as a reference to this Act or the Estates Act, as the case requires; or
- (c) to the keeping in strict custody pursuant to section 23 (3) of the 1958 Act of any person - is to be read as a reference to the detention of that person in strict custody pursuant to section 25 or 39, as the case requires, of the Mental Health (Criminal Procedure) Act 1990.

SCHEDULE 7 - SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS - *continued*

Part 5 - Other provisions

Persons released on licence

38. (1) A person who, immediately before the appointed day, was a person released on licence pursuant to an order that was still in force and made under section 29 of the 1958 Act:

- (a) is to be taken to be a forensic patient released pursuant to an order made under section 84 of this Act; and
- (b) is to be taken to be a forensic patient within the meaning of this Act until such time as the person ceases, by the operation of this Act, to be a forensic patient.

(2) A person who, immediately before the appointed day, was a person detained in a hospital whose release on licence pursuant to an order made under section 29 of the 1958 Act had been revoked is to be taken to be a forensic patient within the meaning of this Act.

(3) An order referred to in subclause (1) made under section 29 of the 1958 Act that was still in force immediately before the appointed day

- (a) on and from that commencement, has effect as if the order were made under section 84 of this Act; and
 - (b) may be revoked or varied in the same way as an order made under that section.
-

EXPLANATORY NOTE

The following Tables set out the way in which mentally ill persons or other persons suffering from a mental condition are dealt with in criminal proceedings and the functions of the Tribunal in relation to such proceedings. The Tables are provided merely as a guide and do not form part of this Act and are not intended to have any legislative effect. The statutory provisions referred to in the Tables are contained in this Act and the Mental Health (Criminal Procedure) Act 1990.

TABLE 1—PERSONS FOUND NOT GUILTY BY REASON OF MENTAL ILLNESS

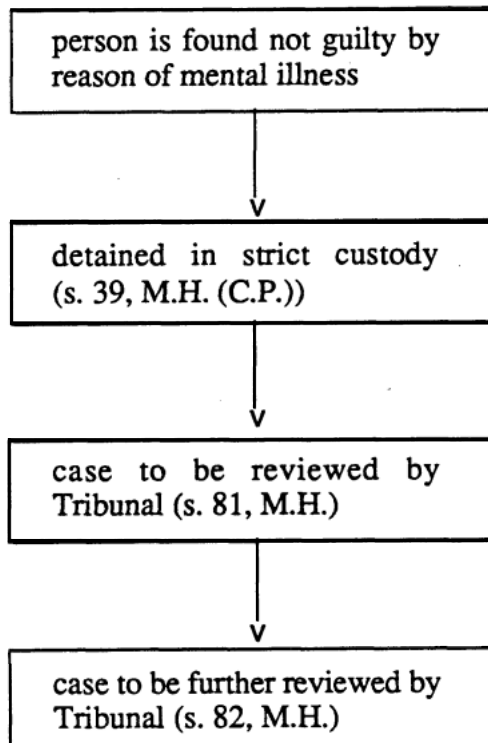
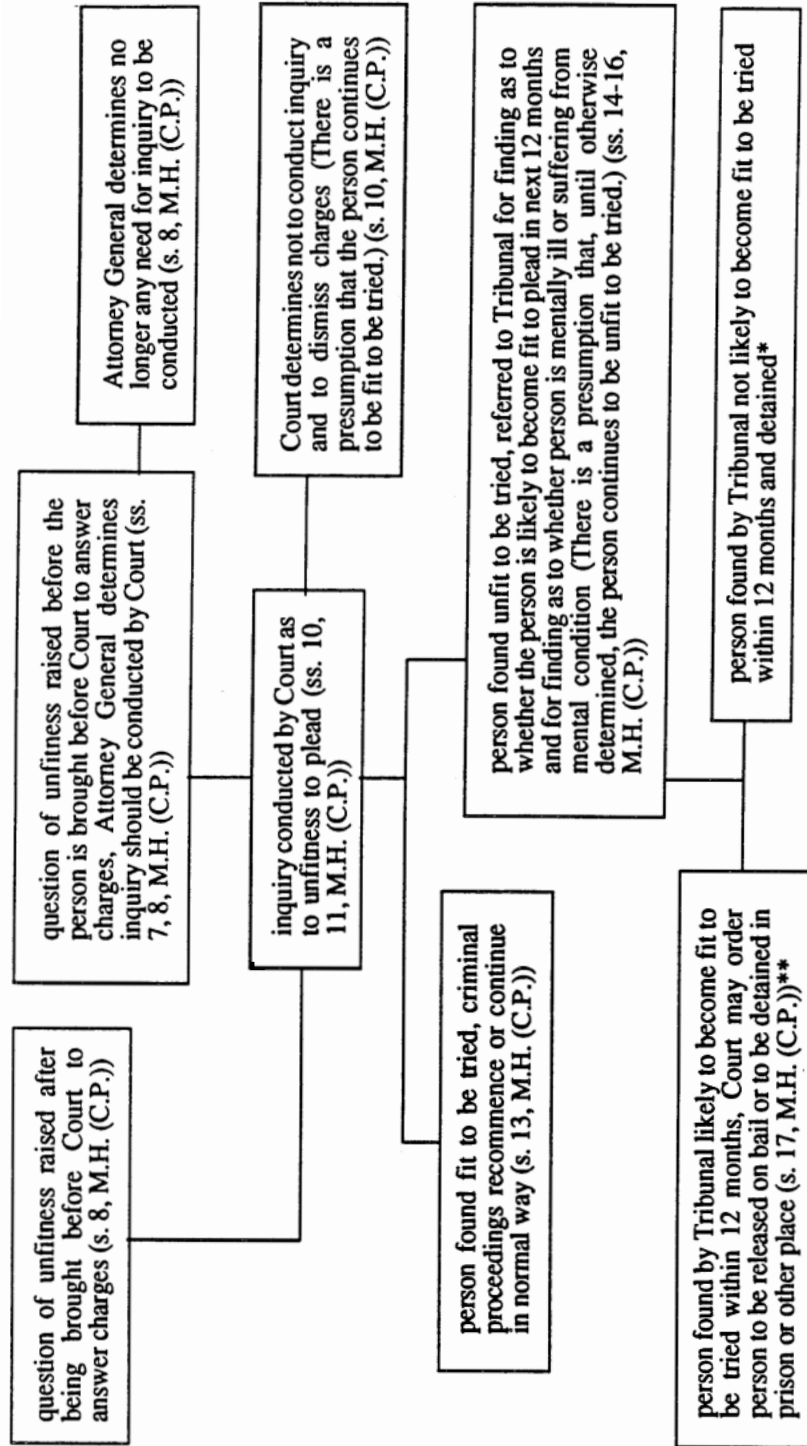


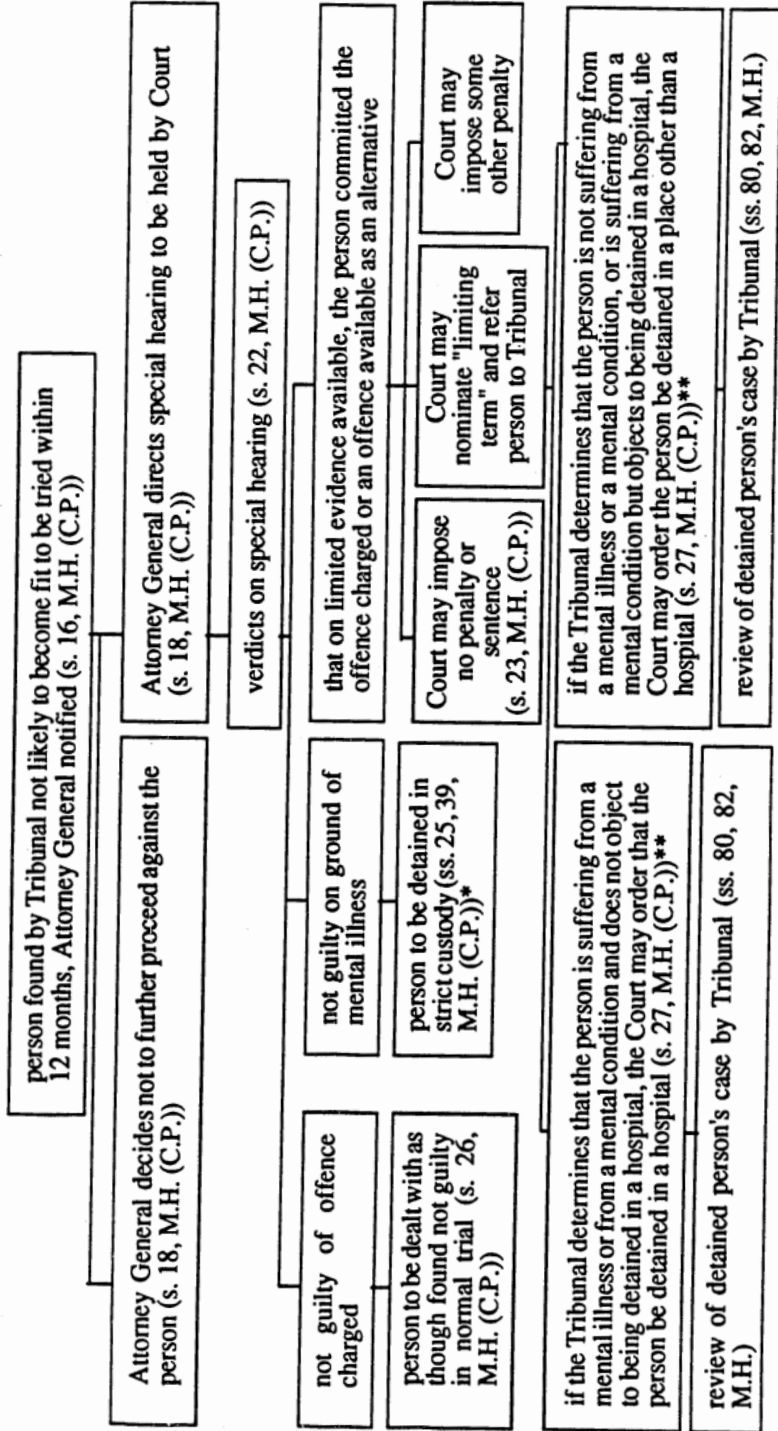
TABLE 2—PERSONS WHO MAY BE UNFIT TO PLEAD



* Note: See Table 3 for consequences of such a finding.

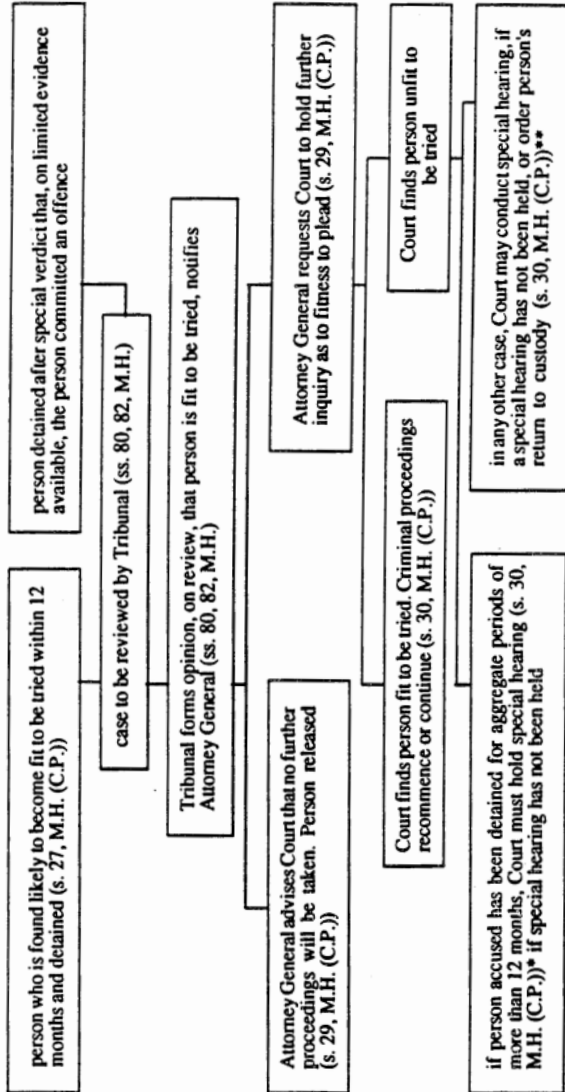
** Note: See Table 4 for effects of the review of such a person's case. The person is a forensic patient. See section 102 for circumstances when the person ceases to be a forensic patient.

TABLE 3—PERSONS FOUND BY TRIBUNAL NOT LIKELY TO BE FIT TO BE TRIED WITHIN 12 MONTHS



* Note: The person is a forensic patient. See section 101 for circumstances when the person ceases to be a forensic patient.
 ** Note: The person is a forensic patient. See section 103 for circumstances when the person ceases to be a forensic patient.

TABLE 4—EFFECTS OF REVIEW OF CASES AND DETERMINATION BY TRIBUNAL THAT A PERSON IS FIT TO BE TRIED



* Note: See Table 3 for results of special hearing.

** Note: The person is a forensic patient. For circumstances when the person ceases to be a forensic patient, see section 102 (where there has not been a special hearing) or section 103 (where there has been a special hearing).

[Minister's second reading speech made in -
 Legislative Assembly on 4 April 1990
 Legislative Council on 8 May 1990]