

**MENTAL HEALTH ACT, 1983, No. 178**

**New South Wales**



ANNO TRICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No. 178, 1983.**

An Act to make provision with respect to the care, treatment and control of persons who are mentally ill. [Assented to, 31st December, 1983.]

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See also Protected Estates Act, 1983; Crimes (Mental Disorder) Amendment Act, 1983; Miscellaneous Acts (Mental Health) Repeal and Amendment Act, 1983.

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**Preamble.**

**WHEREAS** it is recognised:—

- (a) that the provision of services in respect of persons with mental illness requires both community care facilities and hospital facilities;
- (b) that hospital care should be provided on an informal and voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis; and
- (c) that the civil rights of persons should be protected and, at the same time, that opportunity should be given for persons with mental illness to have access to appropriate care:

**BE** it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**PART I.****PRELIMINARY.****Short title.**

1. This Act may be cited as the "Mental Health Act, 1983".

**Commencement.**

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.  
(2) Except as provided by subsection (1), the several provisions of this Act shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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**Arrangement.**

3. This Act is divided as follows:—

PART I.—PRELIMINARY—*ss.* 1–6.

PART II.—ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS—*ss.* 7–35.

DIVISION 1.—*Hospitals other than authorised hospitals—ss.* 7–9.

DIVISION 2.—*Authorised hospitals—ss.* 10–21.

DIVISION 3.—*Official visitors—ss.* 22–27.

DIVISION 4.—*Authorised officers—ss.* 28–32.

DIVISION 5.—*Welfare officers—ss.* 33, 34.

DIVISION 6.—*Miscellaneous—s.* 35.

PART III.—MENTAL HEALTH REVIEW TRIBUNAL—*ss.* 36–62.

DIVISION 1.—*Constitution and functions—ss.* 36–41.

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PART IV.—INFORMAL ADMISSION OF PERSONS TO HOSPITALS—*ss.* 63–70.

PART V.—INVOLUNTARY ADMISSION OF PERSONS (OTHER THAN FORENSIC PATIENTS) TO HOSPITALS—*ss.* 71–99.

PART VI.—REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PATIENTS (OTHER THAN FORENSIC PATIENTS)—*ss.* 100–116.

PART VII.—FORENSIC PATIENTS—*ss.* 117–133.

PART VIII.—JURISDICTION OF THE SUPREME COURT—*ss.* 134–140.

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**PART X.—CARRYING OUT OF CERTAIN MEDICAL OR THERAPEUTIC TREATMENTS—ss. 146–183.**

DIVISION 1.—*Psychosurgery—ss. 146–162.*

DIVISION 2.—*Electro convulsive therapy and certain prescribed treatments—ss. 163–173.*

DIVISION 3.—*Surgical operations—ss. 174–179.*

DIVISION 4.—*Prohibited, restricted and other treatments—ss. 180–183.*

**PART XI.—MISCELLANEOUS—ss. 184–198.****SCHEDULE 1.—PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND OFFICIAL VISITORS.****SCHEDULE 2.—PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.****SCHEDULE 3.—MEDICAL CERTIFICATE AS TO EXAMINATION OR OBSERVATION OF PERSON.****SCHEDULE 4.—MEDICAL CERTIFICATE AS TO EXAMINATION OF PRISONER.****SCHEDULE 5.—CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD.****Interpretation.**

**4. (1)** In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

“authorised hospital” means premises in respect of which a licence granted to any person under Division 2 of Part II is for the time being in force;

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“authorised officer”, in relation to any function conferred or imposed on an authorised officer by this Act, means a person appointed under section 28 to be an authorised officer and who is entitled to exercise that function:

“barrister” means a barrister admitted by the Court;

“Chief Medical Officer” means the Chief Medical Officer of the Department of Health or a person acting for the time being in the office of Chief Medical Officer of that Department:

“continued treatment patient” means a temporary patient who is classified as a continued treatment patient under section 95 (3) (a) or 97 (3) or a forensic patient who is classified as a continued treatment patient as referred to in section 127 (1):

“Court” means the Supreme Court of New South Wales:

“forensic patient” means—

- (a) a person who is detained in a hospital, prison or other place pursuant to an order under section 428F (4) (c), 428L (b), 428P (5), 428Q or 428ZB of the Crimes Act, 1900;
- (b) a person who is detained in a hospital 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:

“hospital” means—

- (a) any premises the subject of an order in force under section 7 (2) 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 64; or

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(b) a person who has been classified as an informal patient under section 104;

“intellectually handicapped person under guardianship”—

(a) before the date of commencement of Part XI of the Community Welfare Act, 1982, means a person who is being dealt with as an intellectually handicapped person under the provisions of Part IX of the Child Welfare Act, 1939; and

(b) on and from the date of commencement of Part XI of the Community Welfare Act, 1982, has the meaning ascribed thereto in section 258 of that Act;

“justice” means a justice of the peace;

“medical superintendent”, in relation to—

(a) a hospital, other than an authorised hospital, means the medical practitioner appointed, under section 8, as medical superintendent of the hospital; and

(b) an authorised hospital, means the medical practitioner appointed, under section 18, as medical superintendent of the authorised hospital;

“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;

“patient” means, except in Division 1 of Part X, 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;

“premises” includes any land, building and part of any building;

“prison” means a prison as defined in section 4 of the Prisons Act, 1952;

“regulations” means regulations made under this Act;

“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;

“Secretary” means the Secretary of the Department of Health;

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“solicitor” means a solicitor of the Court;

“temporary patient” means a person in respect of whom a direction given under section 91 (1) (b) or a determination made under section 95 (3) (b) is in force;

“Tribunal” means the Mental Health Review Tribunal constituted under section 37;

“welfare officer” means a person appointed to be a welfare officer under section 33.

(2) In this Act, a reference to the taking to and detaining in a hospital of a person includes, in relation to a person who is at, but not detained in accordance with this Act in, a hospital, a reference to the detaining of a person in a hospital.

(3) In this Act, a reference to—

- (a) a function includes a reference to a power, authority and duty; and
- (b) the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(4) Except in so far as the context or subject-matter otherwise indicates or requires, an expression used in a Schedule has the same meaning as it has in the relevant provisions of this Act relating to the subject-matter of the Schedule.

**Mentally ill person.**

5. (1) A reference in this Act to a mentally ill person is, where the reference occurs in relation to the involuntary admission of a person to a hospital, the detention of a person in a hospital, prison or other place, the holding of an inquiry under section 88 or a determination or review made by the Tribunal in respect of a person, a reference to a person who requires care, treatment or control—

- (a) for the person’s own protection by reason that—
  - (i) owing to the person’s mental illness, the person has recently attempted to kill himself or herself or to cause serious bodily harm to himself or herself;

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- (ii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will attempt to kill himself or herself or attempt to cause serious bodily harm to himself or herself;
  - (iii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will suffer serious bodily harm due to neglect of himself or herself or to neglect by others;
  - (iv) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon himself or herself; or
  - (v) the person is in the manic phase of a manic-depressive illness and there are reasonable grounds for believing that it is probable that the person will thereby suffer serious financial harm or harm to his or her reputation or standing in the community;
- (b) for the protection of others by reason that—
- (i) owing to the person's mental illness, the person has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
  - (ii) owing to the person's mental illness, the person has recently performed or attempted to perform an act of violence, whether against a person or against property, which indicates that it is probable that the person will inflict serious bodily harm upon another person;
  - (iii) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon another person; or
  - (iv) owing to the person's mental illness, the person has recently engaged repeatedly in a course of behaviour of nuisance or harassment affecting one or more persons which would be reasonably likely to lead to violence and which is of a degree so far beyond the limits of normal social behaviour that a reasonable person would consider it intolerable.



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(2) A person is not a mentally ill person by reason only of any one or more of the following:—

- (a) that the person expresses or has expressed a particular political opinion;
- (b) that the person expresses or has expressed a particular religious opinion;
- (c) that the person expresses or has expressed a particular sexual preference or sexual orientation or is or has been sexually promiscuous;
- (d) that the person engages in or has engaged in immoral conduct;
- (e) that the person engages in or has engaged in illegal conduct;
- (f) that the person has developmental disability of mind;
- (g) that the person takes or has taken drugs, including alcohol.

(3) Nothing in subsection (2) prevents, in relation to a person who takes or has taken drugs, the serious and permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that the person is mentally ill.

**Exercise of functions by certain persons.**

6. The functions conferred or imposed by or under this Act on a medical superintendent, deputy medical superintendent, responsible medical officer or official visitor, other than the Principal official visitor, shall be exercised by the medical superintendent, deputy medical superintendent, responsible medical officer or official visitor only in relation to the hospital in respect of which the person is the medical superintendent, deputy medical superintendent, responsible medical officer or official visitor, as the case may be, and the patients and persons under detention in that hospital.

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## PART II.

## ESTABLISHMENT AND ADMINISTRATION OF HOSPITALS.

DIVISION 1.—*Hospitals other than authorised hospitals.***Establishment of hospitals other than authorised hospitals.****7. (1)** 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;
- (b) an incorporated hospital within the meaning of the Public Hospitals Act, 1929, or a separate institution within the meaning of that Act; and
- (c) where the person to whom premises belong or who has control of premises, by an instrument in writing given to the Secretary, agrees to the premises being premises to which this section applies—those premises.

**(2)** The Secretary, by order published in the Gazette—

- (a) may declare any premises specified or described in the order, being premises to which this section applies by virtue of subsection (1), 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.

**(3)** The Secretary may, by order published in the Gazette, change the name assigned to any premises specified or described in an order under subsection (2).

**Appointment of medical superintendents.**

**8.** The Secretary may, by instrument in writing, appoint a medical practitioner as medical superintendent of a hospital, other than an authorised hospital.

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**Appointment of deputy medical superintendents.**

9. (1) The Secretary 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, shall have and may exercise 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.**

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

(2) An application under subsection (1) shall be—

- (a) in or to the effect of the prescribed form; and
- (b) accompanied by—
  - (i) a plan of the premises in respect of which the licence is sought; and
  - (ii) the prescribed fee.

**Grant or refusal of licence.**

11. (1) The Secretary—

- (a) may grant an application under section 10 (1) and, where the Secretary does so, shall specify—
  - (i) the maximum number of patients who may be kept or treated at the hospital; and
  - (ii) such other terms or conditions, if any, to which the licence shall be subject, as the Secretary thinks fit; or
- (b) may refuse to grant the application.

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(2) Where the Secretary grants an application under section 10 (1), the Secretary shall issue to the applicant a licence in or to the effect of the prescribed form.

(3) A licence remains in force until it is cancelled in accordance with section 14 or 15.

**Annual statement and licence fee.**

12. A licensee shall, on or before 1st July in each year—

- (a) forward to the Secretary a statement in or to the effect of the prescribed form relating to the conduct of the premises to which the licence relates and the admission to and care and treatment of patients on those premises; and
- (b) pay to the Secretary such annual licence fee as may be prescribed.

**Duplicate licence.**

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

**Cancellation of licences—generally.**

14. The Secretary may cancel a licence—

- (a) if the annual licence fee payable under section 12 in respect of the licence has not been paid by the due date;
- (b) if the licensee requests the Secretary, 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.

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**Cancellation of licences—failure to show cause.**

**15. (1)** The Secretary may, by notice in writing served on the holder of a licence granted under section 11 (1), 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)** Where, by the date and time referred to in the notice under subsection (1), the holder of the licence has not shown sufficient cause why the licence should not be cancelled, the Secretary may cancel the licence.

**Variation of licence.**

**16. (1)** The holder of a licence granted under section 11 (1) may, at any time, apply to the Secretary for the variation of any term or condition to which the licence is subject.

**(2)** The Secretary, pursuant to an application under subsection (1)—

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

**(3)** Where the Secretary varies any term or condition to which a licence is subject, the variation shall have effect according to its tenor.

**Medical supervision.**

**17. (1)** The holder of a licence granted under section 11 (1) shall, where the authorised hospital in respect of which the licence is held has—

- (a) more than 100 patients—have a medical practitioner resident in the hospital at all times;
- (b) more than 50 but not more than 100 patients—cause a medical practitioner to attend the hospital daily;
- (c) 50 or less patients—except as provided by paragraph (d), cause a medical practitioner to attend the hospital at least twice a week; or

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- (d) less than 10 patients and the Secretary 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 Secretary's authorisation.

(2) Without affecting subsection (1), the holder of a licence granted under section 11 (1) shall, where the authorised hospital in respect of which the licence is held has 100 or less patients, make such arrangements as may be approved by the Secretary for the provision of emergency medical services to those patients.

**Appointment of medical superintendent.**

18. (1) The holder of a licence granted under section 11 (1) in respect of an authorised hospital shall appoint a medical practitioner approved by the Secretary as medical superintendent of the hospital.

(2) The medical superintendent of an authorised hospital shall cause to be kept such records and furnish to the Secretary 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.**

19. (1) The holder of a licence granted under section 11 (1) in respect of an authorised hospital shall appoint a medical practitioner as deputy medical superintendent of the hospital.

(2) The deputy medical superintendent of an authorised hospital shall have and may exercise 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.

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**Offence where hospital no longer authorised.**

20. Where, 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 shall be guilty of an offence against this Act.

**Certain private hospitals to be licensed.**

21. A person shall 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 section 11 (1).

DIVISION 3.—*Official visitors.***Appointment of Principal official visitor.**

22. 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.**

23. The Principal official visitor—

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

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**Appointment of official visitors.**

**24. (1)** Except where, by reason of the unavailability of suitably qualified or interested persons, it is not, in the opinion of the Minister, appropriate to do so, the Minister shall, by instrument in writing, appoint, for each hospital, 2 or more official visitors, one of whom shall be a medical practitioner and one of whom shall be a suitably qualified or interested person.

**(2)** A person may be appointed as an official visitor to more than one hospital.

**General provisions relating to the Principal official visitor and official visitors.**

**25.** Schedule 1 has effect generally with respect to the Principal official visitor and official visitors.

**Functions of official visitors.**

**26. (1)** Any 2 or more official visitors, one being a medical practitioner, shall visit the hospital 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, shall, so far as practicable, inspect every part of the hospital and make such inquiries as they think necessary as to the care, treatment and control of the patients or persons detained in the hospital.

**(3)** The medical superintendent shall—

- (a) allow the official visitors to have access to and to inspect every part of the hospital;
- (b) permit the official visitors to see and to interview each patient or person detained in the hospital;



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- (c) give full and true answers to the best of the medical superintendent's knowledge to all questions which the official visitors may ask in relation to the hospital, the patients and other persons;
- (d) produce to the official visitors such registers, books, records, orders, certificates, papers 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.

**(4)** The official visitors shall—

- (a) examine and sign the registers, books and records produced to them in accordance with subsection (3);
- (b) on each visit to the hospital, 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.

**(5)** An official visitor shall have and may exercise such other functions as are conferred or imposed on an official visitor by or under this Act.

**(6)** Nothing in this Division 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.**

**27. (1)** A patient or person detained in a hospital may notify the medical superintendent, orally or in writing, that the patient or person desires to see an official visitor.

**(2)** Within 7 days after the receipt of a notification under subsection (1) from a patient or person, the medical superintendent shall inform an official visitor of the patient's or person's desire to see an official visitor.

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DIVISION 4.—*Authorised officers.***Appointment of authorised officers.**

**28.** The Secretary may, by instrument in writing, appoint one or more officers of the Public Service employed within the Department of Health or one 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 to be an authorised officer or authorised officers for the purposes of this Act.

**Functions of authorised officers.**

**29. (1)** Except as provided by subsection (2), an authorised officer shall have and may exercise the functions conferred or imposed on authorised officers by or under this Act.

**(2)** Where the instrument of appointment of an authorised officer specifies the functions that may be exercised by the authorised officer, the authorised officer shall not be 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 shall, in exercising the functions of an authorised officer, be subject to the control and direction of the Secretary.

**Inspection, etc., of hospitals.**

**30. (1)** The Secretary shall 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 Secretary thinks fit.

**(2)** An authorised officer—

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

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- (b) shall make such inspections, investigations and inquiries as are directed by the Secretary,

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.

(3) 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 or 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.

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

(5) A person who, without showing just cause—

- (a) refuses or neglects to comply with a requirement made under subsection (3) or (4); or
- (b) does not 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,

shall be guilty of an offence against this Act.

(6) Any information furnished or evidence given pursuant to a requirement made under subsection (3) or (4) shall 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, be admissible in any prosecution against the person for any offence, not being an offence for a breach of subsection (5), or be admissible in any such proceedings.

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**Prohibited acts of authorised officers.**

**31.** An authorised officer shall 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.

**Prohibited interests of authorised officers.**

**32.** An authorised officer who knowingly has a pecuniary interest, directly or indirectly, in an authorised hospital shall be guilty of an offence against this Act.

DIVISION 5.—*Welfare officers.***Appointment of welfare officers.**

**33.** The Secretary may appoint such persons as the Secretary thinks necessary to be welfare officers for the purposes of this Act.

**Functions of welfare officers.**

**34. (1)** The functions of a welfare officer are—

(a) where—

- (i) a temporary patient or a continued treatment patient has been granted leave of absence from a hospital;
- (ii) the patient has suffered a breakdown in the patient's mental health; and
- (iii) the patient's return to the hospital is desirable on account of the patient's breakdown,

on the direction of the medical superintendent, to escort and convey or to assist in escorting and conveying the patient to the hospital;

(b) to escort and convey or to assist in escorting and conveying patients from a hospital to another hospital or to a public hospital;

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- (c) to visit patients who have been granted leave of absence from a hospital; and
- (d) to visit the relatives or friends of patients referred to in paragraph (c) for the purpose of advising them on matters relating to the welfare of those patients.

(2) A welfare officer may exercise such other 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 appointed under section 8.

DIVISION 6.—*Miscellaneous.*

**Annual report.**

35. (1) The Secretary shall, as soon as practicable after 30th 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;
- (b) the state and condition of each hospital;
- (c) important administrative and policy issues; and
- (d) such other matters as the Secretary thinks fit,

for the 12 months preceding that date.

(2) The Minister shall 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.

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## PART III.

## MENTAL HEALTH REVIEW TRIBUNAL.

DIVISION 1.—*Constitution and functions.***Interpretation.****36.** In this Part—

“Deputy President” means a person appointed, for the time being, as a Deputy President of the Tribunal;

“member” means a person appointed, for the time being, as a member of the Tribunal;

“President” means the person appointed, for the time being, as the President of the Tribunal.

**The Tribunal.****37. (1)** There shall be a Mental Health Review Tribunal.

**(2)** The Tribunal shall have a seal of which judicial notice shall be taken.

**Members of the Tribunal.**

**38. (1)** Subject to this section, the members of the Tribunal shall be appointed by the Governor.

**(2)** The members shall comprise—

(a) a qualified person appointed as the President of the Tribunal; and

(b) persons appointed from the following classes of persons:—

(i) barristers and solicitors;

(ii) psychiatrists; and

(iii) persons having, in the opinion of the Governor, other suitable qualifications or experience.

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(3) The members shall include one or more women and one or more persons of ethnic background.

(4) The members may include one or more qualified persons appointed as a Deputy President or Deputy Presidents of the Tribunal.

(5) A member may be appointed as a full-time member or, in the case of a member other than the President or a Deputy President, as a part-time member.

(6) The Public Service Act, 1979, does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(7) Schedule 2 has effect with respect to the membership of the Tribunal.

**Functions of the Tribunal.**

39. The Tribunal shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

**Composition of the Tribunal.**

40. (1) In the exercise of its functions relating to forensic patients, the Tribunal shall be constituted by the following members nominated by the President:—

- (a) the President or a Deputy President;
- (b) a member of the class referred to in section 38 (2) (b) (ii); and
- (c) a member of the class referred to in section 38 (2) (b) (iii).

(2) Except as provided by subsection (1), the Tribunal shall be constituted by the following members nominated by the President:—

- (a) the President, a Deputy President or a member of the class referred to in section 38 (2) (b) (i);

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(b) a member of the class referred to in section 38 (2) (b) (ii);  
and

(c) a member of the class referred to in section 38 (2) (b) (iii).

(3) A nomination made for the purposes of subsection (1) or (2) may be made generally or in a particular case or class of cases.

(4) The President shall notify a member nominated under subsection (1) or (2) (other than the President) of the member's nomination as soon as practicable after the nomination is made.

**Delegation.**

41. (1) The President may, by instrument in writing, delegate to a member, the Registrar of the Tribunal or a prescribed person the exercise of such of the functions of the President as are specified in the instrument.

(2) A function the exercise of which has been delegated under this section may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation by the delegate.

(3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation under this section, the President may continue to exercise any function delegated.

(5) Any act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the President and shall be deemed to have been done or suffered by the President.

(6) The President may, by instrument in writing, revoke wholly or in part any delegation under this section.



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(7) An instrument purporting to have been signed by a person in his or her capacity as a delegate of the President shall, in all courts and before all persons acting judicially, be received in evidence as if it were an instrument duly executed by the President and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the President.

DIVISION 2.—*Conduct of meetings.***Meetings of the Tribunal.**

42. Where sufficient members have been appointed, more than one meeting of the Tribunal may be held at the same time.

**Procedure at meetings of the Tribunal.**

43. (1) Meetings of the Tribunal shall 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 patient or 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 patient or 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 shall be as determined by the Tribunal.

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**Determination whether a person is a mentally ill person.**

**44. (1)** A member shall not determine, for the purposes of this Act, that a person is a mentally ill person unless the member is satisfied that it is very highly probable that the person is a mentally ill person.

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

- (a) any cultural factors relating to the person which may be relevant to the determination; and
- (b) 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.**

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

**Chairman and votes of members.**

**46.** At a meeting of the Tribunal—

- (a) the President, Deputy President or member of the class referred to in section 38 (2) (b) (i), as the case may be, nominated by the President shall preside as chairman of the meeting;
- (b) except as provided by paragraph (c), questions arising at the meeting shall be determined by a majority of votes of the members present and voting;
- (c) the decision of the chairman of the meeting upon any question of law or procedure which may arise at that meeting shall be the decision of the Tribunal; and
- (d) the chairman of the meeting shall have, in the event of an equality of votes, in addition to a deliberative vote, a second or casting vote.

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**Adjournment.**

**47.** 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.**

**48.** The proceedings of the Tribunal shall be open to the public unless—

- (a) a person having a matter before the Tribunal (not being a person appointed under section 45) or any representative of the person objects; and
- (b) the Tribunal upholds the objection.

**Publication of names, etc.**

**49. (1)** The name of a person who is involved in any matter before the Tribunal shall 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 before the Tribunal shall not include information which identifies or may lead to the identification of any person the publication or broadcasting of whose name is prohibited by subsection (1).

**(3)** A person—

- (a) who publishes or broadcasts the name of a person the publication or broadcasting of which is prohibited by subsection (1); or
- (b) who publishes or broadcasts a report which contravenes subsection (2),

shall be guilty of an offence.

**Rights of appearance and representation.**

**50. (1)** A person having any matter before the Tribunal shall, unless the Tribunal otherwise approves, appear before the Tribunal during the hearing of the matter.

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(2) A person appointed under section 45 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 shall, 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.**

51. 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 shall be entitled to be assisted, when appearing before the Tribunal in relation to the matter, by a competent interpreter.

**Inspection, etc., of medical records.**

52. (1) A patient or person detained in a hospital having any matter before the Tribunal shall, unless the Tribunal otherwise determines, be 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, referred to in section 50, of a person having any matter before the Tribunal shall be 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.

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

(4) An order or direction of the Tribunal under subsection (3) shall have effect according to its tenor.

**Production of evidence.**

53. (1) The Tribunal may of its own motion or on the application of a person having any matter before the Tribunal issue a subpoena in or to the effect of the prescribed form requiring the person to whom the subpoena is addressed to do either or both of the following things, namely:—

- (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 subpoena.

(2) For the purposes of subsection (1), a subpoena 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 subpoena to produce any documents by the production of the documents at a place specified in the subpoena at any time before the meeting of the Tribunal at which the documents are required to be produced.

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(4) A person to whom a subpoena is addressed is entitled to receive—

- (a) where the subpoena was issued by the Tribunal of its own motion, from the Tribunal; or
- (b) where the subpoena 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 subpoena, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

(5) A person—

- (a) who is served with a subpoena addressed to the person pursuant to subsection (1);
  - (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 subpoena and producing anything required by the subpoena to be produced; and
  - (c) who, without cause, fails or refuses to obey the subpoena,
- shall be guilty of an offence against this Act.

**Administration of oath.**

54. The President or a Deputy President may administer an oath to any person giving evidence before the Tribunal.

**Records of proceedings before the Tribunal.**

55. (1) Proceedings before the Tribunal shall be recorded but any such record which is made by means of shorthand, stenotype or sound-recording apparatus shall not 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;
- (b) the President directs that the record be transcribed; or
- (c) the transcription of the record is otherwise required by law.

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(2) Any transcription so made shall, except as to such part, if any, of the transcription as is specified by the Tribunal, be supplied to a person appearing before the Tribunal upon 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.**

56. (1) Every decision of the Tribunal in respect of any matter before it at any meeting of the Tribunal shall be recorded in the form of an instrument in writing signed by the chairman of that meeting and shall include the reasons for the decision of each member with respect to the matter.

(2) Nothing in subsection (1) prevents the Tribunal from giving an oral decision in respect of any matter before it.

(3) An oral decision given by the Tribunal shall be recorded in accordance with subsection (1).

DIVISION 3.—*Miscellaneous.*

**Registrar and other officers of the Tribunal.**

57. A Registrar and such other officers and temporary employees as may be necessary for the exercise of the functions of the Tribunal may be appointed and employed under and subject to the Public Service Act, 1979.

**Authentication of documents.**

58. Every document requiring authentication by the Tribunal may be sufficiently authenticated without the seal of the Tribunal if signed by the President or a Deputy President.

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**Judicial notice of certain signatures.**

**59.** Judicial notice shall 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.**

**60.** No proceedings lie against the Tribunal, a member of the Tribunal or an officer or temporary employee 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, officer or temporary employee, and purporting to be done, ordered, omitted or suffered for the purposes of carrying out the provisions of this Act, if the Tribunal, member, officer or temporary employee has acted in good faith.

**Application of the Defamation Act, 1974.**

**61.** For the purposes of section 18 of the Defamation Act, 1974, the proceedings of the Tribunal shall be deemed to be an inquiry within the meaning of that section.

**Annual report.**

**62. (1)** As soon as practicable after 1st March, but on or before 1st June, in each year, the President shall prepare and forward to the Minister a report as to—

- (a) the exercise by the Tribunal of its functions;
- (b) in relation to persons taken, under Part V, to hospitals—
  - (i) the number of persons so taken and the provisions of Part V under which they were so taken;
  - (ii) the subparagraph or subparagraphs of section 5 (1) under which each person was, at the time the person was so taken, believed to be a mentally ill person;
  - (iii) the number of persons in respect of whom an inquiry under section 88 was held;



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- (iv) the number of persons detained as temporary patients; and
  - (v) the number of persons classified as continued treatment patients; and
- (c) such other matters as the Minister may direct or as may be prescribed.

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

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**PART IV.****INFORMAL ADMISSION OF PERSONS TO HOSPITALS.****Interpretation.**

**63.** A reference in this Part to a medical superintendent of a hospital includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital.

**Admission upon own request.**

- 64. (1)** Subject to this Part, a person may be admitted to a hospital—
- (a) except as provided by paragraph (b), upon an application made, orally or in writing, by the person to the medical superintendent; or
  - (b) where the person is an intellectually handicapped person under guardianship, upon an application made, orally or in writing, by the person to the medical superintendent, being an application which is approved, in writing, by the Tribunal either before the application is made or as soon as practicable thereafter.

(2) Where the Minister for Youth and Community Services is the guardian of a person admitted, under subsection (1), to a hospital, the medical superintendent shall advise that Minister of the person's admission.

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**Refusal to admit.**

**65.** 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.

**Informal patient under 16 years of age.**

**66.** Where a person under the age of 16 years (other than an intellectually handicapped person under guardianship) is admitted to a hospital as an informal patient, the medical superintendent shall, as soon as practicable after admission, do all such things as are reasonably practicable to notify the parents or guardian of the patient of the patient's admission.

**Informal patient of 14 or 15 years of age.**

**67.** Where a parent or the guardian of a person of 14 or 15 years of age (other than an intellectually handicapped person under guardianship) 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 shall discharge the person unless the person elects to continue as an informal patient.

**Admission of person under 14 years of age.**

**68.** A person under the age of 14 years shall not be admitted to a hospital as an informal patient if, at or prior to the time at which the person seeks to be so admitted, a parent or the guardian of the person has notified the medical superintendent that he or she objects to the person's being so admitted.

**Informal patient under 14 years of age.**

**69.** Where a parent or the guardian 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 shall discharge the person.

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**Functions of medical superintendent concerning informal patients.**

- 70.** A medical superintendent may—
- (a) discharge an informal patient; or
  - (b) where, 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 V.

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**PART V.**

**INVOLUNTARY ADMISSION OF PERSONS (OTHER THAN FORENSIC PATIENTS)  
TO HOSPITALS.**

**Interpretation.**

**71.** A reference in this Part to the medical superintendent of a hospital includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital.

**Detention upon the certificate of a medical practitioner.**

- 72. (1)** A person may be taken to and detained in a hospital upon the certificate of a medical practitioner who—
- (a) has personally examined or personally observed the person immediately before or shortly before completing the certificate;
  - (b) is of the opinion that the person is a mentally ill person;
  - (c) 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) is not a near relative of the person.

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**(2)** The certificate referred to in subsection (1) shall be in or to the effect of the form set out in Part I of Schedule 3.

**(3)** Where a medical practitioner who gives a certificate referred to in subsection (1) has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative, partner or assistant who has such an interest, the medical practitioner shall, upon giving the certificate, disclose that fact and give particulars of the interest in the certificate.

**(4)** Where a medical practitioner who gives a certificate referred to in subsection (1) 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 in order to convey the person to a hospital; and
- (b) that no other means of conveying the person to a hospital are reasonably available,

the medical practitioner may endorse the certificate in or to the effect of the form set out in Part II of Schedule 3.

**(5)** A member of the police force to whose notice an endorsement under subsection (4) is brought shall, as soon as practicable, apprehend and take or assist in taking the person in respect of whom the certificate is given to a hospital or cause or make arrangements for some other member of the police force to apprehend and take or assist in taking the person to a hospital.

**(6)** A member of the police force may—

- (a) enter premises, if need be by force, for the purpose of apprehending a person in accordance with subsection (5); and
- (b) apprehend a person in accordance with that subsection,

without the necessity of the warrant of a justice.

**(7)** A person shall not be admitted to or detained in a hospital upon a certificate referred to in subsection (1) unless the person is so admitted within 5 days after the day on which the certificate is given.

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**Detention upon request of relative or friend.**

**73. (1)** Subject to subsection (2), a person may be detained in a hospital upon a written request for the person to be so detained made by a relative or friend of the person to the medical superintendent.

**(2)** The medical superintendent shall not detain a person in respect of whom a request under subsection (1) is made 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 the detention of the person under section 72.

**Detention following apprehension by member of police force.**

**74. (1)** Where—

- (a) a member of the police force finds a person in a public place;
- (b) the person appears to the member of the police force to be mentally disordered; and
- (c) the member of the police force has reasonable grounds for believing—
  - (i) 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
  - (ii) 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.

**(2)** A member of the police force may apprehend a person in accordance with subsection (1) without the necessity of the warrant of a justice.

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**Detention upon order of court.**

**75.** A person may be taken to and detained in a hospital in accordance with an order made under section 428L, 428Q or 428X of the Crimes Act, 1900.

**Detention upon information of welfare officer.**

**76.** A person may be detained in a hospital where 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.

**Detention following order for medical examination, etc.**

**77. (1)** In this section, "stipendiary magistrate" includes a person who is employed within the Department of the Attorney General and of Justice and who is a member of a class or description of persons prescribed for the purposes of this section.

**(2)** Where a stipendiary magistrate is satisfied, by evidence on oath—

- (a) that a person may be a mentally ill person; and
- (b) that, by reason of physical inaccessibility, the person could not, but for the making of an order under this subsection, be personally examined or personally observed,

the magistrate may, by order under the hand of the magistrate, 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.

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

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(4) Section 72 applies to and in respect of a person who is personally examined or personally observed in accordance with this section and to the medical practitioner who carries out the personal examination or personal observation in the same way as it applies to and in respect of a person and a medical practitioner referred to in that section, respectively.

(5) A medical practitioner authorised under subsection (2) shall notify, in writing, the stipendiary magistrate who made the order by which the authorisation was conferred of such action, if any, as was taken under the order and shall so notify the magistrate as soon as practicable after the action was taken.

**Refusal to detain.**

78. The medical superintendent may refuse to detain a person under section 72, 73, 74, 75, 76 or 77 if the medical superintendent is of the opinion that the person is not a mentally ill person.

**Examination at hospital.**

79. A person taken to and detained in a hospital under section 72, 73, 74, 75, 76 or 77—

- (a) shall be examined, as soon as practicable after the person's arrival at the hospital, by the medical superintendent; and
- (b) shall not, except as provided by section 80, be detained after the examination unless the medical superintendent certifies that, in the opinion of the medical superintendent, the person is a mentally ill person.

**Limited detention of certain persons after examination at hospital.**

80. (1) Where, after an examination under section 79 by the medical superintendent, a person to whom section 74 (1) (c) (i) applies and who has been taken to and detained in a hospital under section 74 is not certified by the medical superintendent to be a mentally ill person—

- (a) if a member of the police force is present at the hospital in order to ascertain the result of the examination when the decision not to certify the person as a mentally ill person is made, the medical superintendent shall release the person into the custody of the member of the police force; or

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- (b) if a member of the police force is not so present, the medical superintendent shall, as soon as practicable after the decision not to certify the person as a mentally ill person is made, 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 has not been certified as a mentally ill person and may, subject to subsection (2), after having considered any matter communicated by the member of the police force so notified with respect to the intended apprehension of the person by a member of the police force—
- (i) detain the person pending the apprehension of the person by a member of the police force;
  - (ii) admit the person, pursuant to an application made by the person in accordance with Part IV, to the hospital as an informal patient; or
  - (iii) discharge the person, 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.

(2) A person taken to and detained in a hospital under section 74 shall not be detained in the hospital for a period in excess of 1 hour after a decision of the medical superintendent under section 79 not to certify the person as a mentally ill person is made.

**Administration of medication.**

**81.** A person, in administering or authorising the administration of any medication to a person taken to and detained in a hospital under section 72, 73, 74, 75, 76 or 77, shall have due regard to the possible effects of the administration of the medication and shall 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 88.



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**Further examination at hospital.**

**82. (1)** Where the medical superintendent has, under section 79 (b), certified that a person is a mentally ill person, the medical superintendent shall cause the person to be examined as soon as practicable thereafter by another medical practitioner being, where the medical superintendent is not a psychiatrist, a psychiatrist.

**(2)** Where the medical superintendent of a hospital (not being a medical officer, nominated by the medical superintendent, attached to the hospital) did not, under section 79, 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, the medical superintendent shall, as soon as practicable after being notified of that opinion, cause the person to be examined by another medical practitioner, who shall be a psychiatrist.

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

**Formation of opinion as to mental illness.**

**83.** The medical superintendent or other medical practitioner, in forming an opinion under section 79 or 82 whether a person is a mentally ill 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.

**Consequence of further examination.**

**84. (1)** Where, after an examination, under section 82 (1) or (3) by a medical practitioner, of a person taken to and detained in a hospital—

- (a) a medical practitioner is of the opinion that the person is a mentally ill person, the medical practitioner shall advise the medical superintendent accordingly in or to the effect of the prescribed form; or

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(b) neither of the medical practitioners is of the opinion that the person is a mentally ill person, the person shall not, except as provided by section 85, be further detained in the hospital.

(2) A medical practitioner who furnishes advice under subsection (1) (a) in respect of a person shall be available, on reasonable notice, to attend an inquiry held under section 88 concerning the person in order to give evidence concerning the person.

(3) Where a medical practitioner who furnishes advice under subsection (1) (a) has a pecuniary interest, directly or indirectly, in any authorised hospital or has a near relative, partner or assistant who has such an interest, the medical practitioner shall, upon furnishing the advice, disclose that fact and give particulars of the interest in the advice.

**Limited detention of certain persons after further examination.**

**85. (1)** Where, after examinations under section 82 (1) and (3) by 2 medical practitioners of a person to whom section 74 (1) (c) (i) applies who has been taken to and detained in a hospital under section 74, neither of the medical practitioners is of the opinion that the person is a mentally ill person—

(a) if a member of the police force is present at the hospital in order to ascertain the result of the examination when the later of those opinions is notified to the medical superintendent, the medical superintendent shall release the person into the custody of the member of the police force; or

(b) if a member of the police force is not so present, the medical superintendent shall, as soon as practicable after the later of those opinions is notified 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 is not, in the opinion of the medical practitioners, a mentally ill person and may, subject to subsection (2), after having considered any matter communicated by the member of the police force so notified with respect to the intended apprehension of the person by a member of the police force—

(i) detain the person pending the apprehension of the person by a member of the police force;

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- (ii) admit the person, pursuant to an application made by the person in accordance with Part IV, to the hospital as an informal patient; or
- (iii) discharge the person, 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.

(2) A person taken to and detained in a hospital under section 74 shall not be detained in the hospital for a period in excess of 1 hour after the later of the opinions referred to in subsection (1) is notified to the medical superintendent.

**Proceedings for inquiry before stipendiary magistrate.**

**86. (1)** On receipt of advice furnished under section 84 (1) (a), the medical superintendent to whom the advice is furnished shall inform the person in respect of whom the advice is furnished of the duty imposed under subsection (2) on the medical superintendent to do all such things as are reasonably practicable to give the notice referred to in that subsection and shall obtain, or make all reasonable efforts to obtain, from the person the information required to enable the giving of that notice.

(2) After complying with subsection (1), the medical superintendent shall, 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 the advice under section 84 (1) (a) is furnished before a stipendiary magistrate:—

- (a) the nearest relative, if there is one, of the person in respect of whom the advice is furnished, or a relative nominated by the person;
- (b) in respect of a person other than a person to whom paragraph (e) applies, the person's guardian, if any;
- (c) any personal friend or friends of the person, up to 2 in number, who are either known as, or are said by the person to be, his or her personal friends;
- (d) any other persons in Australia, up to 2 in number, whom the person says he or she wishes to be notified;

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(e) where the person is—

- (i) on and from the date of commencement of Part XI of the Community Welfare Act, 1982, a child whom the Minister for Youth and Community Services has, under section 108 of the Community Welfare Act, 1982, declared to be a ward and of whom that Minister is, under section 110 (1) of that Act, the guardian; or
- (ii) an intellectually handicapped person under guardianship of the Minister for Youth and Community Services,

that Minister.

(3) After giving notice in accordance with subsection (2), the medical superintendent shall, as soon as possible, bring the person in respect of whom the advice under section 84 (1) (a) is furnished before a stipendiary magistrate.

(4) The medical superintendent shall ensure that, so far as is reasonably practicable, the person in respect of whom the advice under section 84 (1) (a) is furnished is, when brought before the stipendiary magistrate, dressed in street clothes.

**Termination of detention.**

87. Where, at any time before a person is brought before a stipendiary magistrate under section 86 (3), a medical superintendent is of the opinion that the person has ceased to be a mentally ill person, the medical superintendent shall release the person from detention in the hospital.

**Holding of inquiry.**

88. (1) Where a person is brought before a stipendiary magistrate under section 86 (3), the magistrate shall hold an inquiry concerning the person.

(2) The stipendiary 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.

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(3) The medical superintendent who brings the person before the stipendiary magistrate shall 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 shall be open to the public unless—

- (a) the person brought before the stipendiary magistrate or any representative of the person objects; and
- (b) the magistrate upholds the objection.

(5) At an inquiry—

- (a) the person brought before the stipendiary magistrate shall, unless the person decides that he or she does not want to be represented, 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.

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

(7) The stipendiary magistrate may, from time to time, adjourn the inquiry for a period not exceeding 14 days.

(8) The stipendiary 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 86 (2) on the medical superintendent relating to the giving of the notice specified in that subsection; or
- (b) that—
  - (i) the notice specified in that subsection has been given; or
  - (ii) all such things as are reasonably practicable have been done to give that notice.

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**Other provisions relating to inquiry.**

**89.** Sections 49, 52, 53, 54 and 55 apply to and in respect of an inquiry under section 88 in the same way as those sections apply to and in respect of a matter before the Tribunal and, in the application of those sections—

- (a) a reference to the Tribunal, the President or a Deputy President shall be read and construed as a reference to the stipendiary magistrate who holds the inquiry;
- (b) a reference to a patient shall be read and construed as a reference to the person in respect of whom the inquiry is held; and
- (c) a reference to a representative, referred to in section 50, of a person shall be read and construed as a reference to a representative, referred to in section 88, of a person.

**Matters to be dealt with at inquiry.**

**90. (1)** As soon as practicable after the beginning of an inquiry, the stipendiary magistrate shall ascertain—

- (a) from the person in respect of whom the inquiry is held, whether the person has been informed of the duty imposed under section 86 (2) on the medical superintendent relating to the giving of the notice specified in that subsection;
- (b) from the medical superintendent, whether—
  - (i) the notice specified in that subsection has been given; or
  - (ii) all such things as are reasonably practicable have been done to give that notice; and
- (c) from the person, whether the person has been informed of the nature and possible results of the inquiry and, where the person has not or appears not to have been so informed, the magistrate shall so inform the person.

**(2)** In the course of the inquiry, the stipendiary magistrate—

- (a) shall consider the reports and recommendations of the medical practitioners under sections 79 (b) and 84 (1) (a) concerning the person in respect of whom the inquiry is held;

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- (b) shall inquire as to the administration of any medication to the person and shall take account of the effect of the administration of the medication on the person's ability to communicate; and
- (c) shall consider such other information as may be placed before the magistrate.

**(3)** In determining, for the purposes of an inquiry, whether a person brought before the stipendiary magistrate is a mentally ill person, the magistrate shall give due regard to—

- (a) any cultural factors relating to the person which may be relevant to the determination; and
- (b) 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 inquiry.**

**91. (1)** Where, pursuant to an inquiry under section 88 concerning a person, a stipendiary magistrate is satisfied that it is very highly probable that the person is a mentally ill person, the magistrate shall—

- (a) order—
  - (i) 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
  - (ii) such other course of action, other than that referred to in paragraph (b), as the magistrate thinks fit in respect of the person; or
- (b) where the magistrate is of the opinion that it is not appropriate to make an order under paragraph (a), 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 as the magistrate shall, having regard to all the circumstances of the case, specify, being a period not exceeding—
  - (i) in the case of a person in the manic phase of a manic-depressive illness—42 days; or
  - (ii) in any other case—3 months.

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(2) Where, pursuant to an inquiry under section 88 concerning a person, a stipendiary magistrate is not satisfied that it is very highly probable that the person is a mentally ill person, the magistrate shall order that the person be discharged from the hospital in which the person is detained.

(3) An order or direction made or given under this section by a stipendiary magistrate shall have effect according to its tenor.

**Record of decision.**

92. (1) An order or direction of a stipendiary magistrate pursuant to an inquiry under section 88 shall be recorded in the form of an instrument in writing and shall include the reasons for the order or direction.

(2) Nothing in subsection (1) prevents a stipendiary magistrate from giving an order or direction orally.

(3) An order or direction given orally by a stipendiary magistrate shall be recorded in accordance with subsection (1).

**Notice of temporary patient's rights of appeal.**

93. Where a direction is given under section 91 (1) (b) in respect of a person, the medical superintendent of the hospital in which the person was detained immediately before the giving of the direction shall, as soon as practicable after the direction is given, give or cause to be given to the person a notice, in or to the effect of the prescribed form, which contains a statement 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.**

94. (1) Where it appears that a temporary patient, not being a person in the manic phase of a manic-depressive illness in respect of whom a direction has been given under section 91 (1) (b) that the person be detained for a period not exceeding 42 days, will, immediately before the expiration of the period of detention directed in respect of the patient under that



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paragraph, continue to be detained in a hospital as a temporary patient, the medical superintendent shall, as soon as practicable before the expiration of that period, cause the patient to be brought before the Tribunal.

(2) The medical superintendent shall ensure that, so far as is reasonably practicable, a temporary patient when brought, under subsection (1), before the Tribunal is dressed in street clothes.

(3) A person in the manic phase of a manic-depressive illness in respect of whom a direction has been given under section 91 (1) (b) that the person be detained for a period not exceeding 42 days shall not be detained pursuant to that direction for a period in excess of the period specified in that direction.

**Determination by the Tribunal.**

95. (1) Where a temporary patient is brought before the Tribunal under section 94, the Tribunal shall determine whether the patient is a mentally ill person.

(2) In making its determination with respect to a temporary patient, the Tribunal—

- (a) shall inquire as to the administration of any medication to the patient and shall take account of the effect of the administration of the medication on the patient's ability to communicate; and
- (b) shall consider such other information as may be placed before it.

(3) Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, it shall 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 shall specify in its determination.

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(4) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from the hospital in which the patient is detained.

(5) A determination made under this section by the Tribunal shall be in or to the effect of the prescribed form and shall have effect according to its tenor.

**Further bringing of certain temporary patients before the Tribunal.**

96. (1) Where, in relation to a temporary patient—

- (a) the Tribunal has made a determination under section 95 (3) (b); and
- (b) it appears that the patient will, immediately before the expiration of the period determined in respect of the patient under that paragraph, continue to be detained in a hospital as a temporary patient,

the medical superintendent shall, as soon as practicable before the expiration of that period, cause the patient to be brought before the Tribunal.

(2) The medical superintendent shall ensure that, so far as is reasonably practicable, a temporary patient when brought, under subsection (1), before the Tribunal is dressed in street clothes.

**Further determination by the Tribunal.**

97. (1) Where a temporary patient is brought before the Tribunal under section 96, the Tribunal shall determine whether the patient is a mentally ill person.

(2) In making its determination with respect to a temporary patient, the Tribunal—

- (a) shall inquire as to the administration of any medication to the patient and shall take account of the effect of administration of the medication on the patient's ability to communicate; and
- (b) shall consider such other information as may be placed before it.

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(3) Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, the Tribunal shall classify the patient as a continued treatment patient.

(4) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from the hospital in which the person is detained.

(5) A determination made under this section by the Tribunal shall be in or to the effect of the prescribed form and shall have effect according to its tenor.

**Classification of certain persons as informal patients.**

98. Nothing in this Part prevents a medical superintendent at any time after a person is admitted to and detained in a hospital under section 72, 73, 74, 75, 76 or 77 and before an inquiry under section 88 is held concerning the person from classifying the person as an informal patient in accordance with section 104 and dealing with the person accordingly.

**Leave of absence for certain persons.**

99. Section 111 applies to and in respect of a person admitted to and detained in a hospital under section 72, 73, 74, 75, 76 or 77 until such time as the person is discharged, the person is classified under section 98 as an informal patient or an inquiry under section 88 is held concerning the person, whichever first occurs, in the same way as section 111 applies to and in respect of a temporary patient or a continued treatment patient.

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**PART VI.****REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PATIENTS (OTHER THAN FORENSIC PATIENTS).****Interpretation.**

100. (1) In this Part, "patient" does not include a forensic patient.

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(2) A reference in this Part to a medical superintendent of a hospital includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital.

**Medical examination of continued treatment patients.**

101. The medical superintendent shall 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.**

102. (1) The Tribunal shall 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.

(2) Where, under subsection (1), the Tribunal determines that the patient is a mentally ill person, the patient shall, subject to this Part, continue to be detained in a hospital for further observation or treatment, or both, as a continued treatment patient.

(3) Where, under subsection (1), the Tribunal does not determine that the patient is a mentally ill person, the patient shall be discharged from the hospital in which the patient is detained.

(4) The Tribunal may, as a consequence of reviewing, under subsection (1), the case of a patient to whom subsection (2) applies, where 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.

(5) Section 111 (subsection (1) excepted) applies to and in respect of a continued treatment patient absent from a hospital pursuant to an order under subsection (4) in the same way as it applies to and in respect of a patient who is absent from a hospital under section 111 (1).

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**Review of informal patients by the Tribunal.**

**103. (1)** The Tribunal shall 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, under subsection (1), the case of a patient, order the discharge of the patient from a hospital.

**Classification of certain patients as informal patients.**

**104.** A medical superintendent may, at any time, classify a temporary patient or a continued treatment patient as an informal patient 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.

**Discharge of informal patients.**

**105. (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.

**Discharge of temporary patients and continued treatment patients.**

**106.** A medical superintendent shall 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.

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**Discharge of certain patients on patient's application.**

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

**(2)** On receipt of an application under subsection (1) from a patient, the medical superintendent may—

- (a) discharge the patient; or
- (b) exercise the functions conferred on the medical superintendent under section 104.

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

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

**(2)** On receipt of an application under subsection (1) in relation to a patient, the medical superintendent may discharge the patient if—

- (a) the relative or friend gives the medical superintendent an undertaking, in writing, that the patient will be properly taken care of;
- (b) 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) where the patient is—
  - (i) on and from the date of commencement of Part XI of the Community Welfare Act, 1982, a child whom the Minister for Youth and Community Services has, under section 108 of the Community Welfare Act, 1982, declared to be a ward and of whom that Minister is, under section 110 (1) of that Act, the guardian; or
  - (ii) an intellectually handicapped person under guardianship of the Minister for Youth and Community Services, that Minister consents to the application.

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**Appeal against refusal to discharge.**

**109. (1)** Where a medical superintendent has refused an application under section 107 (1) or 108 (1) by or on behalf of a patient, or has failed to determine such an application within 72 hours 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)** Where an appeal under subsection (1) is made orally, the prescribed person shall forthwith make a record of the appeal.

**(3)** Where an appeal is made under subsection (1) by or on behalf of a patient, the medical superintendent shall furnish to the Tribunal a report concerning the patient which includes the medical superintendent's reasons for refusing or failing to discharge the patient.

**Determination of appeal.**

**110. (1)** The Tribunal, in determining an appeal made under section 109 (1), shall have and may exercise the functions of the medical superintendent with respect to the application which has given rise to the appeal and may make an order accordingly.

**(2)** In addition to its functions under subsection (1), the Tribunal, in relation to an appeal made under section 109 (1) by or on behalf of a patient, 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;
- (b) the frequency of appeals made under section 109 (1) by or on behalf of the patient;
- (c) the report concerning the patient furnished under section 109 (3);  
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 109 (1) to the Tribunal before the date on which the patient will next be brought before the Tribunal under the provisions of this Act or the date on which the patient's case will next be reviewed by the Tribunal under those provisions, as the case may require.

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**Leave of absence.**

**111. (1)** Where a medical superintendent is of the opinion that it will benefit the health of a temporary patient or a continued treatment patient to do so, the medical superintendent may allow the patient to be absent from a hospital for such period and subject to such conditions, if any, as the medical superintendent thinks fit.

**(2)** Where a patient who is absent from a hospital pursuant to subsection (1) fails—

- (a) except as provided by subsection (3), to return to the hospital by the date on which the period for which the patient's absence is allowed expires; or
- (b) to comply with a condition subject to which the patient's absence is allowed,

the patient may, at any time after his or her failure, at the direction of the medical superintendent, be apprehended and dealt with as provided by section 114.

**(3)** Where, in respect of a patient who is absent from a hospital pursuant to subsection (1), 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 receipt of the certificate, discharge the patient.

**(4)** Subsection (2) does not apply to a patient who has been discharged under section 112 (2) or 113.

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

**112. (1)** Where a patient has, pursuant to section 111 (1), been absent from a hospital for a continuous period of not less than 28 days, the medical superintendent shall inquire into the welfare and mental health of the patient with a view to determining whether the patient should be immediately discharged.



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(2) A medical superintendent shall 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 111 (3).

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

**113.** The medical superintendent shall 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.

**Absence of patient without leave.**

**114.** A temporary patient or a continued treatment patient, not being a patient to whom section 113 applies, who absents himself or herself from a hospital, otherwise than in accordance with the provisions of this Part, may be apprehended at any time by—

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

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

**Absence of patient with permission.**

**115.** 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.

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**Transfer of patients between hospitals.**

**116. (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 shall, before making an order under subsection (1) or arrangements under subsection (2), do all such things as are reasonably practicable to give notice to—

- (a) the nearest relative, if there is one, of the patient or a relative nominated by the patient; or
- (b) where there is no such relative, 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)** Where 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 may require, an emergency, notice as referred to in subsection (3) shall 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) shall be 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.

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**PART VII.**

**FORENSIC PATIENTS.**

**Review following finding of unfitness or at special hearing.**

**117. (1)** The Tribunal shall, within 14 days after the making of an order in respect of an accused person under section 428L (b) or 428Q of the Crimes Act, 1900—

- (a) review the person's case; and
- (b) determine—
  - (i) whether, in its opinion, the person has become fit to be tried for an offence; and
  - (ii) whether, in its opinion, the safety of the person or any member of the public will be seriously endangered by the person's release.

**(2)** Where, under subsection (1) (b), the Tribunal is of the opinion that a person has become fit to be tried for an offence, it shall notify the Attorney General accordingly.

**(3)** Where, under subsection (1) (b), 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 shall make a recommendation to the Minister for the person's release.

**(4)** On receipt of a recommendation under subsection (3) in respect of a person, the Minister shall notify the Attorney General of the recommendation.

**(5)** Where, within 30 days after the date of a notification under subsection (4), the Attorney General has not indicated an objection in accordance with subsection (6) to the person's release, the prescribed authority shall, subject to the regulations, after having informed the Minister for Police of the date of the person's release, order the person's release, unconditionally or subject to conditions.

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(6) Where, within 30 days after the date of a notification under subsection (4), 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 intends to proceed with criminal charges against the person,

the prescribed authority shall not order the person's release.

**Order relating to person found not guilty by reason of mental illness.**

**118. (1)** The Tribunal shall, within 14 days after the making of an order in respect of a person under section 428P (5) or 428ZB of the Crimes Act, 1900—

- (a) review the person's case; and
- (b) as soon as practicable after the review, make a recommendation to the Minister, unconditionally or subject to conditions—
  - (i) as to the person's detention, care or treatment; or
  - (ii) where 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.

(2) Where a recommendation under subsection (1) has been made to the Minister in respect of a person, the prescribed authority may, subject to the regulations—

- (a) except where the Tribunal has made a recommendation for the person's release, make an order for the person's detention in such place, being a hospital, prison or other place, and in such manner as are specified in the order; or
- (b) where the Tribunal has made a recommendation for the person's release, make an order, unconditionally or subject to conditions, for the person's release.

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**Review of forensic patients by the Tribunal.**

**119. (1)** The Tribunal may, at any time, and shall, at least once in every 6 months—

- (a) review the case of each forensic patient; and
- (b) make a recommendation to the Minister as to—
  - (i) the patient's continued detention, care or treatment in a hospital, prison or other place;
  - (ii) in the case of a patient subject to a determination that the patient is unfit to be tried for an offence, the fitness of the patient to be tried for an offence; or
  - (iii) the patient's release, unconditionally or subject to conditions.

**(2)** The Tribunal shall, at the request, in relation to any forensic patient, of the Minister for Health, the Attorney General, the Minister for Corrective Services, the Chief Medical Officer or a medical superintendent—

- (a) review the case of the patient; and
- (b) make a recommendation to the Minister for Health as to—
  - (i) the patient's continued detention, care or treatment in a hospital, prison or other place;
  - (ii) in the case of a patient subject to a determination that the patient is unfit to be tried for an offence, the fitness of the patient to be tried for an offence; or
  - (iii) the patient's release, unconditionally or subject to conditions.

**(3)** The Tribunal shall not, under subsection (1) or (2), make a recommendation for 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 patient's release.

**(4)** Nothing in subsection (1) or (2) enables the Tribunal to make a recommendation for the release of a forensic patient, being a person who has been remanded in custody under section 428F (4) (c) of the Crimes Act, 1900.

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**(5)** Where, in relation to a forensic patient subject to a determination that the patient is unfit to be tried for an offence—

- (a) the Tribunal, for the purposes of a recommendation made under subsection (1) or (2), is of the opinion that the patient has become fit to be tried for an offence it shall notify the Attorney General accordingly; or
- (b) the Tribunal recommends, under subsection (1) or (2), the patient's release, the provisions of section 117 (4)–(6) apply to and in respect of the recommendation in the same way as those provisions apply to and in respect of a recommendation under section 117 (3).

**(6)** Except as provided by subsection (5), where a recommendation under subsection (1) or (2) has been made to the Minister in respect of a forensic patient, the prescribed authority may, subject to the regulations—

- (a) except where the Tribunal has made a recommendation for the patient's release, make an order for the person's detention in such place, being a hospital, prison or other place, and in such manner as are specified in the order; or
- (b) where the Tribunal has made a recommendation for the person's release, make an order, unconditionally or subject to conditions, for the person's release.

**(7)** As a consequence of the review of the case of a forensic patient under subsection (1) or (2) or any other provision of 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.

**Breach of condition of order for release.**

**120. (1)** Where it appears to the prescribed authority that a person has committed a breach of a condition of an order made under section 117 (5) (or section 117 (5) as applied by section 119 (5) (b)), section 118 (2) (b) or section 119 (6) (b), the prescribed authority may order that the person be apprehended and detained in such place, being a hospital, prison or other place, and in such manner as are specified in the order.

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(2) A member of the police force to whose notice an order under subsection (1) is brought shall, as soon as practicable, 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 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—

- (a) enter premises, if need be by force, for the purpose of apprehending a person in accordance with subsection (2); and
- (b) apprehend a person in accordance with that subsection,

without the necessity of the warrant of a justice.

(4) Where a credible person, on oath before a justice, shows reasonable cause to suspect that a person in respect of whom an order under subsection (1) is made is outside the State, the justice may issue a warrant for the apprehension of the person in respect of whom the order under subsection (1) is made.

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

**Security conditions for forensic patients.**

121. (1) A forensic patient detained in a hospital, prison or other place or absent in accordance with section 129 or 130 shall 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 security conditions referred to in subsection (1).

**Requests for transfer to prison.**

122. (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.

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(2) The Tribunal, after considering a request made to it under subsection (1), may make the recommendation requested by the forensic patient or may refuse to make that recommendation.

(3) Where the Tribunal makes a recommendation under subsection (2) 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.**

**123.** Where it appears to the Chief Medical Officer, acting personally, on the certificates, in or to the effect of the form set out in Schedule 4, of 2 medical practitioners, one of whom shall be a psychiatrist, that a person imprisoned in a prison is mentally ill, the Chief Medical Officer may order that the person be transferred to a hospital.

**Transfer of other prisoners to hospitals.**

**124.** Without affecting section 123, where it appears to the Chief Medical Officer, acting personally, on the certificates, in or to the effect of the form set out in Schedule 4, of 2 medical practitioners, one of whom shall be 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 Medical Officer may, with the consent in writing of the person, order that the person be transferred to a hospital.

**Review of persons transferred from prisons.**

**125. (1)** The Tribunal shall, as soon as practicable after a person is transferred to a hospital under section 123 or 124—

- (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.



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(2) The Tribunal, or any member of the Tribunal on behalf of the Tribunal, shall, 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 428M (2) of the Crimes Act, 1900, has not been held,

in addition to the review of the case of the person under subsection (1), informally review the person's case each month in order to ensure that the legal proceedings pending in respect of the person are not delayed.

(3) The Tribunal, or any member on behalf of the Tribunal, may, for the purposes of subsection (2), communicate with such persons, take such action and make such recommendations as the Tribunal or member, as the case may be, thinks fit.

(4) Where a person is transferred to a hospital under section 123 or 124, the Tribunal may, at any time, make a recommendation to the prescribed authority that the person be transferred to a prison.

**Transfer of forensic patients between hospitals.**

**126.** An authorised officer may order the transfer of a forensic patient detained in a hospital to any other hospital.

**Termination of classification as forensic patient.**

**127. (1)** A person shall cease to be a forensic patient—

- (a) in the case of a person in respect of whom an order has been made under section 428P (5) or 428ZB of the Crimes Act, 1900—
  - (i) upon unconditional release by order of the prescribed authority; or
  - (ii) where the person has been released by order of the prescribed authority subject to conditions—upon the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, shall be complied with,

whichever first occurs;

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- (b) in the case of 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 428M (2) of the Crimes Act, 1900, has not been held—upon 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 in respect of the offence;
- (c) in the case of a person who has been detained in a hospital, prison or other place following a special hearing under section 428M (2) of the Crimes Act, 1900—
- (i) upon the expiry of the limiting term within the meaning of section 428P of that Act ordered by a court where that term is less than life;
  - (ii) upon unconditional release by order of the prescribed authority following a recommendation of the Tribunal;
  - (iii) where the person has been released by order of the prescribed authority subject to conditions—upon the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, shall be complied with; or
  - (iv) upon the person being classified by the Tribunal as a continued treatment patient,
- whichever first occurs;
- (d) in the case of 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 the offence (whether or not a special hearing under section 428M(2) of the Crimes Act, 1900, has been conducted in respect of the offence)—
- (i) upon a determination by the Attorney General that the person will not be further proceeded against by the Attorney General in respect of the offence; or
  - (ii) upon a finding at a further inquiry held under section 428s (2) of the Crimes Act, 1900, that the person is fit to be tried for the offence.

whichever first occurs;

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- (e) in the case of a person who, while serving a fixed sentence without a non-parole period, has been transferred to a hospital from a prison—
- (i) upon the expiry of the fixed sentence;
  - (ii) upon unconditional release by the order of the prescribed authority following a recommendation of the Tribunal;
  - (iii) where the person has been released by order of the prescribed authority subject to conditions—upon the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, shall be complied with;
  - (iv) upon being classified by the Tribunal as a continued treatment patient; or
  - (v) upon being transferred to a prison,
- whichever first occurs;
- (f) in the case of a person who, while serving a sentence of imprisonment for life, being a sentence imposed otherwise than pursuant to a special hearing under section 428M (2) of the Crimes Act, 1900, has been transferred to a hospital from a prison—
- (i) upon unconditional release by order of the prescribed authority following a recommendation of the Tribunal;
  - (ii) where the person has been released by order of the prescribed authority subject to conditions—upon the expiry of any time specified in the conditions as being a time during which those conditions, or any of them, shall be complied with; or
  - (iii) upon being transferred to a prison,
- whichever first occurs;
- (g) in the case of a person who, while serving a fixed sentence with a non-parole period, has been transferred to a hospital from a prison—
- (i) upon the expiry of the fixed sentence;
  - (ii) where the non-parole period has expired—upon unconditional release by order of the prescribed authority following a recommendation of the Tribunal;
  - (iii) where the non-parole period has expired and where the person has been released by order of the prescribed authority subject to conditions—upon the expiry of any

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- time specified in the conditions as being a time during which those conditions, or any of them, shall be complied with;
- (iv) upon being classified by the Tribunal as a continued treatment patient; or
  - (v) upon being transferred to a prison,
- whichever first occurs; and
- (h) in the case of a person on remand who has been transferred to a hospital—
- (i) upon release following advice by the Attorney General to the Minister that the person will not be further proceeded against by the Attorney General in respect of the offence in relation to which the person has been remanded; or
  - (ii) upon being transferred to a prison,
- whichever first occurs.

(2) Nothing in subsection (1) prevents the application of section 72, 73, 74, 75, 76 or 77 to a person who ceases to be a forensic patient.

**Effect on sentence, etc., of detention in hospital.**

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

**Special leave of absence in emergencies.**

**129. (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;
- (b) attend the funeral of a near relative; or
- (c) deal with circumstances constituting, in the opinion of the medical superintendent and the Secretary, an emergency.

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(2) On receipt of an application under subsection (1) from a forensic patient, the medical superintendent may, where the medical superintendent is of the opinion that no danger to any member of the public would result if the patient were to be granted special leave of absence, recommend to the Secretary that the leave be granted.

(3) The Secretary may approve a recommendation under subsection (2) and grant, subject to such terms and conditions as the Secretary thinks fit, special leave of absence to a forensic patient.

(4) Where a forensic patient breaches any term or condition subject to which special leave of absence is granted under subsection (3), the forensic patient may be apprehended and dealt with as provided by section 120.

**Absence for medical treatment.**

**130. (1)** The medical superintendent or an authorised officer may allow a forensic patient to be absent from a 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 shall forthwith notify the Minister of any absence allowed under subsection (1).

**Retaking of escapees.**

**131. (1)** A forensic patient who escapes from a hospital may be retaken at any time by—

- (a) the medical superintendent or any other suitably qualified person employed in the hospital;
- (b) a member of the police force;
- (c) a person authorised by the Secretary or the medical superintendent;  
or
- (d) a person assisting the medical superintendent, any other suitably qualified person so employed, a member of the police force or a person so authorised,

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

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(2) Where 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.

**Assisting or permitting escape.**

132. A person, being—

- (a) a person who rescues or attempts to rescue any person being conveyed to or detained in a hospital under this Part; or
- (b) the medical superintendent or any other person employed in a hospital who—
  - (i) through wilful neglect or connivance, permits any person so detained to escape from a hospital; or
  - (ii) abets or connives at the escape of any person from a hospital,

shall be guilty of an offence against this Act and shall be liable—

- (c) upon conviction or indictment to imprisonment for a period not exceeding 3 years; or
- (d) upon summary conviction to—
  - (i) imprisonment for a period not exceeding 1 year; or
  - (ii) a penalty not exceeding \$1,000,or both.

**Form, effect, etc., of orders under this Part.**

133. (1) An order under this Part shall be in writing.

(2) An order under this Part shall have effect according to its tenor.

(3) An order which may be made under this Part 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, as the case may be, be made by any Minister of the Crown.

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PART VIII.

JURISDICTION OF THE SUPREME COURT.

**Interpretation.**

**134. (1)** In this Part—

“appeal” means an appeal under section 136;

“assessor” means a person nominated as an assessor under section 135.

**(2)** In this Part, a reference to a determination of the Tribunal includes a reference to an order, direction or decision of the Tribunal.

**Nomination of assessors.**

**135. (1)** The Minister shall, 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 Part.

**(2)** A nomination of a person made under subsection (1) shall be accompanied by—

(a) the consent, in writing, of the person nominated to the nomination;  
and

(b) the oath referred to in subsection (3) sworn by the person nominated.

**(3)** A person nominated under subsection (1) shall not act as an assessor until the person has taken an oath in the prescribed form.

**(4)** Sections 11, 11A and 12 of the Oaths Act, 1900, apply to and in respect of an oath required to be taken under subsection (3) as if the oath were an oath required to be taken under Part II of that Act.

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**Appeals to the Court.**

**136.** 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 Court, appeal to the Court against the determination, failure or refusal.

**Functions of assessors on hearing of appeals.**

**137. (1)** Where 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 referred to in section 135 (1).

**(2)** An assessor referred to in subsection (1) shall sit with the Court in the hearing of an appeal and shall have power to advise, but not to adjudicate, on any matter relating to the appeal.

**Powers of the Court on appeals.**

**138. (1)** In addition to any other functions and discretions that the Court has apart from this subsection, the Court shall, for the purposes of hearing and disposing of an appeal, have all the functions and discretions which the Tribunal had in respect of the matter the subject of the appeal.

**(2)** An appeal shall be by way of a new hearing and fresh 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 shall have regard to the provisions of this Act and such other matters as it considers to be relevant.



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(4) The decision of the Court upon an appeal shall, for the purposes of this or any other Act or instrument, be deemed, where appropriate, to be the final determination of the Tribunal and shall be given effect to accordingly.

(5) The Tribunal and any member of the Tribunal shall not be 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 order for discharge or transfer of patient.**

**139. (1)** Where—

- (a) the Court receives information upon oath; or
- (b) the Court has reason or cause to suspect,

that a person who is not a mentally ill person is detained in a hospital or that a forensic patient is wrongly detained in a hospital, the Court shall order the medical superintendent to bring the person before the Court for examination at a time specified in the order.

(2) Where, upon the examination of a person pursuant to subsection (1), not being a forensic patient who is alleged to be or is suspected of being wrongly detained in a hospital, the medical superintendent is unable to prove that it is very highly probable that the person is a mentally ill person, the Court shall order that the person be immediately discharged from the hospital in which the person is detained.

(3) Where, upon the examination of a person pursuant to subsection (1), being a forensic patient who is alleged to be or is suspected of being wrongly detained in a hospital, the medical superintendent is unable to prove that the patient is not wrongly detained in the hospital, the Court shall order that the person be immediately transferred to a prison.

**Other jurisdiction of the Court not affected.**

**140.** Nothing in this Part derogates from or otherwise affects the jurisdiction of the Court under any other Act or law.

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## PART IX.

## PATIENTS FUNDS AND ACCOUNTS.

**Interpretation.**

**141.** In this Part—

“patient’s account” means the account kept in relation to a patient under section 143 (2);

“responsible person” means—

- (a) in relation to a hospital, other than an authorised hospital—the Secretary; and
- (b) in relation to an authorised hospital—the medical superintendent of the authorised hospital.

**Trust funds.**

**142. (1)** The Secretary, in relation to each hospital other than an authorised hospital, and the medical superintendent of an authorised hospital shall establish and maintain, in a bank approved by the Treasurer—

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

**(2)** The Secretary, in relation to each hospital other than an authorised hospital, shall establish and maintain, in a bank approved by the Treasurer, an Interest Account.

**Patients Trust Fund.**

**143. (1)** Where money is 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, that money shall be paid into the Patients Trust Fund.

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

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(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.

(4) Where, 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.

(5) 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 subsection (4) 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.

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

**Interest Account.**

**144. (1)** Subject to this Act, money standing to the credit of patients' accounts in respect of those hospitals which are incorporated hospitals within the meaning of the Public Hospitals Act, 1929, and separate institutions within the meaning of that Act shall constitute one general fund and may be invested by the Secretary in accordance with and subject to the Trustee Act, 1925, or in any other form of investment approved by the Treasurer.

(2) Where money is invested under subsection (1)—

(a) there shall be paid into the Interest Account—

(i) the income from the investment; and

(ii) any capital gain made upon the realisation of the investment; and

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- (b) there shall be paid out of the Interest Account—
- (i) any loss incurred upon the realisation of the investment; and
  - (ii) at such time or times as the Secretary may determine, such management fees of the Secretary as the Secretary may determine.

(3) The Secretary shall, at least once a year, after making the payments referred to in subsection (2) (b), 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 under subsection (1); 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.**

**145. (1)** There shall 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.

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## PART X.

## CARRYING OUT OF CERTAIN MEDICAL OR THERAPEUTIC TREATMENTS.

DIVISION I.—*Psychosurgery.***Interpretation.****146. (1)** In this Division—

“behaviour” 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;

“Board” means the Psychosurgery Review Board constituted under section 147;

“nearest relative”, in relation to a patient, means—

- (a) where the patient is married and not separated from his or her spouse by order of a court or by agreement—the patient’s spouse;
- (b) where the patient—
  - (i) is not married; or
  - (ii) 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

- (c) where the applicant under section 150 (1) in respect of the patient—
  - (i) ascertains that the patient has no spouse or surviving parent;
  - (ii) is unable to ascertain whether the patient has a spouse, parents or a surviving parent; or

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(iii) is unable to ascertain particulars of the name and whereabouts of any such spouse, parents or surviving parent,

such person, if any, as, in the opinion of the applicant, has the care, guardianship or custody of the patient at the time of the making of the application;

“patient” means a person upon whom psychosurgery is or is intended to be performed;

“psychosurgery” means—

- (a) the creation of one or more lesions, whether made on the same or separate occasions, in the brain of a person by any surgical technique or any procedure, when it is done primarily for the purpose of altering the thoughts, emotions or behaviour of the person;
- (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 one 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.

**(2)** In this Division, a reference to a person who performs psychosurgery includes a reference to a person who causes psychosurgery to be performed and a person who knowingly permits psychosurgery to be performed.

**(3)** In this Division, a reference to informed consent, in respect of a patient, is a reference to the free and voluntary consent of the patient to the performance on the patient of psychosurgery, after—

- (a) a fair explanation has been made to the patient in a language with which the patient is familiar of the techniques or procedures to be followed, including an identification and explanation of any such technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to predict accurately the outcome of its performance;

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- (b) a full description has been given to the patient of the attendant discomforts and risks, if any;
- (c) a full description has been given to the patient of the benefits, if any, to be expected;
- (d) a full disclosure has been made to the patient of appropriate alternative treatments, if any, that would be advantageous for the patient;
- (e) an offer has been made to the patient to answer any inquiries concerning the procedures or any part of them;
- (f) notice has been given to the patient that the patient is free to refuse or to withdraw his or her consent and to discontinue the procedures or any of them at any time;
- (g) a full disclosure has been made to the patient of any financial relationship between the person by whom consent for psychosurgery is sought or the medical practitioner who proposes to perform the psychosurgery, or both, and the hospital or institution in which it is proposed to perform the psychosurgery; and
- (h) notice has been given to the patient that the patient has the right to legal advice and representation at any time during considerations relating to the performance of psychosurgery on the patient.

(4) For the purposes of this Division, other than section 159, the following classes of persons shall be conclusively presumed to be incapable of giving free and voluntary 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 crime, who are on probation or parole;
- (f) persons convicted of crime, who have escaped from lawful custody;

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- (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 the recognizance;
- (h) persons under arrest in respect of a criminal charge; and
- (i) temporary patients, continued treatment patients or forensic patients.

**Psychosurgery Review Board.**

**147. (1)** There is hereby constituted a corporation under the corporate name of the "Psychosurgery Review Board".

**(2)** Schedule 5 has effect with respect to the constitution, membership and meetings of the Board.

**Psychosurgery to be performed, etc., in accordance with a consent of the Board.**

**148.** A person who performs psychosurgery on a patient, except in accordance with a consent of the Board under section 156 (1), shall be guilty of an offence against this Act.

**Consent of patient.**

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

**Application for permission to perform psychosurgery.**

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



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(2) An applicant under subsection (1) shall specify in the application—

- (a) the applicant's name and address;
- (b) the name and address of the patient;
- (c) the name and address of the patient's nearest relative, if any;
- (d) as to the giving of informed consent by the patient to the psychosurgery—
  - (i) whether, in the applicant's opinion, the patient is capable of giving that consent; and
  - (ii) whether, in the applicant's opinion, the patient has given that consent or whether the applicant is in doubt that the patient has given that consent;
- (e) the exact nature of the psychosurgery proposed to be performed;
- (f) the clinical indications for the psychosurgery;
- (g) the name or names of the person or persons proposing to perform the psychosurgery;
- (h) the name of the hospital or institution in which it is proposed to perform the psychosurgery; and
- (i) such other particulars as may be prescribed.

**Procedure for convening hearing of application.**

**151. (1)** The President of the Board shall, within 10 days after the date of receipt of an application under section 150 (1), convene a meeting of the Board for the purpose of hearing and determining the application.

**(2)** The hearing of an application shall commence within 31 days after the date of receipt of the application.

**(3)** The President of the Board shall 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.

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**Attendance and representation at hearing.**

**152.** At the hearing before the Board of an application under section 150 (1)—

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

**Hearing open to public.**

**153.** The hearing of an application under section 150 (1) shall be open to the public unless—

- (a) the patient or any representative of the patient objects; and
- (b) the Board upholds the objection.

**Hearing of application.**

**154.** On the hearing of an application under section 150 (1), the Board may make such inquiries and conduct such examinations with respect to the application as it thinks fit.

**Other provisions relating to hearing of application.**

**155.** Sections 49, 51, 52, 53, 54, 55 and 56 apply to and in respect of the hearing of an application under section 150 (1) in the same way as those sections apply to and in respect of a matter before the Tribunal and, in the application of those sections—

- (a) a reference to the Tribunal shall be read and construed as a reference to the Board;
- (b) a reference to the President of the Tribunal or a Deputy President of the Tribunal shall be read and construed as a reference to the President of the Board or the Deputy President of the Board, respectively;

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- (c) a reference to a patient within the meaning of this Act, except this Division, shall be read and construed as a reference to a patient within the meaning of this Division; and
- (d) a reference to a representative, referred to in section 50, of a person shall be read and construed as a reference to a patient's barrister or solicitor.

**Granting of consent.**

**156. (1)** Where the Board, after hearing an application under section 150 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit, is satisfied that—

- (a) the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application;
- (b) the patient has given that consent;
- (c) the psychosurgery—
  - (i) has clinical merit; and
  - (ii) is appropriate for the patient;
- (d) the person or persons proposing to undertake the performance of the psychosurgery is or are properly qualified to do so;
- (e) the hospital or institution in which it is proposed to perform the psychosurgery is a proper place in which to perform it;
- (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,

it may grant its consent to the application.

**(2)** A consent of the Board under subsection (1) shall specify—

- (a) the name of the patient;
- (b) the name or names of the person or persons proposing to perform the psychosurgery;

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- (c) the exact nature of the psychosurgery proposed to be performed;
- (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.

(3) The Board shall give notice, in writing, of a consent under subsection (1) 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 granted.

(4) A consent of the Board under subsection (1) shall lapse if the psychosurgery the subject of the consent is not performed within the period specified in the consent.

**Refusal of consent.**

157. (1) Where the Board, after hearing an application under section 150 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit—

- (a) is satisfied that—
  - (i) the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application; and
  - (ii) the patient has not given that consent; or
- (b) is not satisfied as to any one or more of the matters specified in section 156 (1) (c)–(g),

the Board shall refuse to grant its consent to the application.

(2) The Board shall give notice, in writing, of a refusal to grant a consent under subsection (1) to the applicant for the consent as soon as practicable after the refusal is made.

(3) The Board, in a notice under subsection (2), shall state its reasons for refusing to grant the consent.

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**Stating of case for opinion of the Court.**

**158.** Where the Board, after hearing an application under section 150 (1) and after making such inquiries and conducting such examinations with respect to the application as it thinks fit—

- (a) is not satisfied that the patient in respect of whom the application is made is capable of giving informed consent to the psychosurgery the subject of the application;
- (b) is satisfied as to the matters specified in section 156 (1) (c)–(g); and
- (c) is satisfied that the patient has not indicated any opposition to the psychosurgery,

it may state a case for the Court to determine—

- (d) whether the patient is capable of giving that consent;
- (e) whether the patient has given that consent; and
- (f) where 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.**

**159.** Where the Court, after hearing a case stated for its determination under section 158 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 shall make an order refusing the application;
- (b) is capable of giving informed consent and has given that consent, it shall make an order remitting the application to the Board for the purpose of enabling the Board to grant its consent to the application;
- (c) is not capable of giving informed consent and that, in the interests of the patient, that consent should not be given, it shall decline to give that consent on behalf of the patient and shall make an order refusing the application; or
- (d) is not capable of giving informed consent but that, because the performance of psychosurgery is necessary immediately in order to prevent the death of the patient, that consent should be given,

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it may give that consent on behalf of the patient and shall make an order remitting the application to the Board for the purpose of enabling the Board to grant its consent to the application.

**Granting of consent on remission of application.**

**160. (1)** On the remission of an application to the Board under section 159 (b) or (d), the Board shall grant its consent to the application.

**(2)** Subsections (2), (3) and (4) of section 156 apply to and in respect of a consent under subsection (1) in the same way as those subsections apply to and in respect of a consent under section 156 (1).

**Report of operation.**

**161.** Where a person performs psychosurgery on a patient pursuant to a consent of the Board under section 156 (1) or 160 (1), the person shall furnish a report in writing to the Board within 30 days after performing the psychosurgery as to the operation and its results and shall not thereafter fail or refuse, for any cause, to furnish to the Board such information as the person has in relation to the patient and which the Board may request.

**Review and research.**

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

**(2)** For the purposes of subsection (1), the Board may—

(a) make or cause to be made such observations of patients; and

(b) make such arrangements for the gathering and recording of information,

as it thinks fit.

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DIVISION 2.—*Electro convulsive therapy and certain prescribed treatments.*

**Interpretation.**

**163. (1)** In this Division, a reference to a treatment to which this Division applies is a reference to—

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

**(2)** In this Division, a reference to the administration of a treatment to a person includes a reference to the performance of an operation on the person.

**(3)** In this Division, a reference to a person who administers a treatment includes a reference to a person who causes a treatment to be administered and a person who knowingly permits a treatment to be administered.

**(4)** In this Division, a reference to informed consent, in respect of a person, is a reference to the free and voluntary consent of the person to the administration to the person of a treatment to which this Division applies—

- (a) after the person has been given information, in or to the effect of the prescribed form, containing—
  - (i) a fair explanation of the techniques or procedures to be followed, including an identification and explanation of any such technique or procedure about which there is not sufficient data to recommend it as a recognised treatment or to predict accurately the outcome of its performance;
  - (ii) a full description of the possible attendant discomforts and risks, including loss of memory;
  - (iii) a full description of the benefits, if any, to be expected;
  - (iv) a full disclosure of appropriate alternative treatments, if any, that would be advantageous for the person;
  - (v) an offer to answer any inquiries concerning the procedures or any part of them;
  - (vi) notice that the person is free to refuse or to withdraw consent and to discontinue the procedures or any of them at any time; and

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(vii) a full disclosure 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

(b) after an oral explanation of the matters dealt with in the prescribed form has been given to the person in a language with which the person is familiar.

(5) For the purposes of subsection (4), a person shall be presumed to be incapable of giving free and voluntary consent to the administration to the person of a treatment to which this Division applies if, prior to, or at, the time at which the consent is sought, the person has received medication which, at the time the consent is sought, could impair the person's ability to give that consent.

(6) In this Division, a reference to the medical superintendent of a hospital includes a reference to a medical officer, nominated by the medical superintendent, attached to the hospital.

**Administration of treatment—generally.**

**164. (1)** A person, not being a medical practitioner, who administers to another person a treatment to which this Division applies shall be guilty of an offence against this Act.

(2) A medical practitioner who administers to a person a treatment to which this Division applies, otherwise than in accordance with this Division, shall be guilty of an offence against this Act.

**Persons to be present during administration of electro convulsive therapy.**

**165.** A medical practitioner shall 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), one of whom shall be experienced in the administration of electro convulsive therapy and the other or one other of whom shall be experienced in the administration of anaesthesia.



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**Places at which treatment may be administered.**

**166.** A medical practitioner who administers to a person a treatment to which this Division applies, otherwise than at—

- (a) a hospital; or
- (b) a place approved by the Secretary,

shall be guilty of an offence against this Act.

**Circumstances in which treatment may be administered with consent—  
persons other than involuntary patients.**

**167.** Where—

- (a) a person, other than a temporary patient, continued treatment patient or forensic patient—
  - (i) is capable of giving informed consent to the administration to the person of a treatment to which this Division applies; and
  - (ii) has given that consent, in writing, in or to the effect of the prescribed form; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that they are of the opinion that the treatment is—
  - (i) a reasonable and proper treatment to be administered to the person; and
  - (ii) necessary or desirable for the safety or welfare of the person,

a medical practitioner may administer that treatment to the person.

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**Circumstances in which treatment may be administered with consent—  
involuntary patients.**

**168.** Without affecting section 172, where—

- (a) a person, being a temporary patient, continued treatment patient or forensic patient—
  - (i) is, in the opinion of the medical superintendent, capable of giving informed consent to the administration to the person of a treatment to which this Division applies; and
  - (ii) has given that consent, in writing, in or to the effect of the prescribed form; and
- (b) 2 medical practitioners, at least one of whom is a psychiatrist, certify, in writing, that they are of the opinion that the treatment is—
  - (i) a reasonable and proper treatment to be administered to the person; and
  - (ii) necessary or desirable for the safety or welfare of the person.

the medical superintendent shall apply to a stipendiary magistrate to determine the validity of the person's consent.

**Inquiry.**

**169. (1)** On an application under section 168, the stipendiary magistrate shall, as soon as practicable, hold an inquiry to determine the validity of the consent of the person in respect of whom the application is made.

**(2)** The stipendiary 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 person in respect of whom the application under section 168 is made shall, unless the stipendiary magistrate otherwise approves, appear before the magistrate during the holding of the inquiry.

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(4) The medical superintendent shall ensure that, so far as is reasonably practicable, the person in respect of whom the application under section 168 is made is, when appearing before the stipendiary magistrate, dressed in street clothes.

(5) In the course of the inquiry, the stipendiary magistrate—

- (a) shall consider the certificates of the medical practitioners under section 168 (b) concerning the person in respect of whom the application is made;
- (b) shall inquire as to the administration of any medication to the person and shall take account of the effect of the administration of the medication on the person's ability to communicate; and
- (c) shall consider such other information as may be placed before the magistrate.

**Result of inquiry.**

170. Where, pursuant to an inquiry under section 169 concerning a person, a stipendiary magistrate is satisfied that the person—

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

a medical practitioner may administer that treatment to the person.

**Refusal of treatment by medical superintendent.**

171. A medical superintendent (not being a medical officer nominated by the medical superintendent) may refuse to allow the administration to a person referred to in section 168 of a treatment to which this Division applies, notwithstanding that a stipendiary magistrate, in accordance with section 170, is satisfied as to the validity of the consent of the person to the administration of the treatment to the person.

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**Circumstances in which treatment may be administered without consent.****172. Where—**

- (a) a temporary patient, continued treatment patient or forensic patient—
  - (i) 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 of a treatment to which this Division applies; or
  - (ii) is, in the opinion of the medical superintendent (not being a medical officer nominated by the medical superintendent), capable of giving that consent but has refused, or has neither consented nor refused, to have the treatment administered to the patient; and
- (b) 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 they are of the opinion that the treatment is—
  - (i) a reasonable and proper treatment to be administered to the patient; and
  - (ii) necessary immediately in order to save the life of the patient,

a medical practitioner may administer that treatment to the patient.

**Register.**

**173. (1)** A register, in or to the effect of the prescribed form, for the purpose of recording information relating to the administration of treatments to which this Division applies, shall 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 Secretary under section 166—by a person specified by the Secretary.

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(2) The medical superintendent or person specified by the Secretary under subsection (1), as the case may require, shall, before the administration of a treatment to which this Division applies, enter, or cause to be entered, in the register referred to in that subsection such particulars in relation to the administration of that treatment as are required to complete an entry in that register.

(3) Where 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 referred to in subsection (1), the medical superintendent or person specified by the Secretary under subsection (1), as the case may require, shall note the differences and the explanation for the differences in the register.

(4) A member of the Tribunal, an official visitor or an authorised officer may, at any time, inspect a register referred to in subsection (1).

DIVISION 3.—*Surgical operations.*

**Application of Division.**

174. This Division does not apply to—
- (a) the performance of psychosurgery;
  - (b) the administration of electro convulsive therapy; or
  - (c) the performance or administration of an operation or a medical or therapeutic treatment prescribed for the purposes of Division 2.

**Interpretation.**

175. (1) In this Division, “nearest relative”, in relation to a patient or person under detention in a hospital, means—

- (a) where 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;

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- (b) where the patient or person—
  - (i) is not married; or
  - (ii) 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) where the medical superintendent—
  - (i) ascertains that the patient or person has no spouse or surviving parent;
  - (ii) is unable to ascertain whether the patient or person has a spouse, parents or a surviving parent; or
  - (iii) is unable to ascertain particulars of the name and whereabouts of any such spouse, parents or surviving parent,

such person, if any, as, in the opinion of the medical superintendent, had the care, guardianship or custody of the patient or person prior to the admission of the patient or person to the hospital.

(2) In this Division, a reference to a surgical operation includes a reference to a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation.

**Cases of emergency.**

**176. (1)** In this section, “prescribed person” means medical superintendent, deputy medical superintendent, responsible medical officer or authorised officer.

**(2) Where—**

- (a) a temporary patient, continued treatment patient, forensic patient (being mentally ill) or any other person under detention in a hospital—
  - (i) is, in the opinion of a prescribed person, incapable of giving consent to the performance of a surgical operation on him or her; or

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(ii) is, in the opinion of a prescribed person, capable of giving that consent but refuses to give that consent or neither gives nor refuses to give that consent; 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 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,

the prescribed person may consent to the performance of the surgical operation on the patient or other person.

**(3)** Where—

(a) an informal patient or forensic patient (not being mentally ill) is, in the opinion of a 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 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,

the prescribed person may consent to the performance of the surgical operation on the patient.

**(4)** Except where the circumstances of the case render it impracticable, a consent under subsection (2) or (3) shall be in writing and shall be signed by the prescribed person giving the consent.

**(5)** A consent under subsection (2) or (3) in relation to a patient or other person shall have 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.

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(6) Where a surgical operation is performed on a patient or other person pursuant to the consent of a prescribed person, the medical superintendent shall, 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 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.

**Other cases—notice of intention to obtain consent.**

177. (1) Where—

- (a) a temporary patient, continued treatment patient, forensic patient (being mentally ill) or any other person under detention in a hospital—
  - (i) is, in the opinion of the medical superintendent, incapable of giving consent to the performance of a surgical operation on him or her; or
  - (ii) is, in the opinion of the medical superintendent, capable of giving that consent but refuses to give that consent or neither gives nor refuses to give that consent; and
- (b) 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 on the patient or other person,

the medical superintendent shall, 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 other person of the intention of the medical superintendent to obtain the consent of an authorised officer or the Tribunal, as the case may require, to the performance of the surgical operation on the patient or other person.

(2) Where—

- (a) an informal patient or forensic patient (not being mentally ill) is, in the opinion of the medical superintendent, incapable of giving consent to the performance of a surgical operation on him or her; **and**



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- (b) the medical superintendent is of the opinion that it is desirable, having regard to the interests of the patient, to perform a surgical operation on the patient,

the medical superintendent shall, 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 of the intention of the medical superintendent to obtain the consent of an authorised officer or the Tribunal, as the case may require, to the performance of the surgical operation on the patient.

**Application for consent.**

**178. (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 177 (1) or (2), the medical superintendent may, in accordance with subsection (2), apply to an authorised officer or the Tribunal for consent to the performance of the surgical operation on the patient or other person.

**(2)** An application under subsection (1) in respect of a patient or other person shall be made—

- (a) except as provided by paragraph (b) (iii), where the nearest relative of the patient or other person agrees, in writing, to the performance of the surgical operation—to an authorised officer; or
- (b) where—
- (i) the nearest relative of the patient or other person does not agree, in writing, to the performance of the surgical operation;
  - (ii) there is no nearest relative of the patient or other person; or
  - (iii) the surgical operation proposed to be performed is that of the sterilisation of the patient or other person,
- to the Tribunal.

**Hearing and determination of application.**

**179. (1)** An authorised officer or the Tribunal, as the case may require, shall hear and determine an application made under section 178.

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(2) Where an authorised officer or the Tribunal determines an application made under section 178 by granting consent to the performance of a surgical operation on a patient or other person, the consent shall have 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.

DIVISION 4.—*Prohibited, restricted and other treatments.*

**Prohibited treatments.**

**180.** A person who administers to or performs on another person—

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

shall be guilty of an offence against this Act.

**Administration of drugs—generally.**

**181.** A medical practitioner shall 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.

**Administration of drugs in hospitals.**

**182.** The medical superintendent shall 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 amount of dosage, intended and unintended effects and appropriateness of use.

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**Information as to types and dosages of medications.**

**183.** The medical superintendent or a medical officer nominated by the superintendent shall, on the request of a patient or person detained in a hospital or a representative, appointed in accordance with this Act, of any such patient or person, provide the patient, person or representative, as the case may require, 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.

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**PART XI.****MISCELLANEOUS.****Restrictions on holding of certain offices.**

**184. (1)** A person shall 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) stipendiary magistrate, but only where the holder of the office is holding an inquiry under section 88.

**(2)** Nothing in subsection (1) prevents a person who holds the office of a medical superintendent from being appointed to or holding the office of an authorised officer where 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.

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**(3) Where a person contravenes this section—**

- (a) nothing invalidates any act of the person during the period of the contravention; and
- (b) the person 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.**

**185.** For the purposes of this Act, the fact that a person is a mentally ill person shall be presumed not to be an impediment to the representation of the person by a barrister or solicitor before the Tribunal, at an inquiry under section 88, before the Court or before the Psychosurgery Review Board.

**Disclosure of information.**

**186.** Subject to the regulations, a person who discloses any information obtained by the person relating to the medical history of a person who is identified in the disclosure or who may be identified from the terms of the disclosure, unless the disclosure is made—

- (a) with the consent of the person to whom the information relates;
- (b) in connection with the administration or execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman Act, 1974; or
- (e) in any other prescribed circumstances,

shall be guilty of an offence against this Act.

**Withholding of certain correspondence of patients and other persons.**

**187. (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

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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) Subsection (1) does not apply to a postal article addressed by a patient or person detained in a hospital—

- (a) to the Minister;
- (b) to a member of Parliament, other than the Minister;
- (c) to the Protective Commissioner or Deputy Protective Commissioner;
- (d) to the governing authority of the hospital;
- (e) to a person or authority having power to discharge the patient or person from the hospital;
- (f) to the Ombudsman or Deputy Ombudsman; or
- (g) to a prescribed person.

(3) Except as provided by this section, it shall not be 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.**

**188.** A person who refuses, neglects or for any reason fails to obey or comply with an order, direction or determination, under this Act, of the Tribunal, a stipendiary magistrate or the Psychosurgery Review Board shall be guilty of an offence against this Act.

**Assistance of interpreters.**

**189.** A medical practitioner, when conducting an examination of a person for the purposes of this Act, being a person who is unable to communicate adequately in English but who is able to communicate adequately in another language, shall, so far as is reasonably practicable, arrange for a competent interpreter to be present during the examination.

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**Information as to follow-up care after discharge.**

**190.** Where a patient is discharged from a hospital, the medical superintendent shall 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.**

**191.** 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.**

**192. (1)** Where by or under this Act a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on—

(a) an individual—

- (i) by delivering it to the individual personally;
- (ii) by leaving it at the individual's place of residence last known to the person who issued the notice or other document with a person who apparently resides there, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the individual at that place of residence; or

(b) a corporation—

- (i) by delivering it to a person who is or apparently is concerned in the management of the corporation;
- (ii) by leaving it at the registered office of the corporation with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years; or
- (iii) by sending it by prepaid post addressed to the corporation at that registered office.

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(2) A notice or other document that is delivered, left or sent by post in accordance with subsection (1) shall be deemed to have been given or served on its being so delivered or left or, if it is sent by post, shall, in the absence of evidence to the contrary, be prima facie deemed to have been given or served when it would have been delivered in the ordinary course of post.

**Amendment of certain documents.**

**193.** (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 subsection (1) shall be deemed to have had effect in its amended form on and from its original date.

(3) Where a document referred to in subsection (1) is not amended in accordance with that subsection, the medical superintendent may—

- (a) order the discharge of the person admitted to the hospital by virtue of the document; or
- (b) do such things as are necessary to obtain a document in substitution for that document.

(4) A document obtained in accordance with subsection (3) in substitution for another document shall be deemed 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.**

**194.** A medical practitioner—

- (a) who signs a certificate in or to the effect of the form set out in Part I of Schedule 3 or in Schedule 4 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

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(b) who wilfully makes a false or misleading statement in a certificate referred to in paragraph (a),  
shall be guilty of an offence against this Act.

**Ill-treatment, etc., of patients.**

**195.** A medical superintendent or any other person employed in a hospital who wilfully strikes, wounds or ill-treats or wilfully neglects a patient or person detained in a hospital shall, for every such offence, be liable to a penalty not exceeding \$4,000 or to imprisonment for a period not exceeding 6 months, or both.

**Penalties.**

**196.** A person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed or if no penalty is so imposed to a penalty not exceeding \$4,000.

**Proceedings for offences.**

**197.** Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions held before a stipendiary magistrate sitting alone.

**Regulations.**

**198. (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 and, in particular, 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;
- (b) the functions, responsibilities, obligations and liabilities of medical superintendents and medical officers;



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- (c) the exercise by the Principal official visitor and the official visitors of their functions;
  - (d) matters relating to meetings of the Tribunal, to an inquiry under section 88 and to meetings of the Psychosurgery Review Board;
  - (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 section 88;
  - (f) preserving confidentiality of information obtained in connection with the administration or execution of this Act;
  - (g) protecting the privacy of patients and persons under detention in hospitals;
  - (h) standards of patient care;
  - (i) the establishment, in relation to a hospital, of a patient care review committee and the functions of such a committee;
  - (j) matters relating to the rights and privileges of patients and persons under detention in hospitals, including matters relating to—
    - (i) 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; and
    - (ii) the visiting of patients and persons under detention;
  - (k) prescribing the forms required by this Act and such other forms as may be necessary or convenient for the administration of this Act;  
**and**
  - (l) 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.
- (2)** A provision of a regulation may—
- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
  - (b) apply differently according to different factors of a specified kind;  
**or**

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(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body, or may do any combination of those things.

(3) A regulation may impose a penalty not exceeding \$500 for any offence against the regulation.

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## SCHEDULE 1.

(Sec. 25.)

## PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND OFFICIAL VISITORS.

**Interpretation.**

1. In this Schedule, "official visitor" includes the Principal official visitor.

**Age of official visitors.**

2. A person who is of or above the age of 65 years shall not be appointed as an official visitor.

**Term of office of official visitors.**

3. An official visitor shall, subject to this Schedule, be appointed for such term, not exceeding 3 years, as is specified in the instrument of appointment and shall, if otherwise qualified, be eligible for reappointment as an official visitor.

**Remuneration of and allowances for official visitors.**

4. 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.

**Removal from office.**

5. The Minister may remove an official visitor from office for inability, misbehaviour or failure to comply with the terms and conditions of appointment.

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*Mental Health.*

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SCHEDULE 1—*continued.*PROVISIONS RELATING TO THE PRINCIPAL OFFICIAL VISITOR AND OFFICIAL VISITORS—*continued.***Vacation of office.**

6. An official visitor shall be deemed to have vacated office if the official visitor—
- (a) dies;
  - (b) resigns the office by instrument in writing addressed to the Minister and the Minister accepts the resignation;
  - (c) 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;
  - (d) becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person within the meaning of the Protected Estates Act, 1983, or an incapable person within the meaning of that Act;
  - (e) is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
  - (f) 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;
  - (g) signs a certificate or request for the admission of a person to a hospital or attends professionally upon a patient in a hospital;
  - (h) is removed from office by the Minister under clause 5; or
  - (i) attains the age of 65 years.

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SCHEDULE 2.

(Sec. 38 (7).)

## PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL.

**Age of members.**

1. A person who is of or above the age of 65 years shall not be appointed as a member.

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*Mental Health.*

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL—*continued.***Qualification.**

2. (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;
- (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 shall 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, within 2 years immediately preceding the person's appointment.

**Term of office of members.**

3. A member shall, subject to this Schedule, be appointed for such term, not exceeding 5 years, as is specified in the instrument of appointment and shall, if otherwise qualified, be eligible for reappointment as a member.

**Remuneration.**

4. (1) The President and a Deputy President are entitled to be paid—

- (a) remuneration in accordance with the Statutory and Other Offices Remuneration Act, 1975; and
- (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the President and a Deputy President, respectively.

(2) A member, other than the President or a Deputy President, 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.

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*Mental Health.*

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SCHEDULE 2—*continued.*PROVISIONS RELATING TO THE MEMBERSHIP OF THE TRIBUNAL—*continued.***Deputy Presidents.**

5. (1) A Deputy President, while holding office as a Deputy President, shall, subject to the conditions of appointment specified in the instrument of appointment and to any direction given by the President, have the powers, authorities, privileges and immunities and perform the duties of the President.

(2) No person shall 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 shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by the President.

**Removal from office.**

6. The Governor may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of appointment.

**Vacation of office.**

7. A member shall be deemed to have vacated office if the member—

- (a) dies;
  - (b) resigns the office by instrument in writing addressed to the Governor and the Governor accepts the resignation;
  - (c) 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;
  - (d) becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person within the meaning of the Protected Estates Act, 1983, or an incapable person within the meaning of that Act;
  - (e) is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
  - (f) is removed from office by the Governor under clause 6; or
  - (g) attains the age of 65 years.
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*Mental Health.*

SCHEDULE 3.

(Sec. 72.)

MENTAL HEALTH ACT, 1983.

MEDICAL CERTIFICATE AS TO EXAMINATION OR OBSERVATION OF PERSON.

PART I.

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 <sup>(1)</sup> personally examined/personally observed ..... <sup>(1) Strike out if inapplicable.</sup>  
 (name of person in full)

for a period of ..... and I am of the  
 (state length of examination/observation)

opinion that the person <sup>(2)</sup> examined/observed by me is a mentally ill person <sup>(3)</sup> because <sup>(2) Strike out if inapplicable.</sup>  
 the person is a person who requires care, treatment or control—

<sup>(3) See Note 1.</sup>

<sup>(4)</sup> (a) for the person's own protection by reason that—

<sup>(4) Strike out and initial any of the statements that are not applicable.</sup>

- (i) owing to the person's mental illness, the person has recently attempted to kill himself or herself or to cause serious bodily harm to himself or herself;
- (ii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will attempt to kill himself or herself or attempt to cause serious bodily harm to himself or herself;
- (iii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will suffer serious bodily harm due to neglect of himself or herself or to neglect by others;
- (iv) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon himself or herself; or

*Mental Health.*

SCHEDULE 3—*continued.*

- (v) the person is in the manic phase of a manic-depressive illness and there are reasonable grounds for believing that it is probable that the person will thereby suffer serious financial harm or harm to his or her reputation or standing in the community;
- (b) for the protection of others by reason that—
  - (i) owing to the person's mental illness, the person has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
  - (ii) owing to the person's mental illness, the person has recently performed or attempted to perform an act of violence, whether against a person or against property, which indicates that it is probable that the person will inflict serious bodily harm upon another person;
  - (iii) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon another person; or
  - (iv) owing to the person's mental illness, the person has recently engaged repeatedly in a course of behaviour of nuisance or harassment affecting one or more persons which would be reasonably likely to lead to violence and which is of a degree so far beyond the limits of normal social behaviour that a reasonable person would consider it intolerable.

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 appropriate means for dealing with the person are reasonably available.

<sup>(b)</sup> Incidents and/or abnormalities of behaviour and conduct (a) observed by myself <sup>(b)</sup> See Note and (b) communicated to me by others (state name, relationship and address of each 2. informant).

(a) .....

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.....

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.....

.....

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.....

*Mental Health.*

SCHEDULE 3—*continued.*

(b) .....  
.....  
.....  
.....  
.....  
.....  
.....

(6) The general medical and/or surgical condition of the person is as follows:

(6) State present condition, any relevant history and any non-psychiatric medication currently or recently used.

(7) The following medication (if any) has been administered for purposes of psychiatric therapy or sedation:

(7) State doses and duration of treatment. Distinguish emergency sedation, if any.

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

I am not a (8) near relative of the person.

(8) See Note 3.

(9) 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:

(9) Strike out and initial any of the statements that are not applicable.

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

Made and signed this ..... day of ....., 19.....

Signature .....



*Mental Health.*

SCHEDULE 3—*continued.*

PART II.

If the assistance of a member of the police force is required, this part of the Form should be completed.

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. Section 5 of the Mental Health Act, 1983, states:—

5. (1) A reference in this Act to a mentally ill person is, where the reference occurs in relation to the involuntary admission of a person to a hospital, the detention of a person in a hospital, the holding of an inquiry under section 85 or a determination or review made by the Tribunal in respect of a person, a reference to a person who requires care, treatment or control—

- (a) for the person's own protection by reason that—
  - (i) owing to the person's mental illness, the person has recently attempted to kill himself or herself or to cause serious bodily harm to himself or herself;
  - (ii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will attempt to kill himself or herself or attempt to cause serious bodily harm to himself or herself;
  - (iii) there are reasonable grounds for believing that, owing to the person's mental illness, it is probable that the person will suffer serious bodily harm due to neglect of himself or herself or to neglect by others;

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*Mental Health.*

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SCHEDULE 3—*continued.*

- (iv) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon himself or herself; or
  - (v) the person is in the manic phase of a manic-depressive illness and there are reasonable grounds for believing that it is probable that the person will thereby suffer serious financial harm or harm to his or her reputation or standing in the community;
- (b) for the protection of others by reason that—
- (i) owing to the person's mental illness, the person has recently inflicted or attempted to inflict or has recently made a reasonably credible threat to inflict serious bodily harm upon another person;
  - (ii) owing to the person's mental illness, the person has recently performed or attempted to perform an act of violence, whether against a person or against property, which indicates that it is probable that the person will inflict serious bodily harm upon another person;
  - (iii) owing to the person's mental illness, the person has recently performed an act, engaged in a course of activity or constructed or set up a device or arrangement which will probably result in the infliction of serious bodily harm upon another person; or
  - (iv) owing to the person's mental illness, the person has recently engaged repeatedly in a course of behaviour of nuisance or harassment affecting one or more persons which would be reasonably likely to lead to violence and which is of a degree so far beyond the limits of normal social behaviour that a reasonable person would consider it intolerable.

(2) A person is not a mentally ill person by reason only of any one or more of the following:—

- (a) that the person expresses or has expressed a particular political opinion;
- (b) that the person expresses or has expressed a particular religious opinion;
- (c) that the person expresses or has expressed a particular sexual preference, sexual orientation or is or has been sexually promiscuous;
- (d) that the person engages in or has engaged in immoral conduct;
- (e) that the person engages in or has engaged in illegal conduct;
- (f) that the person has developmental disability of mind;
- (g) that the person takes or has taken drugs, including alcohol.

(3) Nothing in subsection (2) prevents, in relation to a person who takes or has taken drugs, the physiological, biochemical or psychological effects of drug taking on a number of occasions from being regarded as an indication that the person is mentally ill.

*Mental Health.*

SCHEDULE 3—*continued.*

- 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—
  - (a) arise from a previous personal examination of the person; or
  - (b) are communicated by a reasonably credible informant.
  
- 3. In section 4 (1) of the Mental Health Act, 1983, "near relative" is defined as follows:—
 

"near relative", in relation to a person, means a parent, brother, sister, child or the spouse of the person and such other person or persons as may be prescribed as a near relative of the person.
  
- 4. For admission purposes, this certificate is valid only for a period of 5 days after the date on which the certificate is given.

SCHEDULE 4.

(Secs. 123, 124.)

MENTAL HEALTH ACT, 1983.

MEDICAL CERTIFICATE AS TO EXAMINATION OF PRISONER.

I, ..... (\*Medical Practitioner/Psychiatrist), \* Strike  
 (name in full—use block letters) out if  
 of ..... do hereby certify applicable.  
 that on the ..... day of ....., 19.....  
 at .....  
 (state name of prison where examination took place)  
 separately from any other psychiatrist, I personally examined .....  
 (name of  
 ..... and I am of the opinion that \*he/she is \*mentally  
 prisoner in full)  
 ill/suffering from a mental condition for which treatment is available in a hospital.

*Mental Health.*

SCHEDULE 4—*continued.*

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.....

SCHEDULE 5.

(Sec. 147 (2).)

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD.

**Interpretation.**

1. In this Schedule—

“member” means a member of the Board:

“President” means the person appointed as referred to in clause 2 (2) (a) as the President of the Board.

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*Mental Health.*

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SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.***Members.**

2. (1) The Board shall consist of 7 members appointed by the Minister.
- (2) The members shall 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;
    - (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;
  - (b) a neurosurgeon from a panel of 3 neurosurgeons nominated by the Royal Australasian College of Surgeons;
  - (c) a neurologist or a neuroscientist, being a neurologist or a neuroscientist from a panel of 3 neurologists or neuroscientists nominated by the Royal Australasian College of Physicians;
  - (d) a clinical psychologist from a panel of 3 clinical psychologists nominated by the Australian Psychological Society;
  - (e) a person from a panel of 3 persons nominated by the New South Wales Council for Civil Liberties; and
  - (f) 2 psychiatrists, one of whom shall be from a panel of 3 psychiatrists nominated by the Australian and New Zealand College of Psychiatrists.

(3) Where, for the purposes of subclause (2), 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.

(4) Where, by or under any Act, provision is made requiring the holder of an office specified therein to devote the whole of the holder's time to the duties of the office, or prohibiting the holder from engaging in employment outside the duties of the office, that provision does not operate to disqualify the holder of the office from holding that office and also the office of a member or from accepting or retaining any remuneration or travelling or subsistence allowance payable to a member under clause 5.

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*Mental Health.*

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SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.*

(5) Where a body specified in paragraph (b), (c), (d), (e) or (f) of subclause (2) ceases to exist, changes its name, is reconstituted, is amalgamated with any other body or otherwise ceases to be as specified in any such paragraph, the Minister shall specify the body which shall be entitled to make a nomination for the purposes of that subclause.

**Age of members.**

3. A person who is of or above the age of 65 years shall not be appointed as a member or to act in the office of a member under clause 6.

**Term of office of member.**

4. (1) Except as provided by subclauses (2) and (3), a member shall, subject to this Schedule, be appointed for such term, not exceeding 4 years, as is specified in the instrument of appointment and shall, if otherwise qualified, be eligible for reappointment as a member.

(2) A member shall not hold office as a member for a total period in excess of 8 years.

(3) The term of office of the members first appointed under this Schedule shall be—

- (a) in the case of the members referred to in clause 2 (2) (a) and (b)—5 years;
- (b) in the case of the members referred to in clause 2 (2) (c), (d) and (e)—4 years; and
- (c) in the case of the members referred to in clause 2 (2) (f)—3 years.

**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.

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*Mental Health.*

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SCHEDULE 5—*continued.*

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.*

**Alternate members.**

6. (1) The Minister may at any time appoint, as an alternate member to act during the absence or illness 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 alternate member.

(2) An alternate member (other than the alternate member for the President or Deputy President of the Board) shall have and may exercise, while acting as a member, the functions, as such a member, of the person for whom he or she is the alternate member.

(3) An alternate member for the President or Deputy President of the Board shall have and may exercise, while acting as a member, the functions, as such a member, of a member other than the President or Deputy President, as the case may be.

(4) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of a member, and, subject to subclause (3), all things done or suffered or omitted to be done by that person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted or suffered to be done by that member.

**Deputy President.**

7. (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 shall have 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.

**Removal from office.**

8. The Minister may remove a member from office for inability, misbehaviour or failure to comply with the terms and conditions of appointment.

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*Mental Health.*

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SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.***Vacation of office.**

9. A member shall be deemed to have vacated office if the member—
- (a) dies;
  - (b) resigns the office by instrument in writing addressed to the Minister and the Minister accepts the resignation;
  - (c) 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;
  - (d) becomes a temporary patient, a continued treatment patient or a forensic patient, or a protected person within the meaning of the Protected Estates Act, 1983, or an incapable person within the meaning of that Act;
  - (e) is convicted in New South Wales of a felony or a misdemeanour punishable by imprisonment for 12 months or upwards, or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be a felony or a misdemeanour so punishable;
  - (f) engages directly in the practice of psychosurgery;
  - (g) holds office as a member for a total period in excess of 8 years;
  - (h) is removed from office by the Minister under clause 8; or
  - (i) attains the age of 65 years.

**Filling of casual vacancy.**

10. (1) On the occurrence of a vacancy in the office of a member, the Minister may appoint a person to the vacant office for the balance of the predecessor's term of office.

(2) A person appointed under subclause (1) shall be 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 was qualified and nominated.

**Convening of meetings.**

11. (1) The President may, at any time, convene a meeting of the Board.

(2) The President, on receipt of a request in writing signed by 3 members, shall convene a meeting of the Board.



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*Mental Health.*

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SCHEDULE 5—*continued.*

CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.*

**Quorum.**

12. At a meeting of the Board, 5 members constitute a quorum.

**Meetings.**

13. (1) Any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board.

(2) Questions arising at a meeting of the Board shall be determined if carried by the votes of not less than 5 members.

**General procedure.**

14. The procedure for the calling of, and for the conduct of business at, meetings of the Board shall be as determined by the Board.

**President to preside.**

15. The President shall preside at all meetings of the Board at which the President is present.

**Absence of President.**

16. (1) In the absence of the President from any meeting of the Board, the Deputy President of the Board shall preside as chairman at that meeting.

(2) Where both the President and the Deputy President of the Board are absent from any meeting of the Board, the members present shall appoint one of their number to preside as chairman at that meeting.

**Presiding member's vote.**

17. The member presiding at a meeting of the Board shall have a deliberative vote only.

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*Mental Health.*

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SCHEDULE 5—*continued.*CONSTITUTION, MEMBERSHIP AND MEETINGS OF THE PSYCHOSURGERY REVIEW BOARD—  
*continued.***Minutes of meetings.**

18. (1) The Board shall cause full and accurate minutes to be kept of its proceedings at meetings.

(2) The Board shall submit a copy of the minutes of a meeting of the Board to the Minister within 14 days after the date on which the meeting is held.

**Presumptions.**

19. In proceedings by or against the Board, no proof shall be required (until evidence is given to the contrary) of—

- (a) the constitution of the Board;
- (b) the due making of any resolution of the Board;
- (c) the appointment of any member; or
- (d) the presence of a quorum at any meeting of the Board.

**Immunity.**

20. No matter or thing done or omitted or suffered to be done by the Board or a member shall, if the matter or thing was done or omitted or suffered to be done bona fide for the purpose of executing this Act, subject the Board or the member to any action, liability, claim or demand whatever.

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