

SOUTH AUSTRALIA

MENTAL HEALTH ACT, 1977

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **1 October 1991**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision since its last reprinting on 1 March 1984.

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MENTAL HEALTH ACT, 1977

being

Mental Health Act, 1977, No. 24 of 1977
[Assented to 12 May 1977]¹

as amended by

Mental Health Act Amendment Act, 1979, No. 21 of 1979 [Assented to 15 March 1979]

Mental Health Act Amendment Act, 1985, No. 122 of 1985 [Assented to 10 November 1985]²

Mental Health Act Amendment Act, 1986, No. 114 of 1986 [Assented to 18 December 1986]²

Statutes Amendment (Consent to Medical and Dental Procedures and Mental Health) Act, 1988, No. 47 of 1988 [Assented to 5 May 1988]

¹ Came into operation 1 October 1979: *Gaz.* 13 September 1979, p. 644.

² Came into operation 1 May 1987: *Gaz.* 30 April 1987, p. 1115.

N.B. The amendments effected to this Act by the Supported Residential Facilities Act 1992 and the Mental Health Act 1993 had not been brought into operation at the date of, and have not been included in, this reprint.

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.

An Act to make provision for the treatment and protection of persons who are mentally ill; to make provision for the care, treatment and protection of persons who are mentally handicapped; to amend the Mental Health Act, 1935; and for other purposes.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Mental Health Act, 1977*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

* * * * *

Amendment and transitional provisions

4. (1) * * * * *

(2) Any person lawfully detained as a mental defective under the provisions of the former Act, and in detention immediately before the commencement of this Act, shall be deemed to have been detained under the corresponding provisions of this Act and shall continue in detention until discharged in pursuance of this Act.

(3) Where immediately before the commencement of this Act the Public Trustee or some other person was the committee of the estate, or otherwise authorized to administer the estate, of any person pursuant to the provisions of the former Act, the Public Trustee or other person shall be deemed to have been appointed administrator of the estate under this Act.

(4) A licence granted under the former Act in respect of a psychiatric rehabilitation hostel shall be deemed to be a licence in respect of a psychiatric rehabilitation centre under this Act and shall, subject to this Act, continue in force for the remainder of the term for which it was granted or last renewed.

Interpretation

5. In this Act, unless the contrary intention appears—

"approved hospital" means any hospital, clinic or other premises declared by the Minister under Part II to be an approved hospital:

"Assistant Chairman" includes a deputy of the Assistant Chairman:

"the Board" means the Guardianship Board constituted under Part IV:

"Chairman" includes a deputy of the Chairman:

"the Commission" means the South Australian Health Commission:

3.

"consent", in relation to the carrying out of a medical procedure or a dental procedure, means an informed consent given after proper and sufficient explanation of the nature and likely consequences of the procedure:

"dental procedure" means any procedure carried out by, or pursuant to directions given by, a dentist in the course of practice as a dentist:

"dentist" means a person who is registered on the general register or specialist register under the *Dentists Act, 1984*:

"the Director" means the person for the time being holding, or acting in, the office of Director of Mental Health Services under this Act:

"the former Act" means the *Mental Health Act, 1935*:

"medical practitioner" means a person who is registered on the general register under the *Medical Practitioners Act, 1983*:

"medical procedure" means any procedure, including a sterilization procedure and a termination of pregnancy, carried out by, or pursuant to directions given by, a medical practitioner in the course of practice as a medical practitioner:

"mental handicap" means imperfect or retarded development, impairment or deterioration of mental faculties from whatever cause:

"mental illness" means any illness or disorder of the mind:

"the Minister" means the Minister of the Crown to whom the administration of this Act is for the time being committed by the Governor, and includes any other Minister of the Crown who may, for the time being, be temporarily discharging the duties of that Minister:

"parent", in relation to a minor, includes a guardian of the minor or a person acting *in loco parentis* in relation to the minor:

"patient" means any person suffering from mental illness lawfully admitted to, or detained in, any approved hospital, notwithstanding that he may be unlawfully at large, or have been permitted to be absent on leave:

"protected person" means a person received into the guardianship of the Board in pursuance of this Act, or a person in respect of whose estate an administrator is appointed in pursuance of this Act:

"psychiatrist" means a medical practitioner who is registered under the *Medical Practitioners Act, 1983*, as a specialist in psychiatry:

"relative" of a person means spouse, father, mother, brother, sister, uncle, aunt, niece, nephew, grandfather, grandmother, child or grandchild:

"senior psychiatrist" means a medical practitioner who has, since the date on which he became qualified for registration as a specialist in psychiatry, had at least five years experience as a practising psychiatrist:

4.

"sterilization procedure" means any procedure carried out on a person that results, or is likely to result, in the person being infertile:

"superintendent", in relation to an approved hospital, means the person for the time being in charge of the hospital, or a person duly authorized to admit patients into the hospital:

"the Tribunal" means the Mental Health Review Tribunal established under this Act.

PART II

ADMINISTRATION

DIVISION I—THE DIRECTOR

The office of Director of Mental Health Services

6. (1) There shall be a Director of Mental Health Services.

(2) The person holding office as the Director of Mental Health Services under the former Act immediately before the commencement of this Act shall, upon the commencement of this Act, become the Director of Mental Health Services under this Act.

Administration of this Act by the Director

7. (1) Subject to subsection (2), the Director shall have the general administration of this Act.

(2) In the administration of this Act, the Director shall be subject to direction by the Commission.

Reports by the Director

8. (1) The Director shall, before the thirty-first day of December in each year, submit to the Commission and the Minister a report upon the administration of this Act during the twelve months ending on the preceding thirtieth day of June.

(2) The Minister shall, as soon as practicable after his receipt of the report, cause copies of the report to be laid before each House of Parliament.

DIVISION II—OBJECTIVES OF THE DIRECTOR AND THE COMMISSION

Objectives

9. In exercising their responsibilities for the care, treatment and protection of those who suffer from mental illness or mental handicap, the Director and the Commission should seek to attain the following objectives:

- (a) to ensure that patients receive the best possible treatment and care;
- (b) to minimize restrictions upon the liberty of patients and interference with their rights, dignity and self respect, so far as is consistent with the proper protection and care of the patients themselves and with the protection of the public;
- (c) to ameliorate adverse effects of mental illness and mental handicap upon family life;
- (d) to rationalize and co-ordinate services for the mentally ill or mentally handicapped;
- (e) to assist and encourage voluntary agencies that provide services for the mentally ill or the mentally handicapped;
- (f) to assist and encourage the development of services designed to reduce the incidence of mental illness in the community;
- (g) to promote research into problems of mental illness and mental handicap;

6.

- (h) to promote a high standard of training for those responsible for the care of the mentally ill and the mentally handicapped;
- (i) to promote informed public opinion on matters of mental health and mental handicap by the dissemination of knowledge and generally to promote public understanding of, and (wherever practicable) involvement in, measures for the prevention, treatment and cure of mental illness and the care and protection of the mentally handicapped.

DIVISION III—APPROVED HOSPITALS

Declaration of approved hospitals

10. (1) The Minister may, upon the recommendation of the Commission, declare, by notice in the *Gazette*, any hospital, clinic or other premises to be an approved hospital for the care and treatment of persons who are mentally ill.

(2) The Minister may, by subsequent notice, vary or revoke any notice previously given under this section.

DIVISION IV—RECORDS TO BE KEPT AND INFORMATION TO BE SUPPLIED IN RELATION TO APPROVED HOSPITALS

Register of patients

11. (1) The superintendent of every approved hospital shall keep or cause to be kept records relating to every patient admitted into the hospital.

(2) The records shall be kept in the prescribed form and shall set out—

- (a) the name and address of each such patient;
 - (b) the nature of any mental or bodily illness or handicap from which he suffers;
 - (c) full particulars of the treatment administered to the patient and of the authorization for that treatment;
 - (d) if the patient dies, the date and cause of death;
- and
- (e) such other information as may be prescribed.

Particulars relating to admission of patients to approved hospitals

12. (1) Where in the opinion of the Director a person seeking information under this section has a proper interest in the matter, he shall inform the inquirer—

- (a) whether or not a particular person is or has been admitted to, or detained in, an approved hospital under this Act;
- and
- (b) if so, the date of his admission and (where applicable) the date of his discharge or death.

7.

(2) The superintendent of an approved hospital shall, upon the discharge of a patient from the hospital, furnish the patient, at his request, free of charge, a copy of any orders, certificates or authorizations upon which he was admitted, detained or treated.

PART III

ADMISSION OF PERSONS SUFFERING FROM MENTAL ILLNESS

DIVISION I—ADMISSION OF VOLUNTARY PATIENTS INTO
APPROVED HOSPITALS

Admission of voluntary patients

13. (1) A person may be admitted as a patient in an approved hospital in pursuance of his own request.

(2) A person who is admitted as a patient in an approved hospital under this section may leave that hospital at any time.

DIVISION II—ADMISSION AND DETENTION OF PATIENTS IN
APPROVED HOSPITALS

Admission of patients pursuant to order by medical practitioner

14. (1) Where, upon examination of a person, a legally qualified medical practitioner is satisfied—

- (a) that that person is suffering from a mental illness that requires immediate treatment;
 - (b) that such treatment can be obtained by admission to, and detention in, an approved hospital;
- and
- (c) that that person should be admitted as a patient in an approved hospital in the interests of his own health and safety or for the protection of other persons,

the medical practitioner may make an order for the immediate admission and detention of that person in an approved hospital.

(2) An order made under subsection (1) shall, unless discharged, be effective for a period of three days.

(3) Where an order has been made under subsection (1) and a person is admitted and detained in an approved hospital in pursuance of that order, that person shall be examined by a psychiatrist—

- (a) where it is possible for the examination to take place within twenty-four hours of his admission—within that period;
- or
- (b) where it is not practicable for an examination to take place within twenty-four hours of his admission—as soon as practicable after his admission.

9.

(4) When the psychiatrist has completed his examination—

(a) he shall, if not satisfied that the continued detention of the patient is justified, discharge the order;

or

(b) he may, if satisfied that the continued detention of the patient is justified, confirm the order.

(5) Where an order for detention has been confirmed under subsection (4), a psychiatrist may at any time during the period for which that order is effective, upon examination of the patient, make an order for the further detention of the patient for a period not exceeding twenty-one days commencing on the expiration of the order by which the patient was detained.

(6) No psychiatrist who has made an order for the admission and detention of a patient under subsection (1) may make an order for the further detention of that patient under subsection (5).

(7) The superintendent of an approved hospital in which a patient is detained pursuant to an order made under subsection (5) may discharge that order at any time during the period for which it is effective.

(8) Where a patient is detained in pursuance of an order under subsection (5) and two psychiatrists who have each made a separate examination of the patient are of the opinion that further detention is necessary for the protection of others, they may make an order for the further detention of the patient.

(9) An order under subsection (8) shall be effective—

(a) until discharged by the superintendent of the approved hospital in which the patient is for the time being detained;

or

(b) until discharged by the Tribunal.

(10) Where an order for further detention of a patient is made under subsection (5) or (8), a report shall be made setting out the grounds upon which the order is made.

(11) Where a person has been detained in an approved hospital pursuant to an order under subsection (8), the superintendent of the hospital may, by instrument in writing, permit that person to be absent from the hospital for a period not exceeding six months.

(12) A permission granted under subsection (11)—

(a) shall be subject to such conditions as the superintendent thinks fit and specifies in the instrument by which he grants his permission;

and

(b) may be revoked by the superintendent at any time by instrument in writing.

(13) A copy of the instrument by which a patient is permitted to be absent from an approved hospital under subsection (11) shall be given to the patient to whom the instrument relates.

Duty of superintendent of an approved hospital to comply with order

15. (1) The superintendent of an approved hospital is, subject to subsection (2), authorized and required to comply with an order under this Part.

(2) Where an order is made for the admission and detention of a patient in an approved hospital and the superintendent is of the opinion that proper facilities do not exist at his hospital for the care or treatment of the patient, he may decline to admit the patient to the hospital but, in that case, he shall (unless the order for detention is discharged) forthwith make arrangements for the admission of the patient into another approved hospital.

Patients to be given statement of their rights, etc.

16. (1) Where a patient is detained in an approved hospital, the superintendent shall ensure that he is given, upon admission to the hospital or as soon as practicable thereafter, a printed statement in the prescribed form—

(a) informing him of his legal rights;

and

(b) containing such other information as may be prescribed.

(2) Where there is a relative of the patient whose whereabouts is known to, or readily ascertainable by, the superintendent, he shall cause a copy of the statement referred to in subsection (1) to be sent, or given, to the relative.

(3) Wherever possible the statement should be in the language with which the patient is most familiar.

(4) Where a patient is illiterate, or too disturbed to read and comprehend the statement referred to in this section, the superintendent shall take such steps (if any) as may be practicable in the circumstances to convey the information contained in the statement to the patient.

Transfer of patients

17. Where a patient is detained in an approved hospital and the superintendent of the hospital is satisfied, upon the certificate of a psychiatrist, that another approved hospital is better equipped for the care and treatment of that patient, the superintendent may authorize the transfer of the patient to that other hospital.

DIVISION III—APPREHENSION OF PERSONS WHO APPEAR TO BE
SUFFERING FROM MENTAL ILLNESS

Powers of apprehension of members of police force

18. (1) Where a member of the police force has reasonable cause to believe—

(a) that a person is suffering from a mental illness or mental handicap;

and

- (b) that the conduct of that person is, or has in the recent past, been such as to cause danger to himself or to others,

the member of the police force shall apprehend that person and bring him as soon as possible for examination by a medical practitioner.

(2) Where a member of the police force has reasonable cause to believe that the behaviour of a person apparently suffering from a mental illness is such as to endanger life or property, he may, for the purpose of apprehending that person, break into and enter premises and use such force as may be reasonably necessary for the purpose of apprehending that person.

(3) Where a member of the police force apprehends a person and brings him for examination by a medical practitioner in pursuance of this section—

- (a) he shall render such assistance to the medical practitioner as may be necessary for the purpose of the examination;

and

- (b) where the medical practitioner makes an order for the admission and detention of the patient in an approved hospital, he shall, if the medical practitioner so requests, convey, or arrange for the conveyance of, the patient to an approved hospital in accordance with the order.

DIVISION IV—TREATMENT OF PERSONS SUFFERING FROM MENTAL ILLNESS

Restriction on psychiatric treatment

19. (1) Subject to this section, but notwithstanding any other provision of this Act, a person shall not administer psychiatric treatment to which this section applies to a person suffering from a mental illness who is a patient in any hospital (whether an approved hospital or not)—

- (a) unless—
- (i) in the case of category A treatment—the treatment has been authorized by—
- (A) the person who is to administer the treatment;
- and
- (B) two psychiatrists (at least one of whom is a senior psychiatrist),
- who have each made an independent examination of the patient;
- or
- (ii) in the case of category B treatment—the treatment has been authorized by a psychiatrist;

and

(b) unless the consent in writing—

- (i) where the patient is capable of giving an effective consent—of the patient;
- (ii) where the patient is incapable of giving an effective consent and is less than 16 years of age—of a parent of the patient;

and

- (iii) where the patient is incapable of giving an effective consent and is of or over the age of 16 years—of the Board,

has been obtained.

(2) The consent of a patient, a parent or the Board to category B treatment is not necessary where—

- (a) the nature of the mental illness from which the patient is suffering is such that the treatment is urgently needed for the protection of the patient or some other person;

and

- (b) in the circumstances it is not practicable to obtain that consent.

(2a) A person who contravenes subsection (1) shall be guilty of an indictable offence.

(3) In this section—

"category A treatment" means psychosurgery, or any other treatment declared by regulation to be category A treatment:

"category B treatment" means electro-convulsive therapy, or any other treatment declared by regulation to be category B treatment:

"psychiatric treatment to which this section applies" means category A treatment and category B treatment:

"psychosurgery" means leucotomy, amygdaloidotomy, hypothalamotomy, temporal lobectomy, cingulectomy, electrode implantation in the brain, or any other brain surgery for the relief of mental illness by the elimination or stimulation of apparently normal brain tissues.

PART IV

GUARDIANSHIP OF PERSONS SUFFERING FROM MENTAL ILLNESS OR
MENTAL HANDICAP

DIVISION I—THE GUARDIANSHIP BOARD

Establishment of Board

20. (1) There shall be a board entitled the "Guardianship Board".

(2) The Board shall consist of 10 members, appointed by the Governor, of whom—

(a) two (the Chairman and the Assistant Chairman) must be selected from the following categories:

(i) the holders of judicial office under the *Local and District Criminal Courts Act, 1926*;

(ii) magistrates;

and

(iii) legal practitioners of at least 7 years standing;

(b) two ("the psychiatrist members") must be psychiatrists;

(c) two ("the psychologist members") must be registered psychologists who have had experience in the care of the mentally handicapped;

and

(d) four ("the ordinary members") must be persons who have, in the opinion of the Governor, other appropriate qualifications for membership of the Board.

Terms and conditions upon which members hold office

21. (1) A member of the Board shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, shall be eligible for reappointment.

(2) The Governor may appoint a suitable person to be a deputy of a member of the Board.

(3) A deputy of the Chairman or the Assistant Chairman must be—

(a) a person holding judicial office under the *Local and District Criminal Courts Act, 1926*;

(b) a special magistrate;

or

(c) a legal practitioner of at least seven years standing.

(3a) Where a member is, for any reason, absent or unable to act in the capacity of a member of the Board, the deputy of that member may act as a member of the Board.

(4) The Governor may remove a member of the Board from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) The office of a member of the Board shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (4).

(6) Upon the office of a member of the Board becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office but, where the office of a member of the Board becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Allowances and expenses

22. The members of the Board shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Validity of acts of the Board

23. An act or proceeding of the Board shall not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Proceedings of Board

24. (1) If the Chairman thinks it necessary or desirable for the purpose of expediting the determination of proceedings before the Board or the disposal of any other business of the Board, the Board may sit in separate divisions.

(2) A division of the Board is constituted by—

(a) the Chairman or the Assistant Chairman;

(b) one psychiatrist member;

(c) one psychologist member;

and

(d) two ordinary members.

(3) Where the Board sits as a full board, the following provisions apply:

(a) the Chairman or, if the Chairman is absent, the Assistant Chairman shall preside and, in the absence of both the Chairman and the Assistant Chairman, a member chosen from amongst their own number by the members present shall preside;

and

(b) six members constitute a quorum and the Board must not deal with any matter unless a quorum is present.

(4) Where the Board sits in separate divisions, the following provisions apply:

(a) the Chairman shall, if present, preside at any meeting of the division of which the Chairman is a member and, in the absence of the Chairman, a member chosen from amongst their own number by the members present shall preside at the meeting of the division;

(b) the Assistant Chairman shall, if present, preside at a meeting of the division of which the Assistant Chairman is a member and, in the absence of the Assistant Chairman, a member chosen from amongst their own number by the members present shall preside at the meeting of the division;

(c) three members constitute a quorum for a division and a division must not deal with any matter unless a quorum is present;

and

(d) the two divisions of the Board may sit concurrently for the purpose of dealing with separate matters.

(5) A question arising for decision at a meeting shall be decided by a majority of the votes cast by the members present.

(6) Each member present at a meeting is entitled to one vote and the person presiding at the meeting is, in the event of an equality of votes, entitled to a casting, as well as a deliberative, vote.

(7) Subject to this Act, the Board, or a division of the Board, may conduct its proceedings as it thinks fit.

Power of Board to delegate

25. (1) Subject to this Act, the Board may, with the approval of the Minister, delegate to the Chairman any of its powers or functions under this Act.

(2) A delegation under this section may be subject to such conditions or limitations as the Board thinks fit, is revocable at will and does not prevent the exercise or performance by the Board of the power or function delegated.

Procedural powers of the Board

25a. (1) In the exercise of its powers and functions under this Act, the Board may—

- (a) by summons signed on behalf of the Board by a member of the Board, require the attendance before the Board of any person;
- (b) by summons signed on behalf of the Board by a member of the Board, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it, retain them for such reasonable period as it thinks fit and make copies of them or any of their contents;
- (d) require any person to make an oath or affirmation that the person will truly answer all relevant questions put to the person by the Board, or by any other person appearing before the Board;

or

- (e) require any person appearing before the Board to answer any relevant question put to the person by the Board, or by any other person appearing before the Board.

(2) Subject to subsection (3), if a person—

- (a) who has been served with a summons under this section fails without reasonable excuse to comply with the summons;

or

- (b) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Board,

the person is guilty of an offence.

Penalty: \$500.

(3) A person is not obliged to answer a question put to the person under this section if the answer to that question would tend to incriminate the person, or to produce books, papers or documents if their contents would tend to incriminate the person.

Attendance before Board

25b. (1) Before the Board makes an order, direction or requirement under this Part in relation to a protected person or any person who is the subject of proceedings before the Board, it must, wherever practicable, afford that person an opportunity to appear before, and make representations to, the Board.

(2) Before the Board makes an order—

- (a) receiving a person into its guardianship, placing a protected person in the care and custody of another person or appointing an administrator of a person's estate;

or

- (b) varying or revoking any such order,

it must afford any person who the Board is satisfied has a proper interest in the matter an opportunity to appear before, and make representations to, the Board.

(3) Where the Board makes an order, direction or requirement under this Part, the Board must give notice of the order, direction or requirement to each person who appeared before, and made representations to, the Board in relation to the matter.

Matters to which the Board must have regard

25c. The Board, in making an order, direction or requirement under this Part in relation to a protected person or any person who is the subject of proceedings before the Board—

- (a) must give due consideration to the expressed wishes (if any) of that person;
- (b) must give due consideration to the object of minimizing interference with the rights and independence of the person so far as is consistent with the proper protection and care of the person;

and

- (c) must treat the welfare of the person as the paramount consideration.

DIVISION II—RECEPTION OF PERSONS INTO GUARDIANSHIP OF BOARD

Reception of persons into the guardianship of the Board

26. (1) Where the Board is satisfied, upon an application made under this section, that—

- (a) a person is suffering from mental illness and, by reason of that illness—

- (i) is incapable of looking after his own health and safety;

or

- (ii) is incapable of managing his own affairs;

or

- (b) a person is suffering from mental handicap and, by reason of that handicap—

- (i) is incapable of managing his own affairs;

or

- (ii) requires oversight, care or control in the interests of his own health and safety or for the protection of others,

the Board may, by order, receive that person into its guardianship.

(2) An application may be made under this section—

- (a) by the person suffering from the mental illness or the mental handicap;
- (b) by a relative of that person;
- (c) by the Public Trustee;
- (d) by a member of the police force;

or

- (e) by any person who satisfies the Board that he has a proper interest in the care and protection of the person in respect of whom the application is made.

Powers of Board in relation to person under its guardianship

27. (1) Where the Board has received a person into its guardianship, it may exercise any of the following powers:

- (a) it may, by order, place the protected person in the care and custody of a relative of the protected person or some other person who, in the opinion of the Board, will take proper care of the protected person;
- (b) it may, by order, require that the protected person be received into a specified hospital, hostel, home or other institution for treatment or care and place the protected person in the custody of the person for the time being in charge of that hospital, hostel, home or other institution;
- (c) it may give directions as to the upbringing, education and training of the protected person;
- (d) it may require that the protected person receive medical or psychiatric treatment;

or

- (e) any other power exercisable at law or in equity by a guardian.

(2) The Board may—

- (a) by further order, vary or revoke any of its orders;

or

- (b) vary or revoke any of its previous directions.

(3) The Board shall, at reasonable intervals, review the circumstances of a protected person under its guardianship.

DIVISION III—APPOINTMENT OF THE ADMINISTRATOR OF THE ESTATE OF
A PERSON SUFFERING FROM A MENTAL ILLNESS OR MENTAL HANDICAP

Appointment of administrator

28. (1) Where in the opinion of the Board a person who is suffering from a mental illness or mental handicap is incapable of administering his affairs, the Board may (whether or not that person has been received into the guardianship of the Board) appoint an administrator of his estate.

(2) An appointment under subsection (1) may be made subject to such conditions as the Board thinks fit.

(3) The Public Trustee shall be appointed the administrator of the estate of a person under this section unless the Board considers that there are special reasons why some other person should be appointed administrator of the estate.

(4) Where some person other than the Public Trustee is appointed administrator of the estate, the Board shall include amongst the terms of the appointment a condition that the administrator shall annually file returns with the Public Trustee setting out such information in relation to his administration as the Public Trustee may require of him.

(5) The Board must, at intervals of not more than 2 years, review an appointment under this section.

(6) The Board may, by notice in writing given personally or by post to an administrator appointed under this section, revoke the appointment, revoke or vary any condition of the appointment, or impose further conditions on the appointment.

(7) An administrator appointed under this section is a trustee of the estate to which the appointment relates.

Registration of appointment of administrator

28aa. (1) An order appointing an administrator under this Part may be registered under the provisions of the *Registration of Deeds Act, 1935*, as an instrument affecting the title to land in which the protected person has a legal or equitable estate or interest.

(2) An order appointing an administrator under this Part is deemed to be an instrument purporting to affect land under the provisions of the *Real Property Act, 1886*, and, upon application to the Registrar-General in a manner and form approved by the Registrar-General, a memorandum of the order may be entered in the register book with respect to any estate or interest in land of which the protected person is the registered proprietor under the provisions of that Act.

Restriction of testamentary capacity of protected person

28aab. (1) The Board may direct that any testamentary provision by a protected person be made only after compliance with such precautions as the Board thinks fit to direct.

(2) Where, after the Board has given a direction under subsection (1), a protected person makes a testamentary provision otherwise than in accordance with that direction, the testamentary provision is ineffectual.

(3) Except as provided by subsection (2), nothing in this section affects the law relating to testamentary dispositions.

PART IVA

CONSENT TO MEDICAL OR DENTAL PROCEDURES CARRIED OUT ON
PERSONS SUFFERING FROM MENTAL ILLNESS OR MENTAL HANDICAP

Application of this Part

28a. This Part applies in relation to a person who is suffering from a mental illness or mental handicap and who is, by reason of that mental illness or mental handicap, incapable of giving effective consent, whether or not the person is a protected person.

Consent of parent or Board is effective in certain circumstances

28b. (1) Where a person to whom this Part applies is less than 16 years of age—

(a) the consent of a parent of the person in respect of a medical procedure (not being a sterilization procedure or termination of pregnancy) or a dental procedure to be carried out on the person shall be deemed to be a consent given by the person and to have the same effect for all purposes as if the person were capable of giving effective consent;

and

(b) the consent of the Board in respect of a sterilization procedure or termination of pregnancy to be carried out on the person shall, if given in accordance with this Part, be deemed to be a consent given by the person and to have the same effect for all purposes as if the person were capable of giving effective consent.

(2) Where a person to whom this Part applies is of or above the age of 16 years, the consent of the Board in respect of a medical procedure or dental procedure to be carried out on the person shall, if given in accordance with this Part, be deemed to be a consent given by the person and to have the same effect for all purposes as if the person were capable of giving effective consent.

(3) An application for the consent of the Board to the carrying out of a medical procedure or dental procedure on a person to whom this Part applies may only be made by—

(a) the medical practitioner or dentist proposing to carry out the procedure;

(b) a parent of the person;

or

(c) any other person who the Board is satisfied has a proper interest in the matter.

Sterilization and abortion procedures not to be carried out without consent of Board

28c. (1) Except where prescribed circumstances exist for the purposes of section 28g(1), a medical practitioner shall not carry out a sterilization procedure or a termination of pregnancy on a person to whom this Part applies unless the Board has consented to the carrying out of that procedure or termination.

(2) A medical practitioner who contravenes subsection (1) shall be guilty of an indictable offence.

Determination by Board of application for consent to sterilization procedure or abortion

28d. (1) Upon receiving an application for its consent to the carrying out of a sterilization procedure or termination of pregnancy on a person and determining that the person is a person to whom this Part applies, the Board shall then determine whether or not to grant its consent.

(2) In making any determination under subsection (1) in respect of a person, the Board—

(a) shall afford—

(i) where it is practicable to do so, the person;

(ii) subject to subsection (3), any parent of the person;

and

(iii) any other person who the Board is satisfied has a proper interest in the matter,

an opportunity to appear before, and make representations to, the Board;

(b) shall give due consideration to the expressed wishes (if any) of the person;

and

(c) shall give due consideration to the object of minimizing interference with the rights of the person so far as is consistent with the proper protection and care of the person.

(3) The Board is not obliged to afford a parent of a person to whom this Part applies (except where the parent is the applicant for consent) an opportunity to appear before, and make representations to, the Board—

(a) if the whereabouts of the parent cannot, after reasonable enquiries, be ascertained;

(b) if, in the particular circumstances, it is not reasonably practicable to do so;

or

(c) if the Board is satisfied that it would not be in the best interests of the person the subject of the application to do so.

(4) The Board shall determine any application relating to a proposed termination of pregnancy as expeditiously as is reasonably practicable.

Consent to sterilization procedure

28e. (1) Where the Board, on an application for consent to the carrying out of a sterilization procedure on a person to whom this Part applies, is satisfied that it is therapeutically necessary for the procedure to be carried out, it may consent to the carrying out of the procedure.

(2) Where the Board, on an application for consent to the carrying out of a sterilization procedure on a person to whom this Part applies, being a procedure that the Board is not satisfied is therapeutically necessary—

(a) is satisfied—

(i) that there is no likelihood of the person acquiring at any time the capacity to give an effective consent;

(ii) that the person is physically capable of procreation;

and

(iii) that—

(A) the person is, or is likely to be, sexually active, and there is no method of contraception that could, in all the circumstances, reasonably be expected to be successfully applied;

or

(B) in the case of a woman, cessation of her menstrual cycle would be in her best interests and would be the only reasonably practicable way of dealing with the social, sanitary or other problems associated with her menstruation;

and

(b) has no knowledge of any refusal on the part of the person to consent to the carrying out of the procedure, being a refusal made by the person while capable of giving effective consent and communicated by the person to a medical practitioner,

the Board may, in those circumstances, consent to the carrying out of the sterilization procedure, but not otherwise.

(3) A consent given under this section has no force or effect until the expiration of the period during which an appeal against a determination of the Board in respect of the giving of the consent may be instituted or, if such an appeal is instituted, until the appeal is determined (the consent not being revoked on the appeal) or the appeal is withdrawn.

Consent to termination of pregnancy

28f. Where the Board, on an application for consent to the carrying out of a termination of pregnancy on a woman to whom this Part applies—

(a) is satisfied—

(i) that the carrying out of the termination would not constitute an offence under the *Criminal Law Consolidation Act, 1935*;

and

23.

- (ii) that there is no likelihood of the woman acquiring the capacity to give an effective consent within the period of time that is reasonably available for the safe carrying out of the termination;

and

- (b) has no knowledge of any refusal on the part of the woman to consent to the termination, being a refusal made while capable of giving effective consent and communicated by her to a medical practitioner,

the Board may, in those circumstances, consent to the carrying out of the termination, but not otherwise.

(2) A consent given under this section has no force or effect until the expiration of the period during which an appeal against a determination of the Board in respect of the giving of the consent may be instituted or, if such an appeal is instituted, until the appeal is determined (the consent not being revoked on the appeal) or the appeal is withdrawn.

Emergency medical procedures carried out on persons unable to consent

28g. (1) Where a medical procedure or dental procedure is carried out in prescribed circumstances by a medical practitioner or a dentist on a person to whom this Part applies, the person shall be deemed to have consented to the carrying out of the procedure and the consent shall be deemed to have the same effect for all purposes as if the person were capable of giving effective consent.

(2) Prescribed circumstances exist for the purposes of subsection (1) if—

- (a) the medical practitioner or dentist carrying out the medical procedure or dental procedure—

- (i) is of the opinion that the procedure is necessary to meet imminent risk to the person's life or health;

and

- (ii) has no knowledge of any refusal on the part of the person to consent to the procedure, being a refusal made by the person while capable of giving effective consent and communicated by the person to the medical practitioner or dentist or some other medical practitioner or dentist;

- (b) the opinion of the medical practitioner or dentist referred to in paragraph (a) is, unless it is not reasonably practicable to do so having regard to the imminence of the risk to the person's life or health, supported by the written opinion of one other medical practitioner or dentist;

and

- (c) in the case of a medical procedure (not being a sterilization procedure or termination of pregnancy) or dental procedure to be carried out on a person who is less than 16 years of age, no parent of the person is reasonably available or, being available, the parent, having been requested to consent to the carrying out of the procedure, has failed or refused to do so.

Delegation by Board of its power to consent

28h. (1) Subject to this section, the Board may delegate to any person the power vested in the Board under this Part to consent to the carrying out of a medical procedure or dental procedure on a person to whom this Part applies.

(2) The Board is not empowered to delegate its power to consent to the carrying out of a sterilization procedure or termination of pregnancy.

(3) The Board shall not delegate its power to consent to the carrying out of a medical procedure or dental procedure on a person to any medical practitioner or dentist who is likely to be involved in the carrying out of the procedure.

(4) A delegation under this section may be subject to such conditions or limitations as the Board thinks fit, is revocable at will, and does not prevent the exercise by the Board of the power delegated.

Evidentiary provisions

28i. (1) Any consent to the carrying out of a medical procedure or a dental procedure given by the Board or its delegate under this Part must be in writing.

(2) In any legal proceedings, a document purporting to be signed by a member of the Board, or a delegate of the Board, and to be the consent of the Board, or the delegate, to the carrying out of a medical procedure or a dental procedure shall be conclusive proof of the consent of the Board, or the delegate, to the carrying out of the procedure and of the validity of that consent.

(3) In any legal proceedings, a certificate purporting to be signed by a member of the Board and to certify that a specified person was, on a specified day or during a specified period, a delegate of the Board for the purposes of this Part shall, in the absence of proof to the contrary, be proof of the matters so certified.

This Part does not derogate from other enactments

28j. The provisions of this Part are in addition to, and do not derogate from, the provisions of any other enactment.

Minister to review and report to Parliament on operation of this Part

28k. (1) The Minister shall, as soon as practicable after the expiration of 2 years from the commencement of this Part, cause a review and report to be made on the operation of this Part.

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

PART V

THE MENTAL HEALTH REVIEW TRIBUNAL

DIVISION I—CONSTITUTION AND POWERS OF THE TRIBUNAL

Establishment of the Tribunal

29. (1) There shall be a tribunal entitled the "Mental Health Review Tribunal".

(2) The Tribunal shall consist of three members, appointed by the Governor, of whom—

(a) one, who shall be chairman of the Tribunal, shall be—

(i) a person holding judicial office under the *Local and District Criminal Courts Act, 1926*;

(ii) a special magistrate;

or

(iii) a legal practitioner of not less than seven years standing;

(b) one shall be a legally qualified medical practitioner;

and

(c) one shall be a person who is, in the opinion of the Governor, otherwise suitably qualified for membership of the Tribunal.

Terms and conditions upon which members hold office

30. (1) A member of the Tribunal shall be appointed for such term of office, not exceeding three years, as the Governor may determine and specifies in the instrument of his appointment and, upon the expiration of his term of office, shall be eligible for reappointment.

(2) The Governor may, subject to subsection (3), appoint a suitable person to be a deputy of a member of the Tribunal, and such a person, while acting in the absence of that member, shall be deemed to be a member of the Tribunal and shall have all the powers, authorities, duties and obligations of the member of whom he has been appointed a deputy.

(3) A deputy of the chairman must be—

(a) a person holding judicial office under the *Local and District Criminal Courts Act, 1926*;

(b) a special magistrate;

or

(c) a legal practitioner of not less than seven years standing.

(4) The Governor may remove a member of the Tribunal from office for—

(a) mental or physical incapacity;

(b) neglect of duty;

or

(c) dishonourable conduct.

(5) The office of a member of the Tribunal shall become vacant if—

(a) he dies;

(b) his term of office expires;

(c) he resigns by written notice addressed to the Minister;

or

(d) he is removed from office by the Governor pursuant to subsection (4).

(6) Upon the office of a member of the Tribunal becoming vacant, a person shall be appointed, in accordance with this Act, to the vacant office but, where the office of a member of the Tribunal becomes vacant before the expiration of the term for which he was appointed, a person appointed in his place shall be appointed only for the balance of the term of his predecessor.

Allowances and expenses

31. The members of the Tribunal shall be entitled to receive such allowances and expenses as may be determined by the Governor.

Validity of acts of the Tribunal

32. An act or proceeding of the Tribunal shall not be invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

Proceedings and decisions of the Tribunal

33. (1) The chairman shall preside at the hearing of any proceedings by the Tribunal.

(2) Subject to subsection (3), a decision concurred in by any two members of the Tribunal shall be a decision of the Tribunal.

(3) The chairman shall determine any question relating to the admissibility of evidence and any other question of law or procedure.

Powers of the Tribunal

34. (1) In the exercise of its powers and functions under this Act, the Tribunal may—

(a) by summons signed on behalf of the Tribunal by a member of the Tribunal, or by the secretary to the Tribunal, require the attendance before the Tribunal of any person;

- (b) by summons signed on behalf of the Tribunal by a member of the Tribunal, or by the secretary to the Tribunal, require the production of any books, papers or documents;
- (c) inspect any books, papers or documents produced before it and retain them for such reasonable period as it thinks fit and make copies of them or any of their contents;
- (d) require any person to make an oath or affirmation that he will truly answer all questions put to him by the Tribunal, or by any person appearing before the Tribunal, relating to any matter being inquired into by the Tribunal;

or

- (e) require any person appearing before the Tribunal to answer any relevant questions put to him by any member of the Tribunal, or by any other person appearing before the Tribunal.

(2) Subject to subsection (3), if any person—

- (a) who has been served with a summons to attend before the Tribunal fails without reasonable excuse to attend in obedience to the summons;
- (b) who has been served with a summons to produce any books, papers or documents fails without reasonable excuse to comply with the summons;
- (c) misbehaves himself before the Tribunal, wilfully insults the Tribunal or any member thereof or interrupts the proceedings of the Tribunal;

or

- (d) refuses to be sworn or to affirm, or to answer any relevant question, when required to do so by the Tribunal,

he shall be guilty of an offence and liable to a penalty not exceeding five hundred dollars.

(3) A person shall not be obliged to answer a question put to him under this section if the answer to that question would tend to incriminate him, or to produce any books, papers or documents if their contents would tend to incriminate him.

(4) In any proceedings, the Tribunal shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms, and it shall not be bound by the rules of evidence, but it may inform itself on any matter in such manner as it thinks fit.

Attendance before the Tribunal

34a. (1) Before the Tribunal makes an order under this Part in relation to a patient or a protected person, it must, wherever practicable, afford the patient or protected person an opportunity to appear before, and make representations to, the Tribunal.

(2) Before the Tribunal makes an order or decision—

- (a) discharging or revoking an order for the detention of a patient or the custody of a protected person;
 - (b) revoking an order by which a person was received into the guardianship of the Board;
- or
- (c) revoking an order by which an administrator was appointed in respect of a person's estate,

the Tribunal shall afford any person who the Tribunal is satisfied has a proper interest in the matter an opportunity to appear before, and make representations to, the Tribunal.

(3) Where the Tribunal makes an order under this Part, the Tribunal must give notice of the order to each person who appeared before, and made representations to, the Tribunal in relation to the matter.

DIVISION II—FUNCTIONS OF THE TRIBUNAL

Review of detention orders and custody orders

35. (1) Subject to this section, where, by order under this Act—

- (a) a patient is detained in an approved hospital;
- or
- (b) a protected person is placed in the custody of another person,

the Tribunal shall, before the expiration of the first two months of that detention or custody and thereafter at periodic intervals of not more than six months, review the circumstances of that detention or custody.

(2) Where, upon a review in respect of the custody of a mentally handicapped person, the Tribunal is of the opinion that the mental handicap of that person is not likely to be ameliorated, the Tribunal may extend the period within which subsequent reviews must be made to a period not exceeding twelve months.

(3) Unless the Tribunal is satisfied in proceedings under this section that there is good cause for the continuing detention of the patient or custody of the protected person, it shall direct that the order for detention or custody be discharged.

(4) The Tribunal is not obliged to make a review in respect of a person under this section if it has heard an appeal under this Act in respect of the same person within the last preceding period of twenty-eight days.

Appeals in respect of patients detained in approved hospitals

36. (1) An appeal may be made to the Tribunal against the detention of a patient in an approved hospital by any of the following persons:

- (a) the patient himself;
 - (b) a relative of the patient;
 - (c) the Director;
- or
- (d) any other person who satisfies the Tribunal that he has a proper interest in the care and protection of the patient.

(2) Unless the Tribunal is satisfied in proceedings under this section that there is good cause for the continuing detention of the patient, it shall direct that the order under which he is detained be discharged.

(3) An appeal may not be instituted under this section in respect of a patient—

- (a) before the expiration of three days from the day on which he was admitted to the approved hospital;
- (b) if a previous appeal in respect of the same patient has been determined in the last preceding period of twenty-eight days;

or

- (c) if a review of his detention has been made by the Tribunal in the last preceding period of twenty-eight days.

(4) The Tribunal shall proceed to hear and determine an appeal as soon as reasonably practicable after the institution thereof.

Appeals from determinations and orders of the Board

37. (1) Where the Board has made an order—

- (a) by which a person is received into the guardianship of the Board;
- (b) by which an administrator is appointed in respect of the estate of a protected person;

or

- (c) by which a protected person is placed in the custody of another person,

any of the following persons may appeal to the Tribunal against the order:

- (d) the protected person;
- (e) a relative of that person;

(f) the Director;

or

(g) any other person who satisfies the Tribunal that he has a proper interest in the care and protection of the person in respect of whom the order was made.

(1a) Where the Board has made a determination under Part IVA on an application for its consent to the carrying out of a sterilization procedure or termination of pregnancy on a person, any of the following persons may appeal to the Tribunal against the determination:

(a) the person the subject of the application;

(b) any parent of the person;

or

(c) any other person who the Tribunal is satisfied has a proper interest in the matter.

(1b) Subject to subsection (1c), an appeal under this section must be instituted within one month of the making of the order or determination the subject of the appeal.

(1c) An appeal against a determination made in respect of an application for consent to the carrying out of a termination of pregnancy must be instituted within 2 working days of the making of the determination.

(1d) The Tribunal shall hear and determine an appeal under this section as expeditiously as is reasonably practicable and shall give priority to the hearing and determination of any appeal against a determination made in respect of an application for consent to the carrying out of a termination of pregnancy.

(2) Upon the hearing of an appeal under this section, the Tribunal may affirm or vary the order or determination of the Board or may revoke the order or determination and may make in its place any other order or determination that the Board could have made.

(3) An appeal against an order of the Board by which a protected person is placed in the custody of another person may not be instituted under this section—

(a) if a previous appeal in respect of the same person has been determined in the last preceding period of twenty-eight days;

or

(b) if a review of his custody has been made by the Tribunal in the last preceding period of twenty-eight days.

DIVISION III—APPEALS FROM DECISIONS OF THE TRIBUNAL

Appeals from decisions and orders of the Tribunal

38. (1) Any person aggrieved by a decision or order of the Tribunal shall, subject to this section, be entitled to appeal to the Supreme Court against the decision or order of the Tribunal.

(1a) A decision or order made by the Tribunal on an appeal against a determination of the Board in respect of giving its consent to the carrying out of a sterilization procedure or a termination of pregnancy is not appealable.

(2) An appeal under this section must be instituted within one month of the making of the decision or order appealed against but the Supreme Court may, if it is satisfied that it is just and equitable in the circumstances to do so, dispense with the requirement that the appeal should be so instituted.

(3) The Supreme Court may, on the hearing of the appeal, exercise one or more of the following powers, according to the nature of the case:

(a) affirm, vary or quash the decision or order appealed against, or substitute, and make in addition, any decision or order that should have been made in the first instance;

(b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for rehearing;

or

(c) make any further or other order as to costs, or any other matter, that the case requires.

(4) Where the appellant in proceedings under this section is the person in respect of whom the appeal is brought, no order for costs shall be made against him.

DIVISION IV—REPRESENTATION OF APPELLANTS

Representation upon appeals

39. (1) In every appeal to the Tribunal or the Supreme Court, the person in respect of whom the appeal is brought shall, subject to subsection (2), be represented by counsel.

(2) Where the Tribunal or the Court is satisfied that a person does not desire to be represented by counsel upon an appeal and that he has sufficient command of his mental faculties to make a rational judgment in the matter, it may dispense with the requirement that he be represented by counsel at the hearing of the appeal.

(3) Unless the person in respect of whom the appeal is brought decides to engage counsel at his own expense, the counsel by whom he is to be represented shall be chosen—

(a) by that person himself;

or

(b) in default of his making a choice, by the Law Society of South Australia,

from a panel of legal practitioners who have indicated their willingness to represent persons in proceedings under this Act, compiled by the Law Society of South Australia.

(4) A legal practitioner who is chosen from the panel referred to in subsection (3) shall be entitled to receive fees for his services from the Commission, in accordance with a prescribed scale, and shall not be entitled to demand or receive from any other person any further fee.

PART VI

LICENSING OF PSYCHIATRIC REHABILITATION CENTRES

Prohibition against operation of psychiatric rehabilitation centre without licence

40. (1) No person shall provide, for fee or reward, accommodation for a person who is subject to an order for detention under this Act unless he is licensed under this Part to use the premises in which the accommodation is provided as a psychiatric rehabilitation centre.

Penalty: One thousand dollars.

(2) In proceedings for an offence against this section, it shall be a defence for the defendant to prove that he did not know, and could not by the exercise of reasonable diligence have ascertained, that the person for whom he provided accommodation for fee or reward was subject to an order for detention under this Act.

(3) This section does not apply to accommodation provided in an approved hospital or in any other hospital incorporated under the *South Australian Health Commission Act, 1976*.

Psychiatric rehabilitation centres

41. (1) Subject to this section, the Minister may, on the application of a person seeking a licence under this Part, grant him a licence to use premises specified in the licence as a psychiatric rehabilitation centre.

(2) A licence under subsection (1) shall be granted for a term not exceeding twelve months.

(3) A licence granted under subsection (1) shall be subject to all or any of the following conditions specified in the licence:

- (a) that a number of persons stipulated in the licence shall be employed in the operation of the psychiatric rehabilitation centre;
- (b) that those persons will have qualifications specified in the licence;
- (c) that those persons will competently discharge the functions assigned to them by, and specified in, the licence;
- (d) that persons of the class or classes specified in the licence will not be permitted to reside in the psychiatric rehabilitation centre;
- (e) that the number of persons receiving care in the psychiatric rehabilitation centre will not exceed the number specified in the licence;
- (f) that the accommodation and facilities provided for persons receiving care in the psychiatric rehabilitation centre will at all times conform to standards specified in the licence;
- (g) that the standard of diet provided for persons receiving care in the centre will conform to a standard specified in the licence;

(h) that the psychiatric rehabilitation centre will at all times be open to inspection by any person authorized by the Director to inspect the centre;

(i) that the holder of the licence will comply with any directions of the Director in relation to the operation of the centre and the care or treatment of the persons resident therein;

and

(j) such other conditions as the Minister may think fit to include in the licence.

(4) The Treasurer may, on the recommendation of the Director and on the application of the holder of a licence under this section, guarantee the repayment of any advance or loan made or proposed to be made to the holder of the licence, where the advance or loan is made for the purpose of carrying out such works, or the purchase of such property, as may be approved by the Minister.

Revocation or suspension of licence

42. (1) Where the holder of a licence under this Part contravenes, or fails to comply with, a condition of the licence, the Minister may, by instrument in writing served personally or by post upon him, give notice of his intention to revoke the licence.

(1a) If the Minister is of the opinion that the continued operation of the psychiatric rehabilitation centre to which a notice under subsection (1) relates would put at risk the safety, health or welfare of a person receiving care in the centre, the Minister may, in that notice or by subsequent notice in writing given personally or by post to the holder of the licence, suspend the licence.

(2) The holder of the licence may appeal against the proposed revocation of the licence to the Tribunal.

(3) Where—

(a) a month has expired since service of the notice under subsection (1) and no appeal has been instituted against the proposed revocation of the licence;

or

(b) an appeal against the proposed revocation of the licence has been dismissed or withdrawn,

the Minister may revoke the licence.

(4) If a licence has been suspended under this section and an appeal against the proposed revocation of the licence is subsequently upheld by the Tribunal, the suspension is deemed to have been revoked on the day on which the Tribunal made its determination.

(5) Where the licence of a psychiatric rehabilitation centre has been suspended or revoked under this section, the Minister may take such steps as the Minister thinks fit to secure the proper care of the persons receiving care in the centre.

PART VII

MISCELLANEOUS

Apprehension of persons unlawfully at large

43. (1) Where a member of the police force or an officer or employee of an approved hospital has reasonable cause to believe that a person who has been detained in that approved hospital is unlawfully at large, he may apprehend that person at any time, without warrant, and return him to that approved hospital.

(2) Where a member of the police force has reasonable cause to believe that a protected person who has been placed in the custody of another person is unlawfully at large, he may apprehend the protected person at any time, without warrant, and return him to the custody of that other person.

(3) Where a special magistrate, on the application of the Crown Solicitor or a police officer of or above the rank of inspector, is satisfied that a person who has been detained in an approved hospital or placed in the custody of another person is unlawfully at large, he may issue a warrant in the prescribed form directing that the person named therein be apprehended and conveyed to the place from which he escaped.

(4) A person apprehended at any time under a warrant issued under subsection (3) must be conveyed to the place specified in the warrant.

(5) For the purposes of this section, a person shall be deemed to be unlawfully at large if, being lawfully permitted to be absent from an approved hospital, he does not return to the hospital within the period of his permitted absence or, if the absence is subject to a condition or conditions, he does not comply with that condition or any one or more of those conditions.

Neglect or ill-treatment of a person suffering from mental illness or mental handicap

44. (1) Any person having the oversight, care or control of a person who is suffering from a mental illness or mental handicap who ill-treats or wilfully neglects that person shall be guilty of an indictable offence.

(2) Subsection (1) does not affect or prejudice the operation of any other Act or law in relation to an offender under that subsection.

Offences in relation to certificates and orders, etc.

45. (1) Any medical practitioner who signs any certificate, order or authorization for the purposes of this Act without having seen and personally examined the person to whom the certificate, order or authorization relates shall be guilty of an offence and liable to a penalty not exceeding one thousand dollars.

(2) Any medical practitioner who wilfully certifies that any person is suffering from a mental illness or mental handicap, not believing him to be suffering from a mental illness or mental handicap, or who wilfully makes any other false or misleading statement in any certificate given under or for the purposes of this Act, shall be guilty of an indictable offence.

(3) A person who, not being a medical practitioner, signs any certificate or order for the purposes of this Act in which he describes himself as, or pretends to be, a medical practitioner or psychiatrist or otherwise purports to act under this Act in the capacity of a medical practitioner or psychiatrist, shall be guilty of an indictable offence.

(4) Any person who, by the production of a false certificate or by other fraudulent means, procures or attempts to procure any person who is not suffering from a mental illness or mental handicap to be received into, or detained in, an approved hospital, or received into the guardianship of the Board, shall be guilty of an indictable offence.

Medical practitioners not to proceed under this Act in respect of their relatives

46. (1) Where a person suffers from mental illness or mental handicap, a medical practitioner who is a relative of that person shall not sign any certificate, order or authorization under this Act in respect of that person.

(2) A certificate, order or authorization signed in contravention of this section is invalid.

Removing a person detained in approved hospital or placed in custody

47. Any person who, without lawful excuse, removes a patient who has been detained in an approved hospital from that hospital, or removes a protected person who has been placed in the custody of another person from that custody, or aids any such patient or protected person to leave that hospital or custody, shall be guilty of an indictable offence.

Duty to maintain confidentiality

48. (1) Any person acting in the administration of this Act who divulges any personal information relating to a patient, obtained in the course of his employment, otherwise than as he may be authorized or required to divulge that information by law, or by his employer, shall be guilty of an indictable offence.

(2) This section does not prevent a person from divulging statistical or other information that could not reasonably be expected to lead to the identification of patients to whom it relates.

Penalty for indictable offence

49. Any person who is guilty of an indictable offence under this Act shall, upon conviction, be liable to a penalty not exceeding \$5 000 or to imprisonment for a term not exceeding one year.

Limitation of liability

50. (1) No liability shall attach to any person in respect of any act done, or omission made, by him in good faith, without negligence, and in the exercise or purported exercise of his powers or functions, or in the discharge or purported discharge of his duties, under this Act.

(2) No liability shall attach to a member of the Board for any act or omission by the Board in good faith and in the exercise or purported exercise of its powers or functions, or in the discharge or purported discharge of its duties, under this Act.

(3) No liability shall attach to a member of the Tribunal for any act or omission by the Tribunal in good faith and in the exercise or purported exercise of its powers or functions, or in the discharge or purported discharge of its duties, under this Act.

Proceedings for offences

51. Proceedings in respect of an offence under this Act (not being an indictable offence) shall be disposed of summarily.

Regulations

52. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) define the powers, functions and duties of the Director;
 - (b) define the powers, functions and duties under this Act of superintendents of approved hospitals and other officers and servants employed in approved hospitals;
 - (c) provide for the management and control of approved hospitals;
 - (d) provide for the classification of patients;
 - (e) provide for the care and treatment of patients of the various classes;
 - (f) prescribe, and provide for the payment and recovery of, fees in respect of accommodation, treatment or other services provided at approved hospitals;
 - (g) provide for the transport of patients or protected persons from one place to another and any matter incidental thereto;
 - (h) provide for the recovery of medical practitioners' fees on the medical examination of persons apprehended by members of the police force;
 - (i) prescribe any matter relating to procedure to be adopted under this Act;
 - (j) prescribe any form to be used for the purposes of this Act;
- and
- (k) prescribe a penalty not exceeding two hundred dollars for breach of any regulation.

SCHEDULE

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APPENDIX

Legislative History

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 1 March 1984. A schedule of these alterations was laid before Parliament on 29 November 1983.

Long title:	substituted by 59, 1993, Sched. cl. 1(2)(a)
Section 2:	repealed by 59, 1993, Sched. cl. 1(2)(b)
Section 3:	deleted in pursuance of the <i>Acts Republication Act, 1967</i>
Section 4:	amended by 21, 1979, s. 2; repealed by 59, 1993, Sched. cl. 1(2)(b)
Section 5:	amended by 122, 1985, s. 3; 114, 1986, s. 3; repealed by 59, 1993, Sched. cl. 1(2)(b)
	Part II comprising ss. 6 - 12 and headings repealed by 59, 1993, Sched. cl. 1(2)(b)
	Part III comprising ss. 13 - 19 and headings amended by 122, 1985, ss. 4-5; repealed by 59, 1993, Sched. cl. 1(2)(b)
	Part IV comprising ss. 20 - 28aab and headings amended by 114, 1986, ss. 4-9; repealed by 59, 1993, Sched. cl. 1(2)(b)
	Part IVA comprising ss. 28a - 28k and heading inserted by 122, 1985, s. 6; amended by 47, 1988, s. 4; repealed by 59, 1993, Sched. cl. 1(2)(b)
	Part V comprising ss. 29 - 39 and headings amended by 122, 1985, ss. 7, 8; 114, 1986, s. 10; repealed by 59, 1993, Sched. cl. 1(2)(b)
Section 40(1) and (2):	amended by 59, 1993, Sched. cl. 1(2)(c)
Section 40(3):	amended by 59, 1993, Sched. cl. 1(2)(d)
Section 41(3) and (4):	amended by 59, 1993, Sched. cl. 1(2)(e)
Section 42(1a):	inserted by 114, 1986, s. 11(a)
Section 42(2):	amended by 59, 1993, Sched. cl. 1(2)(f)
Section 42(3):	amended by 114, 1986, s. 11(b)
Section 42(4):	inserted by 114, 1986, s. 11(c); amended by 59, 1993, Sched. cl. 1(2)(g)
Section 42(5):	inserted by 114, 1986, s. 11(c)
Sections 43 - 48:	repealed by 59, 1993, Sched. cl. 1(2)(h)
Section 49:	amended by 122, 1985, s. 9; repealed by 59, 1993, Sched. cl. 1(2)(h)
Sections 50 and 51:	repealed by 59, 1993, Sched. cl. 1(2)(h)
Section 52(2):	repealed by 59, 1993, Sched. cl. 1(2)(i)
Schedule:	amended by 21, 1979, s. 3; deleted in pursuance of the <i>Acts Republication Act, 1967</i> , s. 4(5), as the amendments effected by this schedule have been incorporated in the reprinted <i>Mental Health (Supplementary Provisions) Act, 1935</i>