

Queensland



MENTAL HEALTH ACT 1974

**Reprinted as in force on 2 June 1999
(includes amendments up to Act No. 19 of 1999)**

Warning—see last endnote for uncommenced amendments

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 2 June 1999. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- express gender specific provisions in a way consistent with current drafting practice (s 24)
- use standard punctuation consistent with current drafting practice (s 27)
- use aspects of format and printing style consistent with current drafting practice (s 35).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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MENTAL HEALTH ACT 1974

[as amended by all amendments that commenced on or before 2 June 1999]

An Act relating to the treatment and care of mentally ill persons and the training and care of intellectually handicapped persons and to their property and affairs; and for connected purposes

PART 1—PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the *Mental Health Act 1974*.

(2) Subject to section 14(13), this Act shall commence on a day to be fixed by proclamation.

Interpretation

5.(1) In this Act—

“**authorised person**”, in relation to a patient, means a person who is appointed as such under and in accordance with the regulations.

“**chief health officer**” means the chief health officer under the *Health Act 1937*.

“**designated authorised person**” means a person designated and authorised by the Minister, in writing, to act as an authorised person for the purposes of section 25.

“**designated medical practitioner**”, in relation to—

- (a) a patient liable to be detained in a public hospital and classified under the regulations made pursuant to the *Health Services Act 1991* as a public patient—means a medical practitioner appointed by the hospital administrator;

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- (b) a patient liable to be detained in any hospital or other place not being a public hospital or a private hospital—means a medical practitioner appointed by the director;
- (c) a patient admitted to and for the time being remaining in a psychiatric hospital or any other place established by the Governor in Council pursuant to section 16 and not liable to be detained therein—means a medical practitioner appointed by the director;
- (d) any other patient—means the medical practitioner for the time being in charge of the treatment of the patient.

“director” means the Director of Mental Health appointed under this Act.

“Director of Intellectual Handicap Services” means the officer holding the office of Director of Intellectual Handicap Services in the department within which the *Family Services Act 1987* is administered.

“health service employee” see *Health Services Act 1991*, section 2.¹

“hospital” means a private hospital, a public hospital, a psychiatric hospital, a security patients’ hospital, or a place established by the Governor in Council pursuant to section 16.

“hospital administrator”, in relation to—

- (a) a private hospital—means the person who manages that hospital;
- (b) a public hospital—means the person having the control or management of the hospital;
- (c) a psychiatric hospital, a security patients’ hospital, a place established by the Governor in Council pursuant to section 16 or an institution—means the holder of an office for the time being or other person prescribed in respect of the hospital, place or institution as the hospital administrator and, in the absence of such holder or other person, means the person for the time being occupying the office or performing the duties of the holder or other person.

¹ Under the *Health Services Act 1991*, section 24, the chief executive may appoint persons in the department as health service employees for the delivery of public sector health services.

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“Mental Health Tribunal” means the Mental Health Tribunal established under part 4.

“patient” means a person suffering or appearing to be suffering from mental illness.

“place of safety” means any hospital (other than a security patients’ hospital) or police station, or any other suitable place the occupier of which is willing to receive temporarily a patient.

“police station” includes a police office, watchhouse, and lockup.

“prison” means a prison within the meaning of the *Corrective Services Act 1988*.

“private hospital” means a private hospital within the meaning of part 3, division 11 of the *Health Act 1937*² in relation to which a licence under that division 11 is in force.

“psychiatric hospital” means a hospital, an institution or premises established or deemed to have been established under this Act as a psychiatric hospital.

“psychiatrist” means a medical practitioner registered under the *Medical Act 1939* as a specialist with respect to the specialty of psychiatry, and whose name remains upon the Register of Specialists, Queensland, with respect to such specialty.

“public hospital” means a public sector hospital within the meaning of the *Health Services Act 1991*.

“resident” means any intellectually handicapped person who is residing within a training centre.

“security patients’ hospital” means a security patients’ hospital established under section 16.

“the Supreme Court” includes a Circuit Court.

“training”, in relation to a resident, includes observation, assessment, intervention and care and, where necessary education, supervision,

² Part 3, division 11 was renumbered as part 3, division 4 under the *Health Act 1937*, section 184.

Health Act 1937, part 3 (Prevention, notification and treatment of disease or disability), division 4 (Private hospitals)

social rehabilitation, help and advice.

“training centre” means a centre or premises established or deemed to have been established under this Act as a training centre, and includes a community villa or residential centre for the intellectually handicapped.

“treatment”, in relation to a patient, includes observation, examination, diagnostic investigation, medical or surgical treatment and care and training, education, supervision and social rehabilitation.

“tribunal” means a Patient Review Tribunal constituted under section 14.

“welfare”, in relation to a patient, means health or safety or both health and safety.

(2) The provisions of this Act apply, with all necessary adaptations, in relation to drug dependence and intellectual handicap as if each of those conditions were a mental illness.

Construction and application of this Act

6. This Act shall be construed and applied—

- (a) so that any private hospital is not compelled to admit any patient;
- (b) so as not to prevent any patient who is in need of care and treatment for mental illness from receiving the same in pursuance of arrangements made in that behalf and, subject to considerations for the patient’s own welfare or the protection of others, with no more legal formality or restriction of liberty than is applied to people who need care and treatment because of other types of illness, disability, or social difficulty;
- (c) so that in the case of any patient the compulsory powers relating to detention conferred by this Act are exercised for the purposes only of the patient’s own welfare or the protection of others;
- (d) so that a person shall not be considered to be suffering from mental illness by reason only that—
 - (i) the person expresses or refuses or fails to express a particular political, anarchic, religious or irreligious, legal or illegal, or moral or immoral opinion; or
 - (ii) the person engages in or refuses or fails to engage in a

particular political, anarchic, religious or irreligious, legal or illegal or moral or immoral activity.

PART 2—ADMINISTRATION

Administration of Act

7. This Act shall be administered by the Minister, and, subject to the Minister, by the chief executive, and, subject as aforesaid, by the director.

Annual report

8. The chief executive shall annually (in accordance with any determination by the Minister as to the time of the furnishing thereof) make and furnish to the Minister a report on the chief executive's administration under this Act, and such report shall be laid before Parliament within 14 sitting days after such publication.

Minister

9.(1) The Minister, in addition to the functions, powers and duties conferred or imposed upon the Minister by this Act, may from time to time visit and inspect every hospital with or without previous notice and at any time of the day or night as the Minister thinks fit, and may at any time make or cause to be made such inspections, investigations, and inquiries as the Minister deems necessary for the purpose of administering this Act.

(2) The Minister, for the purpose of any inspection, investigation or inquiry made by the Minister under this Act, has and may exercise all the powers, authorities, protection and jurisdiction of a commission of inquiry, as well as of a chairperson and of a member of a commission of inquiry, under the *Commissions of Inquiry Act 1950*.

(3) Before the Minister makes, or causes to be made, an inspection, investigation or inquiry under subsection (1), the Minister must seek advice from the chief executive and the chief health officer.

Director, and other officers

10.(1) The Governor in Council may appoint under and for the purposes of this Act a Director of Mental Health who shall be paid a salary at such rate as the Governor in Council determines from time to time.

(2) In addition to the functions, powers and duties conferred or imposed upon the director by this Act, the director has also, without limiting the provisions or operation of section 9, the functions, powers and duties conferred or imposed on the Minister, under section 9(1), for visiting and inspecting hospitals.

(5) The Governor in Council may appoint a duly qualified person who will while that order remains in force, at and in accordance with the direction of the Minister, exercise and discharge the functions, powers and duties of the director, if the director is unable through absence, illness, or any other cause to exercise and perform the director's functions, powers and duties or in the event of a vacancy existing in the office of director and the person so appointed will have the necessary authority accordingly.

Delegations

11.(1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified officer or employee of the department.

(2) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer or employee of the department.

(3) The director may delegate the director's powers under this Act to an appropriately qualified officer or employee of the department.

(4) In this section—

“appropriately qualified” includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person's classification level in the department.

Official visitors

12.(1) The Governor in Council may from time to time appoint, in relation to any hospital or training centre or any part of the State, 2 or more

official visitors, 1 of whom shall be a medical practitioner or a person qualified to practise a profession that requires a special knowledge and interest with respect to mental health, and 1 a barrister-at-law, a solicitor, a Stipendiary Magistrate, or person qualified for appointment as a Stipendiary Magistrate.

(2) Official visitors have such functions, powers and duties as are or may be prescribed and all or any of such prescribed functions, powers and duties may differ in relation to different official visitors appointed for the same hospital or training centre or part of the State.

(3) Official visitors shall receive such remuneration and allowances as are from time to time approved by the Governor in Council.

Visits by official visitors

13.(1) Any 1 or more of the official visitors shall visit every hospital or training centre to which the official visitor or visitors may be appointed and every hospital or training centre which by the regulations the official visitor or visitors is or are required to so visit once at least in every month and shall make special visits concerning the administration of this Act or particular matters at such times as the Minister or the chief executive or director may direct.

(1A) Such visits may be made without previous notice and at such hours of the day or night as the official visitor or visitors making the same thinks or think fit, or as may be required by the person directing the visit.

(2) Immediately after each visit made by an official visitor a report with respect to the visit shall be prepared by the official visitor and forthwith be furnished by the official visitor—

- (a) where the report relates to a visit made at the direction of the Minister or chief executive—to the person who gave the direction; or
- (b) where the report relates to a visit to a hospital, other than a visit referred to in paragraph (a)—to the director; or
- (c) where the report relates to a visit to a training centre, other than a visit referred to in paragraph (a)—to the Director of Intellectual Handicap Services.

(3) In addition to such other inquiries which the official visitor or visitors may make for the purposes of the administration of this Act, an official visitor or official visitors shall make such inquiries as are prescribed.

Patient Review Tribunals

14.(1) The Governor in Council may, by regulation, divide or re-divide the State into regions for the purposes of this section, but until the Governor in Council so divides the State, the whole of the State shall be, and shall be deemed always to have been, a region for the purposes of this section.

(2) For each region there shall be constituted a tribunal, to be called a Patient Review Tribunal, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(3) Each tribunal shall consist of not less than 3 and not more than 6 members, appointed by the Governor in Council by gazette notice, of whom—

- (a) 1 must be—
 - (i) a retired Supreme Court judge or a retired District Court judge; or
 - (ii) a person who is qualified for appointment as a judge of the District Court; or
 - (iii) a retired judge of a court of the Commonwealth, another State or a Territory;who is to be chairperson of the tribunal; and
- (b) 1 at least shall be a medical practitioner; and
- (c) 1 at least shall be a person qualified to practise a profession that requires a special knowledge and interest with respect to mental illness.

(5) Subject to subsections (5A) and (6), a person appointed a member of a tribunal holds office for a term of 3 years and is eligible for reappointment.

(5A) A person appointed to fill a vacancy, caused otherwise than by the retirement of a member on the expiration of the member's term of office, holds office only for the unexpired portion of the term of the office of the

member in whose place the person is appointed.

(5B) The Minister shall, in the case of a vacancy caused or about to be caused by the retirement on the expiration of the term of office of a member appointed in compliance with the requirements of subsection (3)(b), and may, in the case of a vacancy arising or about to arise in the office of such a member from any other cause, notify, as and in the manner prescribed, an association of persons recognised by the Minister as representative of psychiatrists.

(5C) Within 4 weeks after an association is notified by the Minister under subsection (5B) there shall be submitted to the Minister by or on behalf of the association a list of the names of at least 3 medical practitioners considered by its members to be suitable for appointment to the tribunal in whose membership the vacancy has occurred or is about to occur.

(5D) Where a list is not received by the Minister as and within the time provided in subsection (5C), the Governor in Council shall appoint such medical practitioner as the Governor in Council thinks fit to fill the vacancy.

(5E) The appointment of a medical practitioner in compliance with the requirements of subsection (3)(b) shall specify that the medical practitioner is appointed pursuant to that paragraph.

(6) A casual vacancy in the office of member of a tribunal occurs if a member holding office—

- (a) dies; or
- (d) tenders the member's resignation from office, in writing, addressed to the Minister; or
- (e) is removed from office by the Governor in Council.

(7) The Governor in Council may, by gazette notice, appoint any person who is eligible for appointment as a member of a tribunal to fill any casual vacancy, and a person so appointed, while filling the casual vacancy, is deemed to be a member.

(7A) Despite subsection (5), the Governor in Council may, for the purpose of increasing the number of members of a tribunal to not more than 6, by gazette notice, appoint a person as a member of a tribunal for the unexpired portion of the term of office of the other members.

(8) A tribunal shall meet at such times and places and conduct its business in such manner as may be prescribed or, in so far as not prescribed, as it may from time to time determine.

(8A) Three members of a tribunal, of whom the chairperson shall be one, constitute a quorum and have all the powers, authorities, duties and functions of a tribunal pursuant to this Act.

(8B) In respect of any decision or determination of a tribunal, the decision or determination of the majority of the members thereof (there being a quorum) is the decision or determination of the tribunal.

(8C) If the members of the tribunal are equally divided in any decision or determination, the decision or determination of the chairperson prevails and is the decision or determination of the tribunal.

(9) The Governor in Council may, by gazette notice, appoint a person qualified for appointment under subsection (3)(a) to act as chairperson of a tribunal during the absence through illness or other cause of the person who holds the office of chairperson.

(9A) While the appointee so acts the appointee shall be deemed to be a member of the tribunal and its chairperson.

(10) The members of a tribunal shall receive such remuneration and allowances as are from time to time approved by the Governor in Council.

(11) The Governor in Council may, by gazette notice, appoint a secretary to a tribunal and such other officers as the Governor in Council considers necessary for the effectual operation of the tribunal pursuant to this Act, and may, whenever the Governor in Council considers it necessary, likewise appoint any person to act temporarily as secretary to the tribunal or in the room of any other officer who is absent or for any other reason is unable to carry out the officer's duties for the time being.

Powers and proceedings of and appeals from tribunal

15.(1) Except where this Act otherwise prescribes, this section does not apply in relation to applications or references in respect of patients to whom part 4 applies.

(1AA) A tribunal shall discharge its functions, exercise its powers and perform its duties conferred or imposed on it by part 4 in accordance with

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that part.

(1A) An application shall not be made to a tribunal by or in respect of a patient save as prescribed.

(2) A prescribed application shall be made by notice in writing addressed to the tribunal for the region in which the hospital in which the patient is detained is situated or in which the patient, if the patient is not an in-patient, is residing, and subject thereto shall be made as prescribed.

(3) Where a prescribed application may be made within a specified period, not more than 1 such application shall be made within that period.

(4) Nothing in this section excludes or diminishes the power of the tribunal to make or cause to be made any examination of or inquiry in relation to a patient or to make any recommendation it considers necessary or desirable for the patient's welfare or the protection of other persons.

(5) The case of any patient liable to be detained under this Act may at any time be referred to a tribunal by the Minister or the director.

(6) Where an application has been made pursuant to this Act to a tribunal by or in respect of a patient who is liable to be detained under part 3, division 2, the tribunal—

- (a) if it is satisfied that the patient is not suffering from mental illness of a nature or to a degree that warrants the patient's detention in a hospital and does not need to be detained in the interests of the patient's own welfare or with a view to the protection of other persons—may order the director to discharge the patient; or
- (b) if it is satisfied that transfer or absence on leave of the patient would be in the interests of the patient and would not be detrimental to other persons—may order the director to make appropriate arrangements for the transfer or leave of absence of the patient as the tribunal may specify; or
- (c) if it is satisfied as to any other matter that appears to it to be relevant to the application—may make such recommendations to the director if it thinks fit; or
- (d) may refuse the application.

(6AA) It is competent to a tribunal to exercise in respect of any application to it 2 or more of the powers conferred on it by subsection (6)

that are not inconsistent.

(6AB) Every order and recommendation of a tribunal made pursuant to subsection (6) shall set out the matter or matters of which the tribunal is satisfied and by reason of which it has made the order or recommendation.

(6A) The provisions of subsections (6) to (6AB) apply in relation to an application made by the Minister or the director under subsection (5) except that where the application has been made by the Minister any order or recommendation made by the tribunal shall be directed to the Minister to be by the Minister relayed to the director.

(7) With respect to any application, reference, examination or inquiry to or by a tribunal under this Act, the tribunal may admit, and proceed and recommend upon, such information or evidence as it thinks fit, whether the same is such as the law would require or admit in other cases or not.

(8) For the purpose of assisting an applicant in such manner as the tribunal may determine there may be present during a hearing of an application any of the following persons—

- (a) an authorised person;
- (b) the patient's nearest relative or other relative determined by the tribunal;
- (c) counsel or solicitor providing legal representation determined by the tribunal to be warranted;
- (d) any other person determined by the tribunal.

(9) Where the tribunal has made an order under subsection (6) then, unless the director is notified that an application has been instituted to the Mental Health Tribunal under subsection (10) for the setting aside of the order, the director shall, within 7 days after receipt by the director of the order or such shorter period as is practicable, either—

- (a) comply with the order; or
- (b) subject to the director first obtaining the Minister's approval in writing, make application to the Mental Health Tribunal for the setting aside of the order.

(9A) Where the director has made an application under subsection (9) the order of the tribunal shall not operate to require the discharge of the patient pending the determination of the application by the Mental Health Tribunal

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but the director is not thereby precluded from directing the discharge of the patient at any time.

(9B) Upon application made to it by the director the Mental Health Tribunal may extend for such time as it thinks fit the period of 7 days within which the director may make application to it to comply with subsection (9) and if such an extension is granted this subsection shall be read and construed as if the reference to 7 days in subsection (9) were a reference to that period as so extended.

(10) Where the tribunal has refused an application made to it under this section or upon such an application has made an order under subsection (6)(a) an application to the Mental Health Tribunal for the setting aside of the refusal or the order may be made by any of the following persons—

- (a) the patient;
- (b) an authorised person;
- (c) the patient's nearest relative;
- (d) a person who made on behalf of the patient the application to the tribunal;
- (e) any other person, by leave of the Mental Health Tribunal;

and such application shall be made—

- (f) in the case of the tribunal's refusal—within 7 days after the receipt by the person who proposes to make the application of notification in the prescribed form of the refusal; or
- (g) in the case of the tribunal's order—at any time before the patient is discharged as a result of the order.

(10A) Notification of the making of an application under this subsection shall be given, forthwith upon its making, to the director and if before the director is so notified the director has directed the discharge of the patient but the discharge has not been effected at the time of notification the application shall have the effect of staying the director's direction until the application is disposed of or struck out by the Mental Health Tribunal.

(11) The following provisions of this subsection shall apply with respect to the making of an application under subsection (9) or (10) and with respect to an application duly made thereunder—

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- (a) the application shall be made in accordance with the rules of practice of the Mental Health Tribunal or, in the absence of such a rule, the directions of the judge constituting that tribunal;
- (b) the application shall set out with sufficient particularity the grounds on which the setting aside of the order of the tribunal is sought;
- (c) upon the making of the application a copy of it shall be given to the secretary to the tribunal to whose order it relates and to the person who made the application to the tribunal in the first instance;
- (d) upon receipt of a copy of the application made the secretary to the tribunal shall furnish to the Mental Health Tribunal in accordance with its rules of practice (if any) originals of any evidence given and transcripts of any evidence and notes taken in the proceedings before the tribunal, or true copies thereof certified as such by the secretary, as well as certified true copies of any resolution, direction, decision or other writing of or in possession of the tribunal relevant to the matter of the application;
- (e) the Mental Health Tribunal may make such determination and order upon the application as it thinks fit and its determination and order shall be final and binding on the director, the tribunal and all other persons concerned;
- (f) the Mental Health Tribunal has and may exercise with respect to the application, with such adaptations thereof as may be necessary, the powers conferred on it by section 70.

Distribution of tribunals' findings etc.

15A. A Patient Review Tribunal shall provide a copy of every order (other than a direction for examination of a patient), determination, finding, report and recommendation made by it to—

- (a) the patient concerned; and
- (b) the applicant to the tribunal, if the applicant is not the patient; and
- (c) the hospital administrator of the hospital in which the patient is; and

- (d) the director; and
- (e) any other persons prescribed.

Psychiatric hospitals, training centres and other places

16.(1) The Governor in Council may, by regulation, establish psychiatric hospitals, training centres, security patients' hospitals and such other places as the Governor in Council thinks fit for the purposes of this Act.

(3A) Subject to the Minister for the time being administering the *Family Services Act 1987* and the chief executive of the department within which that Act is administered, the Director of Intellectual Handicap Services is charged with the administration of training centres conducted as a service of that department.

(4) The Governor in Council may, by regulation, declare that—

- (a) any psychiatric hospital or part of any psychiatric hospital;
- (b) any training centre or part of any training centre;
- (c) any security patients' hospital;
- (d) any other place established under this section for the purposes of this Act or part of any such place;

shall cease to be a psychiatric hospital, training centre, security patients' hospital or other place as aforesaid as the case may be in respect of the whole thereof or the part thereof in question, and may at any time vary or revoke any such declaration.

(5) Every such declaration shall have effect according to its tenor.

PART 3—ADMISSION AND DETENTION OF PATIENTS GENERALLY, AND REMOVALS TO PLACES OF SAFETY

Division 1—Informal admissions

Informal admission of patients

17.(1) Nothing in this Act shall be construed as preventing a patient who is in need of treatment for mental illness—

- (a) from being admitted to any hospital other than a security patients' hospital in pursuance of arrangements made in that behalf and without any application, order or direction rendering the patient liable to be detained under this Act; or
- (b) where the patient was liable to be detained under this Act but has ceased to be so liable—from remaining in any hospital other than a security patients' hospital in pursuance of arrangements made in that behalf.

(1A) Unless otherwise indicated in this Act, a hospital administrator may refuse to make arrangements to admit a patient to, or otherwise to have or keep a patient in, a hospital after the patient has been examined and the patient's mental condition has been assessed by a medical practitioner and, where the hospital administrator thinks that the patient would benefit from treatment at any other place, after the patient has been appropriately referred to that place.

(2) In the case of a patient who has attained the age of 16 years arrangements referred to in subsection (1) may be made, carried out or determined notwithstanding any right to custody or control of that patient vested in any person.

Division 2—Regulated admissions

Application for admission

18.(1) A patient may be admitted to a hospital other than a security

patients' hospital for treatment of mental illness in pursuance of an application (an "**application for admission**") made by a relative of the patient or by an authorised person in accordance with the provisions of this section.

(2) An application for admission may be made in respect of a patient on the grounds—

- (a) that the patient is suffering from mental illness of a nature or to a degree that warrants the patient's detention in a hospital; and
- (b) that the patient ought to be so detained in the interests of the patient's own welfare or with a view to the protection of other persons.

(3) An application for admission shall be supported by the written recommendation in the prescribed form of a medical practitioner.

(4) A patient shall not be admitted under this section to a public hospital as other than a public patient as so classified under the regulations made pursuant to the *Health Services Act 1991* without the consent of the hospital administrator.

Applications in respect of patients already in hospital

19.(1) An application for admission of a patient to a hospital may be made under this division notwithstanding that the patient is already an in-patient in that hospital, not being liable to be detained in pursuance of an application under this division; and where an application is so made the patient shall be regarded for the purposes of this Act as having been admitted to the hospital at the time when that application was received by the hospital administrator.

(2) If in the case of a patient who is an in-patient in a hospital, not being a person liable to be detained therein under this Act, it appears to the medical practitioner in charge of the treatment of that patient that an application ought to be made under this division for the admission of the patient to a hospital, the medical practitioner may certify to that effect in the prescribed form and forthwith furnish the certificate to the hospital administrator and in any such case the patient may be detained in the hospital pursuant to that certificate for a period not exceeding 24 hours from the time the certificate is signed by the medical practitioner.

(3) A patient shall not be detained by virtue of a report furnished under subsection (2) if at any time during the 24 hours preceding the furnishing of such report the patient has been liable to detention by virtue of a previous report furnished under that subsection.

Effect of application for admission

20.(1) An application for the admission of a patient to a hospital under this division together with the medical recommendation by which it is supported, duly completed in accordance with the provisions of this Act, shall be lawful authority for an authorised person to take the patient and convey the patient to hospital at any time—

- (a) within 14 days from the day on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application; and
- (b) within 7 days from the day on which the medical recommendation was given for the purposes of the application.

(2) Where a medical practitioner who completes a medical recommendation in accordance with the provisions of this Act is of the opinion that the assistance of a police officer is necessary in taking the patient the subject of the medical recommendation, and conveying the patient to the hospital, the medical practitioner may certify as to the medical practitioner's opinion by endorsement on the medical recommendation to that effect.

(2A) Any police officer to whose notice any such endorsement as aforesaid is brought may as soon as practicable take the patient and convey the patient or assist in taking the patient and conveying the patient to the hospital or make or cause to be made arrangements for some other police officer to take the patient and convey the patient or assist in taking the patient and conveying the patient to the hospital.

(2B) Any police officer who is taking a patient and conveying the patient to hospital or is assisting therein shall be accompanied by an authorised person.

(3) It is lawful for any person acting in accordance with any authority vested in the person under or pursuant to this section—

- (a) to use such force as may be reasonably necessary in taking the

patient the subject of the medical recommendation and conveying the patient to the hospital or in assisting in taking the patient and conveying the patient to the hospital;

- (b) to enter into or upon and search any premises in or upon which the patient is or is reasonably believed to be and to use such force as may be reasonably necessary in so doing.

Duration of authority for detention

21.(1) A patient admitted to a hospital in pursuance of an application for admission may be detained there for a period not exceeding 3 days from the day of admission, and shall not be detained thereafter in pursuance of that application unless, before the expiration of that period, a second recommendation in the prescribed form, given by a medical practitioner who has examined the patient subsequent to such admission and who is not the medical practitioner who gave the recommendation under section 18(3), has been received by the hospital administrator.

(2) Where a second recommendation has been so received, the patient, unless it is otherwise provided in this Act, may be detained in a hospital for a period not exceeding 21 days from the day of the patient's admission, and shall not be detained thereafter in respect of the application in question unless authority for the patient's detention is renewed in accordance with this section.

(3) Authority for the detention of a patient may, unless the patient has previously been discharged, be renewed under this section—

- (a) from the expiration of the period referred to in subsection (2)—for a further period not exceeding 3 months;
- (b) from the expiration of any period of renewal under paragraph (a)—for a further period not exceeding 12 months from the day of the patient's admission;

and thereafter may be renewed from time to time for periods each of which shall not exceed 12 months.

(4) On or before the day on which a patient who is liable to be detained in a hospital in pursuance of subsection (2) would under this section cease to be so liable in the absence of renewal of the authority for the patient's detention, or within the period of 1 month ending on the day on which any

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period of renewal under subsection (3) would expire, as the case may be, the hospital administrator shall cause the patient to be examined by a psychiatrist, and if it appears to the psychiatrist that it is necessary in the interests of the patient's welfare or for the protection of other persons that the patient should continue to be liable to be detained, the psychiatrist shall furnish to the hospital administrator a report to that effect in the prescribed form.

(5) The furnishing to the hospital administrator of the report pursuant to subsection (4) constitutes the renewal of the authority for the detention in a hospital of the patient for the period pursuant to subsection (3).

(6) Where the authority for the detention of the patient has been renewed pursuant to subsections (4) and (5), the hospital administrator—

- (a) shall forthwith make an application to the tribunal to review the detention; and
- (b) shall cause the patient, if the patient has attained the age of 16 years, and all other persons prescribed by the regulations for the purpose to be informed of such renewal and that an application may be made to the tribunal by or on behalf of the patient pursuant to this Act.

(6A) An application for the patient's discharge may be made to a tribunal within the period for which the authority for the patient's detention is renewed pursuant to subsections (4) and (5) by the patient or for or on behalf of the patient by any authorised person or relative or by any other person by leave of the tribunal, provided that in the case of an application by a person who is not the nearest relative, the nearest relative shall be informed of the time and place of the hearing and shall be allowed to appear before the tribunal if the nearest relative so desires.

(7) In the case of a patient who is absent from the hospital on leave in accordance with the provisions relating to leave of absence of patients contained in this Act at the time when the authority for the patient's detention would expire, the examination referred to in subsection (4) may, if the hospital administrator thinks fit, be made by a medical practitioner who is not a psychiatrist, and any report furnished to the hospital administrator relative to such examination shall have the same effect as if the examination had been made and the report had been furnished by a psychiatrist.

Admission applications generally

22. A person shall not make an application for the admission of a patient unless—

- (a) the person is of or above the age of 18 years; and
- (b) the person has personally seen the patient within the period of 7 days ending with the date of the application.

Medical recommendations generally

23.(1) Unless otherwise provided by this Act, the medical recommendation required for the purposes of an application for admission of a patient shall be made by a medical practitioner who has personally examined the patient.

(2) Unless otherwise provided by this Act, a medical recommendation shall cease to have effect, for the purposes of an application for admission, on the expiration of 7 days from the day of the examination to which it relates.

(3) A medical recommendation for the purposes of an application for the admission of a patient under this Act or for the purposes of section 21(1) shall not be given by any of the following persons, that is to say—

- (a) the applicant;
- (b) a partner of the applicant;
- (c) a person employed as an assistant by the applicant;
- (d) a person who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient; or
- (e) the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law—
 - (i) of the patient; or
 - (ii) of any person referred to in paragraphs (a) to (d); or
 - (iii) in the case of a second medical recommendation given for the purposes of section 21(1)—of the medical practitioner by whom the medical recommendation has been given under

section 18(3).

(4) The following rules shall be observed in making and signing medical recommendations for the purposes of this Act—

- (a) the medical recommendation shall be in the prescribed form;
- (b) the medical practitioner making and signing the medical recommendation shall state the medical practitioner's qualifications in the medical recommendation;
- (c) the medical practitioner shall state the facts indicating mental illness observed by the medical practitioner at the examination to which the recommendation refers and such other information as may be prescribed;
- (d) the medical recommendation shall state the day or the last day on which the patient was examined;
- (e) every medical recommendation shall contain a statement that the medical practitioner making and signing the same is not prohibited by this Act from giving such medical recommendation.

(5) A medical recommendation shall not be sufficient for the purposes of this Act if it purports to be founded only upon facts communicated by others.

Incorrect or defective application

24.(1) As soon as is reasonably practicable within the period of 24 hours after the admission of a patient to a hospital as provided in this division, the hospital administrator shall satisfy himself or herself that the application for the patient's admission is sufficient to justify the detention of the patient in hospital in that such application and the medical recommendation by which it is supported comply with this Act in all respects.

(2) If the hospital administrator is not so satisfied—

- (a) the hospital administrator shall return the application to the applicant; and
- (b) the hospital administrator shall return the medical recommendation to the medical practitioner who has made and

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signed it; and

- (c) the hospital administrator shall notify the medical practitioner in charge of the treatment of the patient.

(3) On receipt of such notification that medical practitioner shall—

- (a) if the medical practitioner considers the patient should continue to be detained because of mental illness—furnish to the hospital administrator a report in writing to that effect as provided in section 19(2) and the furnishing of such report shall have the same effect as the furnishing of a report under that subsection; or
- (b) if the medical practitioner considers the patient should not be liable to be detained because of mental illness, furnish to the hospital administrator a report in writing to that effect whereupon the patient shall be discharged.

(4) Nothing in this section shall be construed so as to deprive any person of any rights or protection conferred by this Act or by any other Act or law.

Division 3—Removals to places of safety

Warrant to remove to place of safety

25.(1) If it appears to a justice, on information by any person on oath, in the prescribed form, that there is reasonable cause to suspect that a person is mentally ill and that in the interests of that person or for the protection of other persons it is necessary to do so, the justice may issue a warrant in the prescribed form and as hereinafter provided.

(1A) A justice who issues a warrant as provided in subsection (1) shall forthwith forward a copy of the warrant and a copy of the sworn information relied on to the clerk of the court in the Magistrates Courts district in which the patient then is or, where in respect of any such district there is more than 1 such clerk, to 1 of those clerks.

(2) A warrant issued under this section shall authorise and require the police officer to whom it is directed or any other police officer to remove or cause to be removed, within the period of 14 days after the date of the warrant but as soon as practicable, the person in respect of whom the warrant is issued to a place of safety.

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(3) In the execution of a warrant issued under this section the police officer by whom it is to be executed—

- (a) shall be accompanied by a medical practitioner and a designated authorised person; and
- (b) shall be provided by the clerk of the court by whom the sworn information relied on to support the warrant is held with a copy of the information contained in a sealed envelope; and
- (c) shall make the copy information referred to in paragraph (b) available upon request to the medical practitioner and the designated authorised person accompanying the police officer for their inspection; and
- (d) shall deliver the copy information referred to in paragraph (b) to the hospital administrator or person in charge of the place of safety to which the police officer has removed the person in respect of whom the warrant was issued.

(3A) If the medical practitioner or the designated authorised person accompanying the police officer inform that officer in writing—

- (a) that, in his or her opinion, the person in respect of whom the warrant is issued is not mentally ill; or
- (b) that, in his or her opinion, it is not necessary that the person in respect of whom the warrant is issued should be removed to a place of safety, in that person's own interests or for the protection of others;

that police officer shall not execute the warrant but shall as soon as practicable thereafter make a report as to the issue of the warrant and as to the reasons for its not having been executed and shall cause the report to be forwarded to the director, who shall notify the justice who issued the warrant and the clerk of the court to whom a copy of the warrant was forwarded pursuant to subsection (1).

(4) For the purpose of enabling the police officer to whom the warrant is directed or any other police officer to act in accordance with the provisions of subsection (2), the warrant shall authorise the officer so acting to do or to cause to be done all or any of the following things—

- (a) to execute the warrant at any time whether by day or by night;

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- (b) to call to the officer's assistance such police officers, medical practitioners or other persons as the officer thinks fit;
- (c) to apprehend, whether in a place to which the public has access or not, the person in respect of whom the warrant is issued;
- (d) to enter, re-enter and search, if need be by force, the premises (if any) specified in the warrant and any other premises in which the police officer reasonably believes the person in respect of whom the warrant is issued will be found.

(5) It shall not be necessary in any information or warrant under this section to name the person the subject thereof provided that the person is otherwise sufficiently identified in such document.

Removal without warrant to place of safety

26.(1) Subject to subsection (2), a police officer may, without a warrant, remove from any place to a place of safety any person whom that officer believes to be mentally ill and a danger to himself, herself or other persons and in need of immediate treatment or control.

(1A) A police officer who removes a person to a place of safety pursuant to subsection (1) shall forthwith complete and furnish to the hospital administrator or person in charge of the place of safety an authority in the prescribed form for the detention at that place of that person.

(2) A police officer may remove a person from any place that is not a public place to a place of safety without a warrant in pursuance of subsection (1) only if—

- (a) the officer reasonably believes that the obtaining of a warrant under section 25 would involve unreasonable delay, having regard to the circumstances of the case; and
- (b) the officer obtains the consent of the occupier or person apparently in charge or control of that place or, where the place is the subject of more than 1 occupancy, the part of the place in question.

(2A) However, such consent shall not be necessary where such occupier or person apparently in charge or control is the person the subject of the removal or where the occupier or person apparently in charge or control

does not appear to the police officer to be readily identifiable or available.

(3) For the purposes of this section—

“**public place**” includes every road, airport and aerodrome and also every place of public resort open to or used by the public as of right, and also includes—

- (a) any vessel, vehicle, aircraft, train, bus, building, room, licensed premises, field, ground, park, reserve, garden, wharf, pier, jetty, bridge, platform, market, passage, or other place for the time being used for a public purpose or open to access by the public by the express or tacit consent or sufferance of the owner, and whether the same is or is not at all times so open; and
- (b) any vacant land or any premises at any material time unoccupied; and
- (c) any place declared by regulation to be a public place for the purposes of this section.

Procedure on and following removal to place of safety

27.(1) A person removed to a place of safety under this division shall be detained there or in another place of safety for the purpose of being examined or further examined as soon as practicable by a medical practitioner and being interviewed by an authorised person with a view to the making of an application in respect of the person under division 2 or of other arrangements for the person’s treatment.

(1A) Subsection (1) does not authorise the detention of any person in any place of safety for a period exceeding 3 days from the day on which the person was first removed to a place of safety, whether or not the person has been examined or interviewed as referred to in subsection (1).

(2) A person removed to a place of safety pursuant to the provisions of this division shall be removed to a hospital in preference to any other place of safety unless a hospital is not readily accessible.

(2A) A hospital shall be deemed to be not readily accessible where—

- (a) being a private hospital—the hospital administrator of it is not willing to receive the patient; or

(b) being any other hospital—the patient is not able to be cared for in it.

(3) Subject to the provisions of subsections (1) to (2), a person conveyed to a place of safety pursuant to this division may, during the period referred to in subsection (1A), be conveyed from 1 place of safety to another, provided that such person shall not be detained in places of safety, if more than 1, for a period, in the aggregate, in excess of the period so referred to.

(3A) The power conferred by subsection (3) to convey a person from 1 place of safety to another may be exercised by—

- (a) the police officer who, pursuant to this division, conveyed that person to the place of safety from which the person may be conveyed under subsection (3); or
- (b) any other police officer; or
- (c) any other person prescribed.

(4) Where a medical practitioner, upon examining a person detained in a place of safety under this division, is of the opinion that the person is not mentally ill or does not need to be detained on the ground of mental illness the medical practitioner shall certify accordingly in the prescribed form to the hospital administrator, manager or other person in charge of the place of safety whereupon the authority conferred by this section to detain therein the person examined shall terminate.

(5) The hospital administrator, manager or other person in charge of the place of safety shall as soon as practicable furnish to the director a report of the circumstances of the case.

PART 4—PATIENTS CONCERNED IN CRIMINAL AND LIKE PROCEEDINGS

Construction of part with the Criminal Code

28. Unless otherwise indicated or provided, this part shall be read and construed with and as being in addition to and in aid of and not in substitution for or in derogation from the provisions of the Criminal Code.

Interpretation

28A. In this part—

“chief executive (justice)” means the chief executive of the department in which the Criminal Code is administered.

“diminished responsibility” means that state of abnormality of mind described in section 304A of the Criminal Code.³

“fit for trial” means, in relation to a person, fit to plead at the person’s trial and to instruct counsel and to endure the person’s trial, with serious adverse consequences to the person’s mental condition being unlikely.

“unsoundness of mind” means that state of mental disease or natural mental infirmity described in section 27 of the Criminal Code,⁴ but does not include a state of mind resulting, to any extent, from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence.

Mental Health Tribunal

28B.(1) There shall be constituted a tribunal to be called the Mental Health Tribunal for the purpose of dealing with applications, references and appeals made to it under this Act.

(2) The Mental Health Tribunal shall consist of a judge of the Supreme Court who in the exercise of the tribunal’s jurisdiction shall be assisted by 2 psychiatrists.

(2A) The 2 psychiatrists shall not be a constituent part of the tribunal.

(3) The judge and the psychiatrists are to be appointed by the Governor in Council by gazette notice.

(4) The term of every appointment made to or in respect of the Mental Health Tribunal shall commence on the date specified for the purpose in the gazette notice by which the appointment is made and, except where the appointment is to a casual vacancy, shall be for a period of 3 years.

(4A) Unless the judge’s office is sooner vacated as prescribed the judge

³ Criminal Code, section 304A (Diminished responsibility)

⁴ Criminal Code, section 27 (Insanity)

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who constitutes the tribunal and each of the psychiatrists who assist the judge shall continue to hold office until the person's successor assumes office in the person's place.

(5) The office of a person constituting or assisting the Mental Health Tribunal shall become vacant if—

- (a) being the office of the judge who constitutes the tribunal—the appointee—
 - (i) resigns office by writing given to the Minister; or
 - (ii) ceases to be a judge of the Supreme Court; or
- (b) being the office of a person who assists the tribunal—the appointee—
 - (i) dies;
 - (ii) resigns office by writing given to the Minister;
 - (iii) is removed from office by the Governor in Council.

(6) If a casual vacancy occurs in the office of a person constituting or assisting the Mental Health Tribunal during the currency of the person's term of appointment another person who is eligible for appointment shall be appointed to fill that vacancy.

(6A) The appointment of a person appointed to fill a casual vacancy shall continue for as long as the appointment of the person's predecessor in office would have continued had the casual vacancy not occurred.

(7) At any time—

- (a) the Governor in Council may, by gazette notice, appoint a judge of the Supreme Court to constitute the Mental Health Tribunal during the absence through illness or other cause of the judge who holds the appointment made under subsection (4); and
- (b) the Minister may, by instrument in writing, appoint a psychiatrist to act in place of a psychiatrist who holds an appointment made under subsection (4) during the psychiatrist's absence through illness or other cause.

(8) A psychiatrist who holds an appointment to assist the Mental Health Tribunal, whether under subsection (4) or (7) shall receive such

remuneration and allowances as are from time to time approved by the Governor in Council.

Jurisdiction and proceedings of tribunal

28C.(1) Jurisdiction is hereby conferred on the Mental Health Tribunal to hear and determine all proceedings duly instituted before it under this Act and to make therein such orders as it deems necessary and appropriate to give effect to its findings and such orders as it is authorised by this Act to make.

(1A) The jurisdiction of the Mental Health Tribunal does not include jurisdiction to award costs.

(2) Proceedings shall be instituted and conducted before the Mental Health Tribunal in accordance with rules of practice made for the tribunal or, in so far as there are no such rules or no applicable such rule, in accordance with directions of the judge constituting the tribunal given generally or in a particular case.

(3) The judge constituting the Mental Health Tribunal may submit to the Minister such rules as the judge deems necessary or convenient for regulating the procedure and practice of the tribunal and upon being sanctioned by the Governor in Council by regulation those rules shall become and be the rules of practice of the tribunal, which—

- (a) may be amended or rescinded in like manner; and
- (b) may provide for the giving of directions by the judge constituting the tribunal in any case not covered by a rule of practice.

(4) For the purpose of exercising its jurisdiction the Mental Health Tribunal shall be deemed to be a commission of inquiry to which the *Commissions of Inquiry Act 1950* apply and the judge constituting the tribunal shall be deemed to be the chairperson of the commission.

(5) Any person concerned in proceedings before the Mental Health Tribunal may appear in person and shall be entitled to appear by the person's counsel or solicitor or by the person's agent authorised by the person in writing.

(6) If it appears to the judge who constitutes the Mental Health Tribunal that in proceedings before the tribunal the person in respect of whom the

proceedings have been instituted cannot be present or that it is not expedient that the person should be present the judge may order that the proceedings be held in that person's absence whereupon the proceedings may lawfully proceed in the person's absence and the decision therein shall be as binding on that person and all other persons concerned as if that person had been present throughout the proceedings.

References to tribunal

28D.(1) Where there is reasonable cause to believe that a person alleged to have committed an indictable offence is mentally ill or was mentally ill at the time the alleged offence was committed the matter of the person's mental condition may be referred to the Mental Health Tribunal by—

- (a) a crown law officer; or
- (b) the person concerned or the person's legal adviser or the person's nearest relative; or
- (c) where the person has been admitted to hospital under this Act for treatment of mental illness—the director;

for its consideration and determination in accordance with this part.

(2) Without limiting the expression “**reasonable cause**” in subsection (1) knowledge on the part of a crown law officer that an accused person may raise at the person's trial the defence of insanity or diminished responsibility shall be reasonable cause for the purposes of that subsection.

Examinations upon tribunal's order

28E.(1) Where a matter has been referred to the Mental Health Tribunal under this part the tribunal may order to be made such psychiatric, medical and other examinations of the person in respect of whom the reference is made as it thinks fit for the purpose of determining—

- (a) the mental condition of the person at the time the alleged offence was committed; and
- (b) the mental condition of the person at the time the reference is under its consideration.

(1A) The order of the tribunal shall be lawful authority for making the

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examinations ordered and for the use of such force as is necessary for the purpose.

(2) Unless the Mental Health Tribunal otherwise orders, a copy of each report relating to an examination made pursuant to the order of the tribunal and a copy of each other report, relevant to the mental condition of the person in respect of whom reference to the tribunal is made, that is in the possession of any person concerned in the reference shall be given to each other person concerned in the reference.

(2A) The tribunal shall not make an order contrary to the requirements of subsection (2) upon the ground that the giving of a report in compliance with the subsection would disclose matter detrimental to the case of the person in respect of whom the reference to the tribunal is made.

(3) A crown law officer shall be deemed to be a person concerned in every reference made to the Mental Health Tribunal under this part, by whomsoever made.

(4) Evidence compulsorily obtained pursuant to an order of the Mental Health Tribunal or by reason of subsection (2) shall be admissible in any subsequent trial of the person to whom it relates for the alleged offence on account of which the reference to the tribunal was made only—

- (a) for the purpose of determining whether—
 - (i) the person is wanting of understanding, for the purpose of the application of section 613 of the Criminal Code; or
 - (ii) the person is not of sound mind, for the purpose of the application of section 645 of the Criminal Code; or
 - (iii) the person was suffering from unsoundness of mind or diminished responsibility, at the time the alleged offence was committed; or
 - (iv) a power conferred by section 29 on a court should be exercised; or
 - (v) a power conferred by section 43E on a court should be exercised; or
- (b) for the purpose of sentencing;

and for no other purpose.

Entry of not guilty plea by court order where accused mentally ill

29.(1) If at the trial of a person charged with an indictable offence alleged to have been committed either before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* the person pleads guilty and it is alleged or appears—

- (a) that the person is mentally ill; or
- (b) that the person was or may have been mentally ill at the time the alleged offence was committed;

the court may order a plea of not guilty to be entered on the person's behalf and, if it does so, shall adjourn the trial to a date to be fixed and remand the accused accordingly and order the matter of the accused's mental condition to be referred to the Mental Health Tribunal.

(2) If on the appearance for sentence of a person charged with an indictable offence alleged to have been committed either before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* who has pleaded guilty before justices and has been committed by them for sentence it is alleged or appears—

- (a) that the person is mentally ill; or
- (b) that the person was or may have been mentally ill at the time the alleged offence was committed;

the court may order a plea of not guilty to be entered on the person's behalf and, if it does so, shall adjourn the trial to a date to be fixed and remand the accused accordingly and order the matter of the accused's mental condition to be referred to the Mental Health Tribunal.

(3) Where a court remands an accused under this section by reason that it is alleged or it appears that the accused is at the time of the remand mentally ill and it appears to the court that the accused needs to be detained on account of mental illness in the interests of the accused's own welfare or with a view to the protection of other persons, the court shall order that the accused be detained in a security patients' hospital until the Mental Health Tribunal determines otherwise.

(4) Where a court remands an accused under this section by reason that it is alleged or it appears that the accused was or may have been mentally ill at the time the alleged offence was committed or that the accused is mentally ill and it does not appear to the court that the accused needs to be detained as

aforesaid, the court—

- (a) may grant the accused bail; or
- (b) may order that the accused be detained in prison or in a security patients' hospital until the Mental Health Tribunal determines otherwise.

Persons charged with simple offences mentally ill

29A.(1) In this section—

“complaint” includes information and charge.

“simple offence” means an offence (indictable or not) punishable on summary conviction before justices by fine, imprisonment or otherwise and includes a regulatory offence.

(2) Where a complaint for a simple offence is before justices and they are satisfied on the evidence of 2 medical practitioners that the defendant—

- (a) is suffering from mental illness of a nature or to a degree that warrants the defendant's detention in a hospital; and
- (b) ought to be so detained in the interests of the defendant's own welfare or with a view to the protection of other persons;

they shall, subject to subsection (3), order that the defendant be admitted to a hospital other than a security patients' hospital and by virtue of that order the matter of complaint shall be deemed to have been adjourned to a date to be fixed and the defendant shall be deemed to have been remanded accordingly.

(3) Justices shall not make an order such as is referred to in subsection (2) in the case of a defendant charged with an indictable offence punishable on summary conviction if they are of opinion that the charge is a fit subject for prosecution upon indictment.

(3A) Justices may have regard to such material as they consider relevant to the question whether the charge is a fit subject for prosecution upon indictment.

(4) An order such as is referred to in subsection (2) is lawful authority—

- (a) for any police officer or other person named in the order for the purpose to convey the defendant in respect of whom the order

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was made to the hospital specified in the order; and

(b) for the hospital administrator to admit the patient for treatment.

(4A) The patient shall be deemed to have been admitted to the hospital pursuant to part 3, division 2 and shall be treated as a restricted patient as provided by section 50 and, subject to this section, may be detained therein as if the period for the patient's detention had been renewed for a period of 3 months from the date of the justices' order.

(5) The clerk of the court at the place where an order, such as is referred to in subsection (2), is made shall give notice in the prescribed form of the making of the order to the chief executive (justice) and the director as soon as possible, and in any case within 7 days, after the making of the order.

(6) Where a person—

(a) after being charged with a simple offence, other than an indictable offence punishable on summary conviction, is admitted to a hospital pursuant to part 3, division 2 or 3 otherwise than under the authority of an order made under subsection (2); or

(b) after being admitted to a hospital pursuant to part 3, division 2 or 3 is charged with a simple offence, other than an indictable offence punishable on summary conviction;

the director shall, upon being notified thereof, notify the chief executive (justice), who shall thereupon notify the clerk of the court at the place where the matter of complaint is to be heard and, in the case referred to in paragraph (a), the clerk of the court shall notify the complainant.

(6A) A patient referred to in subsection (6) shall be treated as a restricted patient as provided by section 50 and, unless the patient's liability to be detained is extended and renewed in accordance with section 21(2) and (3), the patient shall be liable to be detained for a period of 3 months from the expiration of the period prescribed by section 21(1) for which the patient may be detained (which period of 3 months shall be deemed to be a period of renewal under section 21(3)(a)) and for any further period for which the authority for the patient's detention may be renewed under section 21(3)(b), unless the patient is sooner discharged as provided by section 50.

(7) Upon receipt of notice referred to in subsection (5) or upon being notified as referred to in subsection (6) the director shall arrange for the patient to be examined by a psychiatrist who in making the examination

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shall have regard to—

- (a) the patient's mental condition; and
- (b) the relationship (if any) between the patient's mental illness and the alleged offence the subject of the complaint; and
- (c) the likely duration of the patient's mental illness and the likely outcome of treatment; and
- (d) any other matter likely to assist the Attorney-General in determining pursuant to this section whether the hearing of the complaint against the patient should proceed; and
- (e) any other matter prescribed.

(8) Within such time or times as are prescribed the psychiatrist shall give to the director a report on the examination of the patient and the director, having regard to the report and to the matter referred to in subsection (7), shall give the director's report to the Attorney-General and shall furnish to the Attorney-General a copy of the report by the psychiatrist.

(9) Upon consideration of the reports referred to in subsection (8) and any other material that the Attorney-General considers relevant the Attorney-General—

- (a) may direct that the hearing of the complaint not proceed; or
- (b) if the patient is no longer detained or in the Attorney-General's opinion should no longer be detained on account of mental illness—may direct that the hearing of the complaint proceed; or
- (c) may defer a determination for a period not exceeding 3 months.

(10) Where the Attorney-General acts pursuant to subsection (9)(c) the matter of the patient's mental condition shall be referred to a Patient Review Tribunal within the period of deferment.

(10A) The tribunal may direct to be made such examinations of the patient as it thinks fit and, upon consideration of all material that it considers relevant, shall give to the Attorney-General its report concerning the mental condition of the patient and shall state whether in its opinion the patient needs to be further detained on account of mental illness and whether the patient is fit for trial.

(10B) If the tribunal reports that in its opinion the patient does not need to

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be further detained on account of mental illness and that the patient is fit for trial, the Attorney-General may, subject to there being no appeal duly instituted to the Mental Health Tribunal against the findings of the tribunal direct that the hearing of the complaint proceed.

(10C) If the tribunal reports that in its opinion the patient needs to be further detained on account of mental illness or is not fit for trial the Attorney-General shall forthwith cause—

- (a) the director; and
- (b) the clerk of the court in whose office the complaint was lodged for hearing;

to be notified thereof and the clerk of the court shall forthwith notify all other persons prescribed.

(11) Where the Attorney-General directs under subsection (9) or (10B) that the hearing of a complaint proceed—

- (a) the clerk of the court in whose office the complaint was lodged for hearing shall, in the prescribed form, notify the complainant and all other persons prescribed; and
- (b) the complainant may cause to be issued and served on the patient in accordance with the *Justices Act 1886* a summons, which may be issued by the justice before whom the complaint was laid or by another justice, whether or not a summons had previously been issued on the complaint.

(12) If—

- (a) the Attorney-General directs under subsection (9) that the hearing of a complaint not proceed; or
- (b) a tribunal reports under subsection (10A) that a patient needs to be further detained on account of mental illness or that the patient is not fit for trial; or
- (c) within 3 months after the deferment of a determination under subsection (9) neither the Attorney-General has directed as referred to in paragraph (a) nor a tribunal has reported as referred to in paragraph (b);

the complaint that has led to the application of the provisions of this section shall be deemed to have been thereby dismissed and the patient shall

continue to be liable to be detained as if admitted to hospital pursuant to part 3, division 2 but shall not by reason of subsection (4) be treated as a restricted patient as provided by section 50.

(12A) In no case shall a complaint deemed pursuant to subsection (12) to have been dismissed be taken for any purpose to have been heard upon the merits.

(13) The provisions of this section shall not be construed to require any complainant to proceed with a matter of complaint or to prevent the complainant from informing the court that the complainant does not intend to offer further evidence.

(14) Where the hearing of a complaint proceeds in accordance with this section by way of being resumed, any evidence previously given in the hearing shall be disregarded and the justices who hear the complaint shall hear all evidence de novo.

Patients under pt 3, div 2 or 3 charged with indictable offences

29B.(1) Where a person—

- (a) after being admitted to a hospital pursuant to part 3, division 2 or 3, is charged with an indictable offence; or
- (b) after being charged with an indictable offence, is admitted to a hospital pursuant to part 3, division 2 or 3 before the completion of an examination of witnesses in relation to the offence; or
- (c) after being committed for trial or sentence in respect of an indictable offence, is admitted to a hospital pursuant to part 3, division 2 or 3;

the person shall be treated as a restricted patient as provided in section 50.

(2) Upon being notified of a circumstance referred to in subsection (1) the director shall notify—

- (a) the chief executive (justice); and
- (b) except in a case referred to in subsection (1)(a)—the commissioner of the police service;

thereof and the chief executive (justice), upon being so notified, shall notify the clerk of the court at the place where the examination of witnesses in

relation to the offence is to be taken or, in the case referred to in subsection (1)(c), shall notify the registrar of the court to which the person has been committed for trial or sentence.

Persons charged with indictable offences mentally ill upon examination of witnesses

29C.(1) Where justices taking an examination of witnesses in relation to an indictable offence are satisfied on the evidence of 2 medical practitioners at any time during the examination that the person charged with the offence—

- (a) is suffering from mental illness of a nature or to a degree that warrants the person's detention in a hospital; and
- (b) ought to be so detained in the interests of the person's own welfare or with a view to the protection of other persons;

they shall—

- (c) order that the person be admitted to a security patients' hospital; and
- (d) upon making that order, adjourn the examination to a date to be fixed and remand the person accordingly, unless they are satisfied that the evidence heard by them before they made that order is sufficient to put the defendant upon trial for the offence charged or any other indictable offence, in which event, regardless of anything said by the defendant in answer to the charge, they shall commit the defendant for trial to a criminal sittings of an appropriate court.

(2) Where justices make an order such as is referred to in subsection (1)(c)—

- (a) no order shall be made in relation to custody or bail; and
- (b) it shall not be necessary for witnesses examined before the justices to enter into recognisances.

(3) An order, such as is referred to in subsection (1)(c), is lawful authority—

- (a) for any police officer or other person named in the order for the

purpose to convey the defendant in respect of whom the order was made to the security patients' hospital specified in the order; and

- (b) for the hospital administrator to admit the patient and detain the patient until the patient is otherwise dealt with pursuant to this part.

(4) The clerk of the court at the place where an order, such as is referred to in subsection (1)(c), is made shall give notice in the prescribed form of the making of the order to the chief executive (justice), and the director as soon as possible, and in any case within 7 days after the making of the order and shall furnish with the notice a transcript of all oral evidence given before the justices and a copy of any documentary evidence placed before the justices relating to the defendant's mental condition.

Examinations of patients referred to in ss 29B(1) and 29C(4)

30.(1) Upon being notified of a circumstance referred to in section 29B(1) or upon receipt of notice referred to in section 29C(4) the director shall arrange for the patient to be examined by a psychiatrist who in making the examination shall have regard to—

- (a) the patient's mental condition;
- (b) the relationship (if any) between the patient's mental illness and the alleged offence the subject of the charge and in particular the mental capacity of the patient at the time of the alleged offence, having regard to the provisions of section 27 of the Criminal Code;⁵
- (c) the likely duration of the mental illness and the likely outcome of treatment;
- (d) any other matter likely to assist the Mental Health Tribunal in making its determination pursuant to this part;
- (e) any other matter prescribed.

(2) Within such time or times as are prescribed the psychiatrist shall give to the director a report on the examination of the patient and the director,

⁵ Criminal Code, section 27 (Insanity)

having regard to that report and to the matters referred to in subsection (1), shall give the director's report to the Attorney-General and shall furnish to the Attorney-General a copy of the report by the psychiatrist.

(3) The director's report to the Attorney-General shall be made within 3 months from the director's receipt of the notification or notice referred to in subsection (1).

(4) Unless the director reports to the Attorney-General that the patient does not need to be detained on account of mental illness, a crown law officer or the director shall refer the matter of the patient's mental condition to the Mental Health Tribunal.

(5) Notwithstanding any provision of this section or the regulations, if the director is at any time satisfied on material available to the director that the patient does not need to be detained on account of mental illness the director shall, forthwith notify the chief executive (justice) accordingly and thereupon the provisions of section 31A shall apply.

Persons mentally ill while in custody awaiting examination of witnesses

31.(1) A person who has been charged with an indictable offence alleged to have been committed either before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* and who is in custody awaiting the commencement or continuation of an examination of witnesses in relation to that offence may be removed from the person's place of custody and admitted to a security patients' hospital for treatment for mental illness, and the person's admission to the hospital shall be based on an application made in accordance with this section by a person who is an authorised person in respect of that place of custody.

(1A) For the purposes of this section an authorised person is—

- (a) in respect of a place of custody under the management of the chief executive (corrective services)⁶—a person appointed by the chief executive (corrective services) in that behalf;

⁶ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

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- (b) in respect of any other place of custody—the person in charge of that place or such other person as is prescribed in respect of that place.

(2) An application referred to in subsection (1) shall be founded on the written recommendation of a medical practitioner, who shall be a Government medical officer or a psychiatrist, which recommendation shall set out the reasons that, in the opinion of the medical practitioner or psychiatrist, the person charged should be admitted to a security patients' hospital for treatment.

(2A) The application and recommendation shall be in accordance with such other conditions and requirements as are prescribed and, where the person in respect of whom the application is made is a prisoner within the meaning of the *Corrective Services Act 1988*, the making of the application shall be approved by the chief executive (corrective services).⁷

(2B) An application duly made and the recommendation on which it is founded shall together be lawful authority—

- (a) for any police officer or any correctional officer (within the meaning of the *Corrective Services Act 1988*) to convey the person in respect of whom the application is made to the security patients' hospital; and
- (b) for the hospital administrator to admit the person to the hospital and detain the person until the person is dealt with otherwise in accordance with this section.

(2C) Upon the admission of the person to the security patients' hospital the hospital administrator shall forthwith notify the director.

(3) Within 3 days from the day of a patient's admission to a security patients' hospital pursuant to this section the patient shall be examined by a psychiatrist who shall certify to the hospital administrator the psychiatrist's opinion whether—

- (a) the patient is suffering from mental illness of a nature or to a degree that warrants the patient's detention in hospital; and
- (b) the patient ought to be so detained in the interests of the patient's

⁷ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

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own welfare or with a view to the protection of other persons.

(4) If the psychiatrist certifies that the patient needs to be so detained the patient shall be detained pursuant to this section but if the psychiatrist certifies that the patient does not need to be so detained—

- (a) the hospital administrator shall forthwith inform the director and the chief executive (corrective services)⁸ and, where the patient was not before admission to the security patients' hospital a prisoner within the meaning of the *Corrective Services Act 1988*, the authorised person in respect of the place of custody from which the patient was admitted; and
- (b) the chief executive (corrective services) shall cause the patient to be removed from the hospital and, on being removed, the patient shall be deemed to be a prisoner within the meaning of the *Corrective Services Act 1988* (whether or not the patient was such a prisoner immediately before the patient's admission to the security patients' hospital) and that Act shall apply accordingly.

(5) Upon being notified that a person has been admitted to a security patients' hospital pursuant to this section the director shall notify the chief executive (justice) and the commissioner of the police service and the chief executive (justice) shall thereupon give notice of the admission to the clerk of the court at the place where the examination of witnesses is to commence or continue.

(6) A person admitted to a security patients' hospital pursuant to this section shall be detained therein or in such other hospital as the director directs in writing until the person is otherwise dealt with pursuant to this part.

(6A) As soon as practicable after being notified that a person has been admitted to a security patients' hospital pursuant to this section the director shall arrange for the person to be examined by a psychiatrist who in making the examination shall have regard to the matters referred to in section 30(1).

(6B) An examination of a patient under subsection (6A) may be conducted in conjunction with the examination of the patient required by subsection (3).

⁸ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

(7) Within such time or times as are prescribed the psychiatrist shall give to the director a report on the examination of the patient made under subsection (6A) and the director, having regard to that report and to the matters referred to in section 30(1), shall give the director's report to the Attorney-General and shall furnish to the Attorney-General a copy of the report by the psychiatrist.

(7A) The director's report to the Attorney-General shall be made within 3 months from the director's receipt of the notification referred to in subsection (2C).

(8) Unless the director reports to the Attorney-General that the patient does not need to be detained on account of mental illness, a crown law officer or the director shall refer the matter of the patient's mental condition to the Mental Health Tribunal.

(9) Notwithstanding any provision of this section or the regulations, if the director is at any time satisfied on material available to the director that the patient does not need to be detained on account of mental illness the director shall forthwith notify the chief executive (justice) accordingly and thereupon the provisions of section 31A shall apply.

Action on persons found not to be in need of detention

31A.(1) Where—

- (a) pursuant to any provision of section 30 or 31 the director has reported or notified that the person to whom the report or notification relates does not need to be detained on account of mental illness; or
- (b) pursuant to section 34(2) the Attorney-General has ordered that proceedings be continued against a person; or
- (c) pursuant to section 34(5) the Governor in Council has ordered that proceedings be continued against a person;

then—

- (d) the chief executive (justice) shall forthwith give notice thereof—
 - (i) where the person has been committed for trial or sentence before a court—to the registrar of the court at the place where proceedings with a view to the trial or sentencing of

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the person are to be held; and

- (ii) where the person has not been committed for trial or sentence before a court—to the clerk of the court at the place where an examination of witnesses by justices in respect of the charge against the person is to commence or continue; and
 - (iii) to the commissioner of the police service; and
 - (iv) to any other person prescribed; and
- (e) if that person has been committed for trial or sentence before a court in connection with the charge against the person—the person shall be brought before the court at the place to which the person has been committed or, with the person’s consent at any other place, as soon as is practicable to be dealt with according to law; and
- (f) if that person has not been committed for trial or sentence in connection with the charge against the person—the person shall be brought before justices as soon as is practicable and in any case within 7 days from the date of the director’s report or notification or the order of the Attorney-General or Governor in Council and the justices shall—
- (i) make such order as they think fit and are authorised by the *Justices Act 1886* to make; and
 - (ii) remand the person in custody or on bail; and
 - (iii) make such orders as they think fit as to binding of witnesses examined prior to the admission of that person to hospital as referred to in section 29B or 29C; and
 - (iv) make such orders as they think fit with a view to the commencement or continuation of the examination of witnesses;

and every such order shall be given effect according to its tenor.

(2) Any police officer or other person prescribed is authorised to convey a person referred to in subsection (1) who is detained in a hospital from the hospital to appear before a court or justices in accordance with subsection (1).

Admission to hospital not to prejudice

31B. Where a person has been admitted to hospital as referred to in section 29B or 29C neither the person nor any surety of the person shall suffer any detriment by reason of that person's failure to appear before justices in respect of the charge against the person if the person's failure is due to the person's admission to hospital as aforesaid.

Persons mentally ill while in custody after committal for trial or sentence

32.(1) A person who has been committed for trial or sentence upon a charge of an indictable offence and who is in custody pending the person's appearance at a criminal sittings of the Supreme Court or the District Court in respect of that charge may be removed from the person's place of custody and admitted to a security patients' hospital for treatment for mental illness, and the person's admission to the hospital shall be based on an application made in accordance with section 31 by a person who is an authorised person in respect of that place of custody.

(2) The provisions of section 31 apply to and in connection with the admission of a person to a security patients' hospital pursuant to this section and examinations of and reports on such a person as if the person were of a class of person referred to in section 31(1) except that in the application of section 31(5) the reference therein to the clerk of the court at the place where the examination of witnesses is to commence or continue shall be construed as a reference to the registrar of the court to which the person has been committed for trial or sentence.

Procedures of Mental Health Tribunal

33.(1) When the matter of a person's mental condition has been referred to it the Mental Health Tribunal—

- (a) shall inquire and determine whether the person was, at the time the alleged offence was committed, suffering from unsoundness of mind;
- (b) if the person is alleged to have committed the offence of murder and the Mental Health Tribunal finds that at the time the alleged offence was committed the person was not suffering from

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unsoundness of mind—shall inquire and determine whether the person was, at the time the alleged offence was committed, suffering from diminished responsibility;

- (c) if the Mental Health Tribunal finds that the person was not suffering from unsoundness of mind—shall inquire and determine whether the person is fit for trial.

(2) If in a reference made to it the Mental Health Tribunal is of the opinion that the facts of or connected with the alleged offence or of the involvement therein of the person in question are so in dispute that it would be unsafe to make a determination such as is referred to in subsection (1)(a) or (b), it shall refrain from making the determination but shall inquire and determine whether the person in question is fit for trial.

(3) Where the Mental Health Tribunal—

- (a) pursuant to subsection (1)—
 - (i) finds that a person alleged to have committed an indictable offence was not suffering from unsoundness of mind at the material time; and
 - (ii) finds that the person is fit for trial; or
- (b) pursuant to subsection (2), finds that a person alleged to have committed an indictable offence is fit for trial;

it shall order that proceedings be continued according to law against the person in respect of the charge.

(4) Where the Mental Health Tribunal makes an order referred to in subsection (3) in relation to any person—

- (a) it shall cause notice thereof to be given to the chief executive (justice) who shall notify—
 - (i) the director;
 - (ii) the commissioner of the police service;
 - (iii) the clerk of the court at the place where an examination of witnesses in relation to the indictable offence with which the person is charged is to be taken or, as the case may be, the registrar of the court to which the person has been committed for trial or sentence;

- (iv) any other person prescribed; and
- (b) may remand the person in custody or on bail or order that, until the person is brought before a court or justices for continuation of proceedings, the person be detained in a security patients' hospital or other hospital.

(5) An order made by the Mental Health Tribunal as referred to in subsection (4)(b) is lawful authority to all persons concerned to deal with the person to whom the order relates in accordance with the order.

(6) Where the Mental Health Tribunal has remanded a person on bail pursuant to subsection (4) the bail shall be deemed to have been granted under the *Bail Act 1980* and the provisions of that Act shall apply to and in connection with that grant of bail.

Procedure on finding of unsoundness of mind

33A.(1) If, under section 33, the Mental Health Tribunal finds that a person charged with an offence was, at the time the alleged offence was committed, suffering from unsoundness of mind, the tribunal must order the person be detained as a restricted patient under this part in a security patients' hospital or in another hospital.

(2) The order is lawful authority to all police officers, employees of the hospital and health service employees, using reasonable force—

- (a) to take the person to the hospital; and
- (b) to detain the person under the order.

Procedure upon finding of unfit for trial

34.(1) If, pursuant to section 33 the Mental Health Tribunal finds that a person is not fit for trial—

- (a) it shall order that the person be detained as a restricted patient under this part in a security patients' hospital or in some other hospital;
- (b) a Patient Review Tribunal shall review the mental condition of the person in relation to the person's fitness for trial at least once in every 3 months for a period of 12 months commencing on the

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day on which the Mental Health Tribunal made its order for the person's detention;

- (c) at the termination of the period of 12 months a Patient Review Tribunal shall determine the likelihood of the person being fit for trial within a reasonable time.

(1A) The order of the Mental Health Tribunal made under subsection (1) is lawful authority to all persons concerned to detain the person to whom the order relates in accordance with the order.

(2) If, pursuant to subsection (1) a Patient Review Tribunal finds that a person is fit for trial it shall give its report thereon to the Attorney-General who may order that proceedings be continued against the person, and such order shall be complied with.

(3) If, pursuant to subsection (1), a Patient Review Tribunal finds that it is unlikely that a person will be fit for trial within a reasonable time it shall give its report thereon to the Attorney-General who shall submit the report together with the Attorney-General's recommendation as to the continuance or discontinuance of proceedings against the person to the Governor in Council who, having regard to the report, the recommendation and any other material that the Governor in Council considers relevant, may—

- (a) order that such proceedings be discontinued forthwith; or
- (b) defer the question of continuance of the proceedings against the person for a period not exceeding 6 months and may, thereafter, defer that question for any period or periods not exceeding 6 months at any time;

and an order such as is referred to in paragraph (a) shall be complied with.

(4) Where the Governor in Council has deferred the question referred to in subsection (3) a Patient Review Tribunal shall review the mental condition of the patient and shall give its report thereon to the Attorney-General who shall submit the report together with the Attorney-General's recommendation as to the continuance or discontinuance of proceedings against the person to the Governor in Council prior to the expiration of the period for which the question is deferred.

(5) Where the Governor in Council has deferred the question referred to in subsection (3) the Governor in Council may at any time—

- (a) order that proceedings against the patient in question be discontinued forthwith; or
- (b) if a Patient Review Tribunal has reported that the patient is fit for trial—order that proceedings against the patient be continued;

and such order shall be complied with.

(6) The exercise of a power or the performance of a duty that is conferred or imposed on the Attorney-General by any provision of this section and that is consequent upon a finding of a Patient Review Tribunal is subject to there being no appeal duly instituted to the Mental Health Tribunal against the finding.

Leave of absence

34A.(1) This section applies if, under section 33A or 34, the Mental Health Tribunal orders a person's detention as a restricted patient under this part in a security patients' hospital or in another hospital.

(2) The tribunal may, by order, grant the patient leave of absence from the hospital if it is satisfied the patient can be released having regard to the interests of the patient's own welfare and the protection of other persons.

(3) The leave of absence may be granted on the conditions the tribunal considers appropriate.

(4) The conditions must be stated in the order.

(5) The leave of absence takes effect immediately on the making of the order and continues in force until—

- (a) a Patient Review Tribunal reviews the patient's liability to be detained as a restricted patient under this part; or
- (b) the leave of absence is revoked, under the conditions stated in the order granting the leave of absence, by—
 - (i) the hospital administrator for the hospital stated in the order or another hospital to which the patient is transferred; or
 - (ii) the designated medical practitioner for the patient; or
 - (iii) the director.

(6) At any time after revocation of the leave of absence, the designated

medical practitioner for the patient may, by written notice, grant the patient fresh leave of absence if the practitioner is satisfied the patient can be released having regard to the interests of the patient's own welfare and the protection of other persons.⁹

(7) Leave of absence under subsection (6) must be granted on the same conditions as stated in the Mental Health Tribunal's order.

Consequences of Mental Health Tribunal's findings or Governor in Council's order

35.(1) Where pursuant to section 33(1) the Mental Health Tribunal—

(a) has found that a person charged with an offence was, at the time the alleged offence was committed, suffering from unsoundness of mind; or

(b) has found that a person charged with an offence is not fit for trial;

the person to whom the finding relates shall, unless in the case of a finding of unsoundness of mind it is overturned upon an appeal duly instituted under section 43A, be liable to be detained as a restricted patient under this part.

(2) Where pursuant to section 34 the Governor in Council has ordered that proceedings against any person be discontinued the person shall be liable to be detained as a restricted patient under this part.

(3) If within 3 years after the date on which the Mental Health Tribunal has, pursuant to section 33(1), found that a person charged with an offence is not fit for trial, the Governor in Council has not determined the question of continuance or discontinuance of proceedings against the person, the proceedings shall be and be deemed to be discontinued and further proceedings shall not be taken against the person in respect of the act or omission constituting the offence to which the discontinued proceedings related and the person shall be liable to be detained as a restricted patient under this part.

⁹ Also, the patient may be released, including on leave of absence, by a tribunal under section 36(b) (Review of patient detained as restricted patient under this part).

Consequences to proceedings of findings of Mental Health Tribunal

35A. Where pursuant to section 33(1) the Mental Health Tribunal has found that a person charged with an offence was, at the time the alleged offence was committed, suffering from unsoundness of mind or has found that a person charged with the offence of murder was, at the time the alleged offence was committed, suffering from diminished responsibility, then unless in either case the finding is overturned upon an appeal duly instituted under section 43A and unless the person found to have been suffering from unsoundness of mind takes appropriate action under section 43C to be brought to trial, proceedings against the person—

- (a) shall, in the case of a finding of unsoundness of mind, be discontinued and further proceedings shall not be taken against the person in respect of the act or omission constituting the offence to which the discontinued proceedings related; or
- (b) shall, in the case of a finding of diminished responsibility, be discontinued in respect of the offence of murder but may be continued in respect of any other offence constituted by the act or omission to which the proceedings relate.

Review of patient detained as restricted patient under this part

36. Except where it is otherwise provided in this part, where a patient is liable to be detained as a restricted patient under this part—

- (a) the patient's liability to be detained shall be reviewed by a tribunal as if the patient had been admitted to hospital pursuant to part 3, division 2; and
- (b) the patient shall not be released, including on leave of absence, unless a tribunal has found that the patient can be released having regard to the interests of the patient's own welfare and the protection of other persons; and
- (c) the patient shall not be transferred from one hospital to another unless a tribunal, by writing under the hand of its chairperson, or the director, by signed writing, so orders.

Appeal against finding of tribunal

37.(1) A person who is aggrieved by any order (other than a direction for examination of a patient), determination, finding, report or recommendation of a Patient Review Tribunal under this part, being a person specified in subsection (2), may appeal to the Mental Health Tribunal against it.

(2) The persons who may appeal pursuant to subsection (1) are—

- (a) a crown law officer;
- (b) the patient concerned or the patient's legal adviser or the patient's nearest relative;
- (c) the director.

(3) An appeal to the Mental Health Tribunal pursuant to subsection (1) shall be instituted by way of application made within 7 days from the date of the order, determination, finding, report or recommendation of the Patient Review Tribunal against which the appeal is to be made.

(3A) The provisions of section 15(11)(a) to (f) apply with respect to the making of an application that institutes an appeal pursuant to subsection (1) and with respect to an appeal duly instituted.

(4) The Mental Health Tribunal may hear and determine an appeal pursuant to subsection (1) whether the patient concerned is present before it or not.

(4A) Every appeal shall be heard and determined by way of inquiry de novo by the Mental Health Tribunal.

(5) Upon the determination of an appeal, the Mental Health Tribunal may make such finding and order as it considers should have been made by the Patient Review Tribunal and the finding and order so made shall be deemed to be the finding and order of the Patient Review Tribunal for the purposes of this part and where necessary any determination, report or recommendation of the tribunal shall be varied accordingly.

(6) The finding and order of the Mental Health Tribunal upon an appeal pursuant to subsection (1) shall be final and conclusive.

Persons mentally ill where ss 613 and 645 of the Criminal Code applicable

38.(1) Where a person charged with an indictable offence has, by reason of having been found by a jury to be of unsound mind—

- (a) before the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, been ordered by a court to be kept in strict custody in a place determined by the court until the person is dealt with under the laws relating to insane persons; or
- (b) after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, been ordered by a court to be kept in strict custody in a place determined by the court until the person is dealt with pursuant to the provisions of this Act;

or has been ordered by a court, whether before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* to be kept in custody in a place determined by the court until the person can be dealt with according to law, or where in such circumstances some other order to the like effect has been made by a court the Minister may—

- (c) in the case of a court order made before the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, where the patient is not in a security patients' hospital—order as soon as is practicable after the commencement of that section that the patient be admitted to a security patients' hospital;
- (d) in the case of a court order made after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, where the patient is not in a security patients' hospital—order as soon as is practicable after the making of the court order that the patient be admitted to a security patients' hospital.

(1A) A patient admitted to a security patients' hospital under an order referred to in subsection (1)(c) or (d) shall be detained as a restricted patient under this part.

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(2) Every order made by the Minister under subsection (1) shall be given effect according to its tenor and shall be lawful authority—

- (a) for a police officer or for any person named for the purpose therein to convey the patient to the security patients' hospital; and
- (b) for the hospital administrator of the security patients' hospital to admit and detain the patient for treatment.

(3) Where, pursuant to section 613 or 645 of the Criminal Code,¹⁰ a court makes an order referred to in subsection (1), the registrar of the court shall give notice of the order in the prescribed form to the chief executive (justice) and to the director as soon as is practicable after it is made and in any case within 7 days after it is made.

(4) The director shall arrange for every person in relation to whom an order is made under section 613 or 645 of the Criminal Code to be examined by a psychiatrist who, in making the examination, shall have regard to the matters referred to in or prescribed for the purposes of section 30(1), subject to any reference to complaint or in relation to complaint being construed as a reference to charge.

(5) Within such time or times as are prescribed the psychiatrist shall forward to the director a report on the examination of the patient and the director, having regard to that report and to the matters to which the psychiatrist is required by subsection (4) to have regard in making the examination, shall give the director's report to the Attorney-General and shall furnish to the Attorney-General a copy of the report by the psychiatrist, and shall refer the matter to a Patient Review Tribunal.

(6) In respect of a matter referred to it under subsection (5) the tribunal may direct to be made such psychiatric, medical and other examinations of the patient as it thinks fit, and having regard to the findings upon such examinations (if any) and to the matters to which a psychiatrist is required by subsection (4) to have regard in making the examination of the patient and to any other information that it considers relevant shall give its report to the Attorney-General.

(7) The Attorney-General shall, subject to there being no appeal duly instituted to the Mental Health Tribunal against the findings of the tribunal,

¹⁰ Criminal Code, section 613 (Want of understanding of accused person) or 645 (Accused person insane during trial)

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submit the report the Attorney-General receives from a Patient Review Tribunal to the Governor in Council and in relation thereto shall recommend whether the patient should or should not be tried for the offence with which the patient is charged.

(7A) Such recommendation shall be made to the Governor in Council within 3 months of the making of the court order in relation to the patient under section 613 or 645 of the Criminal Code or within 3 months of the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, whichever is the later event.

(8) Upon receipt of the report of the Patient Review Tribunal and the recommendation of the Attorney-General submitted under subsection (7) the Governor in Council may—

- (a) order that the patient be not proceeded against for the offence with which the patient is charged; or
- (b) order that the patient be tried for the offence with which the patient is charged; or
- (c) defer a determination of the matter for a period not exceeding 6 months.

(9) Where the Governor in Council acts pursuant to subsection (8)(c)—

- (a) a Patient Review Tribunal is authorised and required to take in respect of the patient all such steps as such a tribunal was authorised and required by subsection (6) to take in respect of the patient when the matter of the patient's mental condition was referred to it under subsection (5); and
- (b) the Attorney-General shall take in respect of the patient all such steps as the Attorney-General was required by subsection (7) to take in respect of the patient; and
- (c) the Governor in Council shall exercise in respect of the patient 1 of the powers conferred on the Governor in Council by subsection (8);

at least once before the expiration of the period of deferment.

(9A) The Governor in Council may exercise the Governor in Council's power to defer determination of a matter from time to time and whenever the Governor in Council does so the provisions of subsection (9) shall be

given effect.

(10) If, within a period of 3 years after the making of a court order under section 613 or 645 of the Criminal Code in relation to a person the Governor in Council has not ordered that the patient be not proceeded against for the offence with which the patient is charged or that the patient be tried for the offence with which the patient is charged the proceedings against that person shall be deemed to have been discontinued.

(11) Where the Governor in Council has ordered that the patient be not proceeded against for the offence with which the patient is charged or where proceedings against the patient are deemed to have been discontinued—

- (a) the chief executive (justice) shall forthwith give notice thereof to the registrar of the court in which the court order under the Criminal Code was made, the commissioner of the police service, the commission, the director and all other persons prescribed; and
- (b) the director, upon receipt of such notice, shall notify the psychiatrist in charge of the patient's treatment accordingly; and
- (c) the patient shall not be further proceeded against for the offence with which the patient is charged.

(12) Where the Governor in Council has ordered that the patient be not proceeded against for the offence with which the patient is charged or where proceedings against the patient are deemed to have been discontinued the patient shall not be entitled to be discharged but shall be liable to be detained as a restricted patient under this part in a security patients' hospital unless otherwise determined by a Patient Review Tribunal.

(13) Where the Governor in Council orders that the patient be tried for the offence—

- (a) the chief executive (justice) shall give notice thereof to the registrar of the court in which the court order under the Criminal Code was made, the commissioner of the police service, the director and all other persons prescribed; and
- (b) pending further proceedings against the patient, the patient shall be brought before justices as soon as possible and in any case within 7 days from the making of the order by the Governor in Council and the justices shall remand the patient, in custody or if it is lawful for them so to order, on bail to appear as soon as is

practicable at a criminal sittings of the court in which the court order under the Criminal Code was made.

(14) Any police officer or other person prescribed is authorised to convey the patient from a hospital to appear before justices in accordance with subsection (13).

Persons mentally ill where s 647 of the Criminal Code applicable

39.(1) Where a person charged with an indictable offence has been found by a jury to be not guilty on the ground of unsoundness of mind and has—

- (a) before the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, been ordered by a court to be kept in strict custody in a place determined by the court until Her Majesty's pleasure is known; or
- (b) after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, been ordered by a court to be kept in strict custody in a place determined by the court until the person is dealt with pursuant to the provisions of this Act;

the Minister may—

- (c) in the case of a court order made before the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* where the patient is not in a security patients' hospital, and the Governor in Council has not determined under section 647 of the Criminal Code¹¹ a place of confinement for the safe custody of the patient—order as soon as is practicable after the commencement of that section that the patient be admitted to a security patients' hospital;
- (d) in the case of a court order made before the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984* where the patient is not in a security patients' hospital and the Governor in Council has determined under section 647 of the Criminal Code a place of confinement for the safe custody of the patient that is not a security patients'

¹¹ Criminal Code, section 647 (Acquittal on ground of insanity)

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hospital—order as soon as is practicable after the commencement of that section that the patient be admitted to a security patients' hospital;

- (e) in the case of a court order made after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, where the patient is in strict custody in a place other than a security patients' hospital—order that the patient be admitted to and detained in a security patients' hospital until a Patient Review Tribunal has otherwise determined under this part.

(2) Every order made by the Minister under subsection (1)(c) or (e) shall be given effect and shall be lawful authority—

- (a) for a police officer or any person named therein for the purpose to convey the patient to the security patients' hospital named therein; and
- (b) for the hospital administrator to admit and detain the patient for treatment.

(3) Where, pursuant to section 647 of the Criminal Code, a court makes an order referred to in subsection (1), the registrar of the court shall give notice of the order in the prescribed form to the chief executive (justice) and to the director as soon as is practicable after it is made and in any case within 7 days after it is made.

(4) Within 3 months after the making of the court order under section 647 of the Criminal Code or within 3 months from the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, whichever is the later event, the director shall refer the matter of the patient's mental condition to a Patient Review Tribunal.

(4A) The tribunal may direct to be made in respect of the patient such psychiatric or other examinations as it thinks fit and, having regard to the findings upon such examinations (if any) and to any other information that the tribunal considers relevant, shall determine whether the patient should be detained in a security patients' hospital or any other hospital or in prison.

(5) A person detained in a security patients' hospital or other hospital pursuant to an order of a court or of the Governor in Council made under

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section 647 of the Criminal Code, whether made before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, or pursuant to an order of the Minister or a determination of a tribunal made under this section shall be detained as a restricted patient under this part.

(6) Where pursuant to a tribunal's determination under subsection (4A) a patient is detained in a prison the tribunal shall review the patient's mental condition at least once in each period of 12 months commencing on the date of the making of the tribunal's determination and to that end the tribunal may direct to be made in respect of the patient such psychiatric or other examinations as it thinks fit and shall have regard to the findings upon such examinations (if any) and to any other information that the tribunal considers relevant and the tribunal's direction shall be binding upon and be given effect by all persons concerned.

(6A) The tribunal that has reviewed a patient's mental condition under subsection (6) shall, if it is of the opinion that the patient can be released having regard to the interests of the patient's own welfare and the protection of other persons, recommend to the Queensland Community Corrections Board accordingly.

(7) Where pursuant to a tribunal's determination a patient is detained in a prison and a tribunal has made a recommendation to the Queensland Community Corrections Board pursuant to subsection (6A), it is competent to the Board to release the patient from prison on parole and for that purpose the provisions of part 4 of the *Corrective Services Act 1988*¹² shall with all necessary adaptations and modifications apply accordingly except that the application for parole shall be forwarded to the secretary to the Queensland Community Corrections Board and shall not be considered by a regional community corrections board.

(8) A patient released on parole pursuant to subsection (7) shall be under the supervision of a community correctional officer within the meaning of the *Corrective Services Act 1988* for such period as the Queensland Community Corrections Board from time to time determines.

¹² *Corrective Services Act 1988*, part 4 (Parole)

Special provisions as to patients in custody

40. Where a patient who is liable to be detained under part 3 in a hospital is detained in custody pursuant to an order under this part or under any other Act or pursuant to a sentence or order passed or made by a court or justices in Queensland (including an order committing or remanding the patient in custody), the patient shall not cease at any time before the patient is discharged from such custody to be liable to be detained under this Act in a hospital or cease to be otherwise subject to any provision of this Act applicable to the patient, and—

- (a) if, apart from this section, the patient would have ceased to be liable to be detained under this Act in a hospital on or before the day on which the patient is discharged from custody—the patient shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; or
- (b) if the patient is still liable to be detained under this Act in a hospital after the day on which the patient is discharged from custody—the patient shall continue to be so liable and to be so subject as if the patient's detention in custody had been a detention under this Act in a hospital;

and in any case section 47 shall apply in relation to the patient as if the patient had absented himself or herself from hospital without leave on the day of the patient's discharge from custody.

Transfer of detained person by director

41.(1) The director may order, by signed writing, the transfer of any person who is detained in a hospital pursuant to this part from one hospital to another for the purpose of the provision of suitable treatment or for any other reason whatsoever that the director thinks sufficient.

(2) The director may, by signed writing, order the removal of any person who is detained in a hospital pursuant to this part from the hospital to—

- (a) a clinic, dental hospital or such other place as may be prescribed, for the purpose of the provision of suitable medical, dental, optical or other treatment or for any other reason whatsoever that the director thinks sufficient;
- (b) any court or other place to appear as a party or witness to any

proceeding or for examination;

- (c) any place specified by the director in the director's order in connection with the funeral of anyone determined by the director to be a close relative of that person or in connection with any other circumstances determined by the director to be compassionate circumstances;

and the return of that person to hospital.

(3) The order of the director shall be lawful authority for the transfer, removal, conveyance, admission, detention and return of the person the subject of the order in accordance with the terms thereof.

(4) Where the director is of the opinion that the assistance of a police officer is necessary in transferring, removing, conveying, admitting or returning a person the subject of an order under this section, the director shall certify as to the director's opinion by endorsement on the order to that effect.

(5) Any police officer to whose notice any such certification as aforesaid is brought may as soon as is practicable assist in transferring, removing, conveying, admitting or returning the person to whom the order relates in accordance therewith or make or cause to be made arrangements for some other police officer to render such assistance.

Granting of leave to detained persons

42. A person detained under this part in a hospital may be granted leave as and in the manner prescribed for such period or periods as the director may determine, subject to the provisions of this part and to the concurrence of the chief executive (corrective services)¹³ where prescribed.

Admission of prisoners to hospital for treatment

43.(1) A person serving a sentence of imprisonment or detention for a period pursuant to the order of a court, whether made before or after the commencement of section 28 of the *Mental Health Act, Criminal Code and*

¹³ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

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Health Act Amendment Act 1984, may be removed from the person's place of custody and admitted to a security patients' hospital for treatment for mental illness.

(1A) Every such admission shall be based on an application made by a person who is an authorised person in respect of that place of custody.

(1B) For the purposes of this section an authorised person is—

- (a) in respect of a place of custody under the management of the chief executive (corrective services)¹⁴—a person appointed by the chief executive (corrective services) in that behalf;
- (b) in respect of any other place of custody—the person in charge of that place or such other person as is prescribed in respect of that place.

(2) The application shall be founded on the written recommendation of a medical practitioner who shall be a Government medical officer or a psychiatrist, which recommendation shall set out the reasons that, in the opinion of its maker, the prisoner should be admitted to a hospital for treatment.

(3) The making of the application and the medical recommendation shall be in accordance with and subject to such other conditions and requirements as may be prescribed and, where the prisoner is a prisoner within the meaning of the *Corrective Services Act 1988*, the making of the application shall be approved by the chief executive (corrective services).

(4) An application duly made and the recommendation on which it is founded shall together be lawful authority—

- (a) for any police officer or any correctional officer (within the meaning of the *Corrective Services Act 1988*) to convey the prisoner to a security patients' hospital; and
- (b) for the hospital administrator to admit the person to the hospital and detain the person until the person is otherwise dealt with in accordance with this section.

(5) Within 3 days from the day of the admission of a person to a hospital

¹⁴ For the definition of “chief executive (corrective services)”, see *Corrective Services (Administration) Act 1988*, section 7(6).

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pursuant to this section the person shall be examined by a psychiatrist who shall certify to the hospital administrator the psychiatrist's opinion whether the person is mentally ill and needs to be detained in a hospital on account of mental illness.

(5A) If the psychiatrist certifies that the person needs to be so detained the person shall be detained pursuant to this section but if the psychiatrist certifies that the person does not need to be so detained—

- (a) the hospital administrator shall forthwith inform the director and the chief executive (corrective services)¹⁵ and, where the person was not before admission to the security patients' hospital a prisoner within the meaning of the *Corrective Services Act 1988*, the authorised person in respect of the place of custody from which the person was admitted; and
- (b) the chief executive (corrective services) shall cause the person to be removed from the hospital and, on being removed, the person shall be deemed to be a prisoner within the meaning of the *Corrective Services Act 1988* (whether or not the person was such a prisoner immediately before the person's admission to the security patients' hospital) and that Act shall apply accordingly.

(6) A person admitted to a hospital pursuant to this section and in respect of whom a psychiatrist has certified that in the psychiatrist's opinion the person needs to be detained in a hospital on account of mental illness shall, unless a psychiatrist nominated by the director sooner certifies that the person does not need to be detained any longer on account of mental illness, continue to be detained in the hospital to which the person was admitted or in such other hospital as the director from time to time directs in writing until the expiration of the person's period of imprisonment or detention.

(6A) Where a person is admitted to a hospital pursuant to this section—

- (a) the provisions of this Act relating to the treatment or custody of a patient shall, subject to this subsection, apply to that person with all necessary modifications; and
- (b) the provisions of section 50A(3) shall apply to the person as if the person were a restricted patient.

¹⁵ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

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(6B) A psychiatrist secondly referred to in the preceding provisions of subsection (6) may be nominated by the director—

- (a) either generally or in respect of a particular case or class of case;
- (b) as an individual or as the holder of an office.

(6C) The psychiatrist in charge of the treatment of a patient who continues to be detained in a hospital pursuant to this section shall review the patient's case at least once in every period of 12 months until the provisions of subsection (7) apply in respect of the patient and the psychiatrist shall make a report with respect to each such review to the director.

(6D) If the psychiatrist nominated by the director certifies that the person detained does not need to be detained any longer on account of mental illness—

- (a) the hospital administrator shall forthwith inform the chief executive (corrective services);¹⁶ and
- (b) the chief executive (corrective services) shall cause the person to be removed from the hospital and, on being removed, the person shall be deemed to be a prisoner within the meaning of the *Corrective Services Act 1988* (whether or not the person was such a prisoner immediately before the person's admission to a security patients' hospital) and that Act shall apply accordingly.

(7) At the expiration of the person's period of imprisonment or detention a person admitted to a hospital pursuant to this section, not being one in respect of whom a psychiatrist nominated by the director has certified as referred to in subsection (6), shall not by reason of such expiration be, or be entitled to be, discharged but on and from the day of such expiration the person shall be deemed—

- (a) to have been admitted to the hospital where the person then is as if an application had been made pursuant to part 3, division 2 and as if the authority for the person's detention had been renewed for a period of 12 months following such expiration; and

¹⁶ For the definition of "chief executive (corrective services)", see *Corrective Services (Administration) Act 1988*, section 7(6).

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- (b) to be a restricted patient and shall be treated as provided by section 50.

(7A) Subsection (7) applies subject to subsections (8) and (8A).

(8) As soon as is practicable within the period commencing 14 days before the expiration of the patient's period of imprisonment or detention and terminating 7 days after such expiration the psychiatrist in charge of the treatment of a patient admitted to a hospital pursuant to this section shall review the case and recommend to the director whether—

- (a) the patient is suffering from mental illness of a nature or to a degree that warrants the patient's detention in a hospital; and
- (b) the patient ought to be so detained as a restricted patient in the interests of the patient's own welfare or with a view to the protection of other persons;

and make such other recommendation as the psychiatrist thinks fit to the director.

(8A) Upon receiving the recommendation of the psychiatrist, the director shall, as soon as is practicable, refer the matter to a Patient Review Tribunal which shall—

- (a) determine that the patient be or continue to be a restricted patient and be treated as provided by section 50; or
- (b) determine that the patient not be or not continue to be such a restricted patient and order the patient's transfer (after the expiration of the patient's period of imprisonment or detention) to another hospital if the patient is detained in a security patients' hospital; or
- (c) determine that the patient be discharged from detention upon the expiration of the patient's period of imprisonment or detention or forthwith if that period has expired if the tribunal is satisfied that the patient is not suffering from mental illness of a nature or to a degree that warrants the patient's detention in a hospital and does not need to be detained in the interests of the patient's own welfare or with a view to the protection of other persons;

and every such determination of the tribunal shall be given effect according to its tenor.

(9) In this section—

“the expiration of the person’s or patient’s period of imprisonment” means the day calculated by the chief executive (corrective services)¹⁷ pursuant to regulations made under this Act (the Governor in Council being hereby authorised to make such regulations) as the day on which the period of imprisonment of the prisoner is deemed for the purposes of this section to expire.

(10) A calculation referred to in subsection (9) shall be made by the chief executive (corrective services) and notified to the director as near as is practicable to the time of the prisoner’s admission to hospital pursuant to this section.

(11) Subject to subsection (12) but notwithstanding any other provision of this Act, a person serving a sentence of imprisonment or detention for a period pursuant to the order of a court who is detained in a security patients’ hospital or other hospital may be released on parole—

- (a) in the case of a person undergoing a term of imprisonment for life—by the Governor in Council; and
- (b) in any other case—by the Queensland Community Corrections Board;

as if that person were a prisoner within the meaning of the *Corrective Services Act 1988* and for that purpose the provisions of part 4 of that Act shall with all necessary adaptations and modifications apply accordingly except that the application for parole shall be forwarded to the secretary to the Queensland Community Corrections Board, shall not be considered by a regional community corrections board and, other than in the case of an application by a person undergoing a term of imprisonment for life, shall be determined by the Queensland Community Corrections Board.

(12) A person detained in a security patients’ hospital or other hospital shall not be released on parole unless a Patient Review Tribunal, having reviewed the mental condition of the person, has determined that the person may be so released having regard to the person’s own safety and the safety of other persons.

¹⁷ For the definition of “chief executive (corrective services)”, see *Corrective Services (Administration) Act 1988*, section 7(6).

Finality of Mental Health Tribunal's decisions

43A.(1) Except as is provided by this section, the decisions of the Mental Health Tribunal under this part shall be final and conclusive and shall not be questioned in any proceeding whatever.

(2) A finding by the Mental Health Tribunal—

- (a) that a person was not suffering from unsoundness of mind at the time of commission of an alleged offence; or
- (b) that a person was not suffering from diminished responsibility at the time of commission of an alleged offence;

shall not preclude that person from raising the person's mental condition at the material time as an issue upon the person's trial and if the person does so raise that issue those findings shall not be admissible in evidence upon the person's trial.

(3) An appeal to the Court of Appeal against a decision of the Mental Health Tribunal may be instituted by—

- (a) the person to whose mental condition the decision relates; or
- (b) the Attorney-General.

(3A) Notwithstanding the provisions of subsection (3) an appeal shall not be available against a decision of the Mental Health Tribunal made upon an appeal from a Patient Review Tribunal.

(4) A person desiring to appeal to the Court of Appeal from a decision of the Mental Health Tribunal shall, within 1 calendar month from the date of the tribunal's decision, give notice of appeal to the registrar of that court and an appeal shall not be instituted at any time after the expiration of that period.

(4A) A notice of appeal shall be in the form prescribed by general rules made for the purposes of appeals from the Mental Health Tribunal to the Court of Appeal and every such appeal shall be conducted in accordance with such general rules so far as they extend and otherwise in accordance with directions given by the judge presiding at the Court of Appeal.

(4B) The power to make general rules conferred by section 707(2) of the Criminal Code includes power to make such rules for the purposes of appeals from the Mental Health Tribunal to the Court of Appeal.

(5) Where the Court of Appeal has allowed an appeal instituted to it from the Mental Health Tribunal and the appellant is found by the court to be fit for trial the provisions of section 33(3) to (6) apply and shall for that purpose be construed as if a reference therein to the Mental Health Tribunal were a reference to the Court of Appeal.

Finality of decision of Court of Appeal

43B.(1) Except as is provided by this section, the decisions of the Court of Appeal upon appeals instituted to it from the Mental Health Tribunal shall be final and conclusive.

(2) A finding by the Court of Appeal upon such an appeal that at any material time—

- (a) a person was not suffering from unsoundness of mind; or
- (b) a person was not suffering from diminished responsibility;

shall not preclude that person from raising the person's mental condition at the material time as an issue upon the person's trial but if the person does raise that issue those findings shall not be admissible in evidence upon the person's trial.

Accused's right to trial notwithstanding lack of criminal responsibility

43C. If a person desires to be brought to trial for the offence with which the person is charged notwithstanding that the Mental Health Tribunal or the Court of Appeal has found the person to be not criminally responsible by reason of the person being of unsound mind, the person shall, within 28 days from the date of the decision of the tribunal or the court, lodge with the Crown Solicitor notice in the prescribed form of the person's desire whereupon, unless the person has been found to be not fit for trial, all necessary steps shall be taken to have the person's case brought on for trial as soon as is practicable.

Findings upon accused's mental condition not to be published to prejudice of trial

43D. Where the Mental Health Tribunal or the Court of Appeal has given a decision concerning—

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- (a) a person's mental condition at the time of the commission of the alleged offence with which the person is charged; or
- (b) a person's fitness for trial;

a report of that decision shall not be published, except in so far as it is necessary to do so to give effect to this Act, until—

- (c) in the case of a decision that will result in the accused person being brought to trial—the conclusion of the trial;
- (d) in the case of a decision of the Court of Appeal that will not result in the accused person being brought to trial—the expiration of 28 days from the date of the decision or, if within that period notice referred to in section 43C has been given, the conclusion of the trial;
- (e) in the case of a decision of the Mental Health Tribunal that will not result in the accused person being brought to trial—the expiration of 28 days from the date of the decision or—
 - (i) if within that period an appeal is instituted against the decision—the expiration of 28 days from the date of the decision of the Court of Appeal or if the court's decision will result in the accused person being brought to trial—the conclusion of the trial; or
 - (ii) if within that period an appeal is not instituted against the decision but a notice referred to in section 43C has been given—the conclusion of the trial.

Custody of accused in security patients' hospital during proceedings

43E.(1) Where a court determines that a person charged before it with an indictable offence should be remanded in custody upon any adjournment of the proceedings and it appears to the court that the person's mental condition is such that the person should be detained in a security patients' hospital during such adjournment, the court may order that the person be remanded in custody in a security patients' hospital.

(2) A court order made under subsection (1) is lawful authority—

- (a) for a police officer or for any person named therein for the purpose to convey the person to whom the order relates to a

security patients' hospital; and

- (b) for the hospital administrator to admit the person to whom the order relates and detain the person in accordance with the order.

(3) A person admitted to a security patients' hospital under the authority of a court order made under subsection (1) shall be treated as a restricted patient as provided by section 50.

(4) Any police officer or any other person prescribed for the purpose is authorised to convey a patient detained in a security patients' hospital under the authority of a court order made under subsection (1) from the hospital to appear before the court in accordance with the order upon resumption of the proceedings before the court.

PART 5—TRANSFER, LEAVE OF ABSENCE, AND DISCHARGE OF PATIENTS

Transfer of patients

44.(1) A patient liable to be detained in a hospital pursuant to part 3, division 2 may be transferred from any hospital to any other hospital other than a security patients' hospital pursuant to arrangements made by the hospital administrators of the hospitals concerned and in accordance with an order for the transfer of the patient signed by a medical practitioner.

(1A) The order of a medical practitioner shall be lawful authority for the transfer, removal, conveyance and admission of the patient in accordance with its terms.

(2) Subject to part 4, the director, for the purpose of providing suitable treatment or for any other reason whatsoever that the director thinks sufficient, may, by writing signed by the director, order the transfer of a patient from any hospital to any other hospital, and such an order shall be sufficient authority for the transfer, removal, conveyance and admission of the patient in accordance with the terms thereof.

(2A) However, any order by the director for such a transfer to a security patients' hospital may be made only in the case of a patient who is being

treated as a restricted patient as provided in section 50.

(3) Where a patient liable to be detained in a hospital pursuant to an application for admission under part 3, division 2 is transferred to another hospital pursuant to an order referred to in subsection (1) or an order referred to in subsection (2), the provisions of this Act shall thereafter apply in respect of the patient as if the application for admission had been an application for admission to that other hospital and as if the patient had been admitted to that other hospital at the time of the patient's original admission to hospital pursuant to the application for admission.

(4) Where a hospital administrator is of the opinion that the assistance of a police officer is necessary in transferring a patient in pursuance of arrangements referred to in subsection (1) the hospital administrator shall certify as to the hospital administrator's opinion in writing, stating clearly the reasons for such opinion.

(4A) Where the director is of the opinion that the assistance of a police officer is necessary in transferring a patient in pursuance of an order referred to in subsection (2) the director shall certify as to the director's opinion by endorsement on the order to that effect.

(4B) Any police officer to whose notice any such certification as aforesaid is brought may as soon as practicable convey or assist in conveying the patient to the hospital to which the patient is to be transferred as provided in this section or make or cause to be made arrangements for some other police officer to convey or assist in conveying the patient.

(5) A patient transferred pursuant to an order referred to in this section shall be accompanied by hospital staff such as the medical practitioner in charge of the patient's treatment thinks appropriate

Removal of patients out of Queensland

45.(1) If it is made to appear to the Mental Health Tribunal by any person—

- (a) that a patient, other than a patient who is for the time being liable to be detained under part 4 in relation to whom a final determination has not been made by the Mental Health Tribunal or the Governor in Council as required by this Act, has a relative or other person in a place outside Queensland who is willing to

undertake the care and charge of the patient; and

- (b) that it would be in the interests of the patient's welfare that the patient should be removed from Queensland to that place;

the Mental Health Tribunal may order that the patient be removed from Queensland and may make such further or other order directing or authorising the patient's removal or touching the patient's safe custody and maintenance as it thinks fit and may order that security be given for the safe custody and maintenance of the patient in any place outside Queensland.

(2) However, no order shall be made for the removal of such patient until after 14 days notice of the intention to apply for such order has been given to the person in whose care or custody the patient is, unless such person is applying for the order.

Leave of absence from hospital

46.(1) Subject to this Act, the designated medical practitioner may grant to a patient who is for the time being liable to be detained under this Act (other than under part 4) in a hospital, leave to be absent from the hospital subject to such conditions (if any) as that medical practitioner considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence under subsection (1) may be granted to a patient either indefinitely or for any specified period; and where leave is so granted for a specified period, that period may from time to time be extended, and, where the designated medical practitioner thinks fit, any such extension may be granted on the recommendation of some other medical practitioner.

(3) Where it appears to the designated medical practitioner that it is necessary so to do in the interests of the patient or for the protection of other persons, the medical practitioner may, upon granting leave of absence under this section, direct that the patient remain in custody during the patient's absence; and where leave of absence is so granted the patient shall not be absent from the hospital on such leave unless the patient is kept in the custody of the person who is authorised in that behalf in writing by the hospital administrator which writing shall be sufficient authority for that person to keep the patient in the person's custody and at the place where the patient is required to reside in accordance with the conditions imposed, and at any time while the authority remains in force to return the patient to the

hospital.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section and it appears to the designated medical practitioner or the hospital administrator or the director that it is necessary so to do in the interests of the patient's welfare or for the protection of other persons, that medical practitioner or the hospital administrator or the director, as the case may be, may, subject to subsection (5), by notice in writing revoke the leave of absence and recall the patient to the hospital forthwith or within a time stipulated in the notice.

(5) Without prejudice to any other provision of this Act, a patient to whom leave of absence is granted under this section shall cease to be liable to be detained under this Act in a hospital at the expiration of the period of 12 months beginning on the first day of the patient's absence on leave unless—

- (a) the patient has returned or has been returned to the hospital, or has been transferred or removed to another hospital under the provisions of this Act or any other Act before the expiration of that period; or
- (b) the patient is absent without leave at the expiration of that period; or
- (c) the director orders in writing that the patient shall continue to be liable to be detained for a period not exceeding 24 months beginning on the first day of the patient's absence on leave.

(6) This section applies subject to section 50.

Leave of absence for detainees under s 18 of the Criminal Law Amendment Act 1945

46A. Where, pursuant to section 18 of the *Criminal Law Amendment Act 1945*,¹⁸ a person is detained in an institution as defined in that section, whether for a period directed by a judge or during Her Majesty's pleasure, the Governor in Council, may—

- (a) without prejudice to the requirement of any Act or law that the

¹⁸ *Criminal Law Amendment Act 1945*, section 18 (Detention of persons incapable of controlling sexual instincts)

person serve any sentence of imprisonment imposed on the person; and

- (b) on the recommendation of 2 psychiatrists nominated by the director for the purpose made by them after investigation of the person;

release the person on leave of absence subject to such terms and conditions as may be prescribed or as may be fixed by the Governor in Council (in addition to or in lieu of prescribed terms and conditions or any of them) including terms and conditions relating to the apprehension and return to detention of the person for breach of any prescribed or fixed term or condition.

Return and re-admission of patients absent without leave

47.(1) Where a patient who is for the time being liable to be detained under this Act in a hospital other than a patient liable to be detained under part 4—

- (a) absents himself or herself from the hospital without leave granted under section 46; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to the patient under that section, or upon being recalled thereunder; or
- (c) absents himself or herself without permission from any place where the patient is required to reside in accordance with conditions imposed on grant of leave of absence under that section;

the patient may, if the hospital administrator or the designated medical practitioner or the director so requires, and subject to the provisions of this section, be taken into custody and returned to the hospital or, pursuant to an order of the Minister or the director, admitted to some other hospital, or where the patient has absented himself or herself without permission from any place where the patient is so required to reside, to the hospital or some other hospital as aforesaid or to the place from which the patient has absented himself or herself, by any police officer, by any person or member of a class of person authorised in writing by the hospital administrator, or

by any other prescribed person.

(2) Where a patient liable to be taken into custody as provided by subsection (1) is not a patient liable to be detained under part 4 or a patient who is required by this Act to be treated as a restricted patient as provided by section 50 the patient's liability to be taken into custody under subsection (1) shall cease upon the expiration of the period of 28 days from the commencement of the patient's absence without leave, failure to return or absence without permission referred to in subsection (1), unless the patient has within that period returned or been so taken into custody.

(3) In this Act—

“absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this section, and kindred expressions shall be construed accordingly.

Discharge of patients generally

48.(1) Subject to the provisions of this section and sections 49 and 50, a patient who is for the time being liable to be detained under this Act in a hospital (other than under the provisions of part 4) ceases to be so liable if an order in writing discharging the patient from liability to detention (an **“order for discharge from liability to detention”**) is made in accordance with this section.

(2) An order for discharge from liability to detention may be made in respect of a patient by the designated medical practitioner, the hospital administrator, the director or the nearest relative of the patient or, where the application for admission was made by an authorised person, by the authorised person.

(3) Subject to section 50, nothing in this part shall be read as preventing the discharge from liability to detention and removal from hospital of a person who is not mentally ill.

Restrictions on discharge by certain persons

49.(1) An order for discharge from liability to detention of a patient who is liable to be detained in a hospital in pursuance of an application for the patient's admission shall not be made by the patient's nearest relative or an

authorised person unless such relative or authorised person has given at least 72 hours notice in writing to the hospital administrator of his or her intention to make the order as well as, in a case where the designated medical practitioner considers that certain conditions relating to the care of the patient on the patient's discharge should be observed, his or her giving before the making of the order an undertaking in writing to the hospital administrator that such conditions will be observed.

(2) If, within 72 hours after notice of intention to make the order for discharge from liability to detention has been given, the designated medical practitioner furnishes to the hospital administrator a report certifying that in the medical practitioner's opinion the patient, if discharged, would be likely to act in a manner dangerous to himself, herself or to other persons—

- (a) any order for discharge from liability to detention of the patient made by that relative or authorised person in pursuance of the notice shall be of no effect; and
- (b) no further order for discharge from liability to detention of the patient shall be made by that relative or authorised person during the period of 3 months beginning on the date of the report.

(2A) A copy of the report made by the designated medical practitioner shall be forwarded to the director.

(3) In any case where a report under subsection (2) is furnished in respect of a patient or where the designated medical practitioner considers that certain conditions relating to the care of the patient on the patient's discharge should be observed, the hospital administrator shall cause the nearest relative of the patient or the authorised person to be informed, and, without derogating from the provisions of section 21(6) and (6A) and notwithstanding the provisions of section 15(3), that relative or authorised person, within the period of 28 days beginning on the day on which the relative or person is so informed, may apply to a tribunal in respect of the patient for review in accordance with this Act.

Restrictions on leave and discharge of certain persons

50.(1) Where the director is of the opinion that a patient liable to detention under this Act, if granted leave of absence or discharged from a hospital, would be likely to act in a manner dangerous to himself, herself or to other persons, and that it is necessary in the interests of the patient's

health or safety or for the protection of other persons that the patient should be restricted in the manner provided in this section, the director may, with the consent of the chief executive and with the approval of the Minister, determine that the patient shall not be granted leave of absence or discharged from hospital without the director's consent.

(1A) Such a patient is in this Act referred to as a **“restricted patient”**.

(1B) For the purposes of subsections (7) and (9B), the determination of the director, in the case of a patient who is deemed to be a restricted patient under any of the provisions of part 4, shall be deemed to be made on the day of the director's determination pursuant to that part that such person should be or continue to be a restricted patient.

(2) The director shall notify or cause to be notified the name of every restricted patient to the hospital administrator of the hospital where such restricted patient is for the time being detained, and in each case shall notify the restricted patient, if the restricted patient has attained the age of 16 years (or if the restricted patient is under the age of 16 years, on attaining that age), and also the restricted patient's nearest relative and any other person prescribed to be so notified of the director's determination in respect of that restricted patient.

(3) The hospital administrator of every hospital where restricted patients are detained shall keep a restricted patients' register in the prescribed form and shall enter therein the name of every restricted patient detained in that hospital and such other particulars as are prescribed.

(3A) The official visitor shall at least once in every month certify in the restricted patients' register that the official visitor has reviewed the register and satisfied himself or herself that all requirements of this section have been complied with.

(4) A designated medical practitioner shall not grant leave of absence to a restricted patient without the consent in writing of the director.

(5) A designated medical practitioner, hospital administrator, authorised person or nearest relative shall not make an order for discharge of a restricted patient without the consent in writing of the director.

(6) If any designated medical practitioner grants leave of absence to a restricted patient without the consent in writing of the director, or if any designated medical practitioner, hospital administrator, authorised person or

nearest relative makes an order for discharge from liability to detention of a restricted patient without the consent in writing of the director, such grant of leave of absence or order, as the case may be, shall be of no effect, and if the restricted patient has left the hospital pursuant to such grant of leave of absence or order, the restricted patient may, where the director so requires, be returned to the hospital by any police officer or any person or member of a class of person authorised in writing by the hospital administrator or any person authorised in writing by the director, or by any other person prescribed in relation thereto.

(7) Within the period of 3 months after a determination provided for in subsection (1) and thereafter in conjunction with reviews of the patient's detention made in accordance with section 21 the director shall review the director's determination in respect of that restricted patient, who shall forthwith cease to be and to be classified as a restricted patient upon a determination to that effect by the director following any such review, but otherwise the restricted patient shall continue to be and to be classified as a restricted patient.

(7A) The persons notified in accordance with the provisions of subsection (2) shall be notified of a patient's ceasing to be a restricted patient pursuant to subsection (7), and the hospital administrator shall note the restricted patients' register accordingly.

(8) Nothing in this section shall be read as preventing the discharge from hospital of a restricted patient forthwith upon the director being of the opinion that the restricted patient need no longer be detained on account of mental illness, and upon such discharge the restricted patient shall cease forthwith to be a restricted patient.

(8A) Nothing in this section shall be read as preventing an application being made to a tribunal at such time and in such manner as is provided by any other provision of this Act for patients detained under this Act—

- (a) in respect of a patient for review of the patient's classification as a restricted patient; or
- (b) by or on behalf of a patient for the patient's discharge from liability to detention.

(9) Where a determination is made by the director pursuant to the provisions of subsection (1), the restricted patient, if the restricted patient has attained the age of 16 years, the nearest relative of the restricted patient,

an authorised person or any other person prescribed may, without derogating from the provisions of section 21(6) and (6A) and notwithstanding the provisions of section 15(3), make application to a tribunal for a review of the determination in accordance with this Act.

(9A) The tribunal, on reviewing the determination, shall make such recommendations or observations as it thinks fit, and the director shall bring such recommendations or observations to the notice of the Minister.

(9B) An application referred to in subsection (9) may be made within the period of 6 months after the director's determination and in any subsequent period of 12 months.

(10) Notwithstanding anything contained in this Act, a restricted patient shall not cease to be a restricted patient or to be liable to be detained by reason only that the authority for the restricted patient's detention is not renewed as provided by this Act.

(11) In the event that the authority for detention of a restricted patient is not renewed for any reason whatsoever, the facts of the case shall be reported by the hospital administrator to the director who shall also be furnished with a report by a psychiatrist who has examined the patient within a period of 14 days prior to the report being so furnished.

(12) Where the facts of the case and the report of the psychiatrist are received by the director, the director may direct that the restricted patient be no longer a restricted patient and be discharged from liability to detention or that the authority for the restricted patient's detention be renewed, as the director thinks fit.

(13) Where the director renews the authority for the detention of a restricted patient pursuant to subsection (12), the provisions of this Act shall apply and be deemed to have applied to that restricted patient as if the authority for the restricted patient's detention had been renewed as provided by section 21.

PART 6—MISCELLANEOUS AND GENERAL

Powers over restricted persons in certain circumstances

50A.(1) The director may, in signed writing, direct the removal of any person detained in a hospital as a restricted patient from the hospital to—

- (a) any hospital, clinic, dental hospital, premises of a medical practitioner or other place prescribed for the provision to that patient of suitable medical, dental, optical or other treatment or for any other reason, whether of a similar or other description, that the director thinks sufficient; or
- (b) any court or other place to appear as a party or witness in any proceedings or for examination; or
- (c) any place specified by the director in the director's order for a purpose connected with the funeral of any person whom the director believes to be a close relative of the patient or with any other event or circumstance that in the director's opinion constitutes compassionate circumstances;

and in every such case direct the return of the patient to the hospital from which the patient is removed pursuant to the order.

(1A) An order of the director made under subsection (1) shall be lawful authority for the removal, conveyance, admission, detention and return of the person to whom the order relates in accordance with the order.

(2) Where the director is of the opinion that the assistance of a police officer is necessary or desirable for carrying out the terms of an order made under subsection (1) the director shall certify as to that opinion by endorsement on the order.

(2A) Any police officer to whose notice any order so endorsed is brought may as soon as is practicable assist in removing, conveying, admitting or returning the person to whom the order relates in accordance therewith or make or cause to be made arrangements for some other police officer to render such assistance.

(3) Where a person, being a restricted patient, is absent without leave from a hospital or has had the person's leave revoked or has escaped from legal custody it is lawful for—

- (a) any police officer; or
- (b) any person or member of a class of person authorised in writing by the person who had the patient in legal custody or by the hospital administrator concerned or by the director;

to take or retake that patient at any time and return the person to the hospital from which the person is absent without leave or to the custody from which the person escaped or to such place as is specified by the director in writing.

Incidental powers for purposes of ss 50 and 50A

50B. It is lawful for a person who seeks to exercise any power or authority conferred on the person by or under section 50 or 50A—

- (a) to enter into or upon and search any premises or place in which the patient in respect of whom the power or authority is to be exercised is or is believed by that person on reasonable grounds to be and to use such force as is necessary to make such entry and search;
- (b) to use such force as is necessary to exercise the power or authority sought to be exercised.

Relatives and nearest relatives of patients

51.(1) In this Act—

“**relative**” means, subject to section 52, any of the following, that is to say—

- (a) husband or wife;
- (b) son or daughter;
- (c) father;
- (d) mother;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;

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- (i) nephew or niece;
- (j) other relative or relatives as may be prescribed.

(2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall, subject to subsection (3), be treated as a relationship of the whole blood.

(2A) In relation to a patient—

- (a) in respect of whom an application under part 3, division 2 is sought to be made by a relative; or
- (b) who is liable to be detained under this Act;

the expression “**husband**” and the expression “**wife**” includes a man or, as the case may be, a woman who, though not legally married to the patient, has lived with the patient on a permanent and bona fide domestic basis—

- (c) in the case of a patient described in paragraph (a)—for a period not less than 3 years immediately prior to the making of the application; or
- (d) in the case of a patient described in paragraph (b)—for a period not less than 3 years immediately prior to her or his becoming liable to be detained under this Act.

(3) In this Act—

“**nearest relative**” means, subject to section 52, the person first described in subsection (1) who is for the time being surviving and, in a case to which subsection (2A) is relevant, who consents in writing to be the nearest relative, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of 2 or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

(4) Where the person who, under subsection (3), would be the nearest relative of a patient—

- (a) is not ordinarily resident within Queensland; or
- (b) being the husband or wife of the patient, is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or

- (c) not being the husband, wife, father or mother of the patient, is for the time being under 18 years of age;

the nearest relative of the patient for the purposes of this Act shall be ascertained as if that person were dead.

Guardians and custodians as nearest relatives

52.(1) Where a patient—

- (a) is, by virtue of an order made by a court in the exercise of its jurisdiction, by virtue of a declaration made under section 47 of the *Children's Services Act 1965*,¹⁹ or by virtue of a deed or will executed by the patient's father or mother, under the guardianship of a person not being the patient's nearest relative, or is under the joint guardianship of 2 persons of whom 1 is such a person as aforesaid; or
- (b) is, by virtue of an order made by a court in the exercise of its jurisdiction, or by virtue of a separation agreement between the patient's father and mother, in the custody of any such person;

the person or persons having the guardianship or custody of the patient shall, for the purposes of this Act to the exclusion of any other person, be deemed to be the patient's nearest relative.

(2) Section 51(4) shall apply in relation to a person who is, or who is 1 of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under section 51(3).

Prohibition of certain treatments

53.(1) The Governor in Council may, by regulation, declare any surgical procedure or medical or therapeutic intervention of a description specified therein to be proscribed treatment.

(2) A proscribed treatment shall not be performed or carried out on or in respect of a patient except—

¹⁹ *Children's Services Act 1965*, section 47 (Voluntary admission to care and protection)

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- (a) pursuant to the patient's written application made to the chief executive wherein the patient acknowledges that the patient has been informed of the nature of the proscribed treatment and of all the foreseen possible consequences of the proscribed treatment; and
- (b) in accordance with the chief executive's consent given in relation to a particular case.

Maximum penalty—40 penalty units.

(3) For the purpose of assisting the chief executive in the matter of giving or withholding consent, referred to in subsection (2), in a particular case there shall be established a consultative committee consisting of such persons as the Minister appoints by gazette notice and the committee's function shall be to consider and recommend to the chief executive with respect to any reference submitted to it by the chief executive as to whether, in a particular case, the chief executive should give or withhold consent to the performance of carrying out of any proscribed treatment.

(4) Where the chief executive is satisfied that if any proscribed treatment is to be performed or carried out certain conditions should be met the chief executive may in giving consent thereto specify those conditions, which shall be deemed to be part of the terms of the consent in the particular case.

Visiting and examination of patients

54.(1) For the purpose of—

- (a) advising whether an application to a tribunal should be made by or in respect of a patient who is liable to be detained under this Act in a hospital; or
- (b) furnishing information as to the condition of a patient for the purposes of such an application; or
- (c) advising as to the exercise by the nearest relative of any such patient of any power to order the patient's discharge;

a medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or who has made the application, or authorised by the nearest relative of the patient, as the case may be, may, at any reasonable time, and in accordance with arrangements made, visit the

patient and examine the patient.

(2) Any person admitted to a hospital for treatment of mental illness may be visited by a medical practitioner or a person practising in the field of mental health at a professional level who in either case is authorised to so visit by or on behalf of the patient in accordance with arrangements made in that behalf with the designated medical practitioner and the visiting medical practitioner or person may consult with the designated medical practitioner concerning the treatment of the patient.

(3) Any person admitted to a hospital for treatment of mental illness may be visited by the person's legal adviser in accordance with arrangements made in that behalf with the designated medical practitioner.

Management of the estates of patients

55.(1) The provisions of schedule 5 apply in relation to the management of the estates of patients as therein defined.

(2) The designated medical practitioner, forthwith upon the medical practitioner forming the opinion that a person admitted to a psychiatric hospital, training centre or other place referred to in section 16 or a person liable to be detained in a hospital by virtue of an application, order or direction under this or any other Act is mentally ill and incapable of managing the person's estate, shall notify the public trustee in writing the medical practitioner's opinion as well as the name of the patient and place where the patient is then to be found.

(3) In subsection (2)—

“managing the person's estate” means undertaking the custody, management and administration of the property and affairs of the patient.

Forgery of documents and use of forged documents

57.(1) Any person who forges any of the following documents, that is to say—

- (a) an application under this Act;
- (b) a medical recommendation or report under this Act;

- (c) any other document required or authorised to be made for any of the purposes of this Act;

is guilty of an offence.

(2) Any person who, with intent to deceive, uses, permits or allows another person to use, or has in the person's possession a document referred to in subsection (1) that the person knows to have been forged, or makes, uses, permits or allows another person to use, or has in the person's possession a document so closely resembling any such document as to be calculated to deceive, is guilty of an offence.

(3) In this section—

“**forge**” has the same meaning as in section 486 of the Criminal Code.

Maximum penalty—8 penalty units or imprisonment for 6 months.

Wilfully making, or making use of, false entry

58. Any person who wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement that the person knows to be false is guilty of an offence.

Maximum penalty—16 penalty units or imprisonment for 6 months.

Ill-treatment of patient or resident

59.(1) Any person who—

- (a) being associated with the treatment of patients in a hospital or being a member of the staff of a hospital or otherwise employed in or about a hospital or being in charge or control of a hospital or any part of a hospital, ill-treats, wilfully neglects, or molests a patient for the time being receiving treatment for mental illness in or at the hospital, whether as an in-patient or an outpatient; or
- (b) being associated with the training or care of residents of a training centre or being a member of the staff of a training centre or otherwise employed in or about a training centre or being in charge or control of a training centre or any part of a training

centre, ill-treats, wilfully neglects, or molests a resident for the time being receiving training or care in that training centre;

is guilty of an offence.

(2) Any person who ill-treats or wilfully neglects a patient or resident who is for the time being in the person's custody or care (whether by virtue of any legal or moral obligation or otherwise) is guilty of an offence.

Maximum penalty—16 penalty units or imprisonment for 6 months.

Assisting patients to absent themselves without leave

60.(1) Any person who induces or knowingly assists a patient—

- (a) who is for the time being liable to be detained under this Act in a hospital, to absent himself or herself without leave; or
- (b) who is in legal custody by virtue of section 66, to escape from such custody;

is guilty of an offence.

(2) Any person who harbours a patient who, to the knowledge of such person, is absent without leave or is otherwise at large and liable to be re-taken under this Act, or who gives any such patient any assistance with intent to prevent, hinder or interfere with the patient being taken into custody or returned to the hospital or other place where the patient ought to be or from which the patient has absented himself or herself, is guilty of an offence.

Maximum penalty—16 penalty units or imprisonment for 6 months.

Obstruction

61. Any person who—

- (a) refuses or fails to allow the inspection of any premises by a person authorised by or under this Act to so inspect; or
- (b) refuses or fails, without reasonable cause, to allow the visiting, interviewing or examination of any person by a person authorised in that behalf by or under this Act; or
- (c) refuses or fails to produce any document or record for the

inspection of a person authorised by or under this Act to require such production when such person so requires such production;
or

- (d) otherwise obstructs a person in the exercise of the person's functions under this Act;

is guilty of an offence.

Maximum penalty—8 penalty units or imprisonment for 3 months.

Offence provision of the Criminal Code not affected

62. The provisions of this Act relating to offences are in addition to and not in substitution for or in derogation of the provisions of the Criminal Code or any other Act.

Penalties

63.(1) Any person who—

- (a) contravenes or fails to comply with any provision of this Act or any order, direction or requirement made or given on or to the person under this Act; or
- (b) wilfully fails to fulfil any undertaking given by the person for the purposes of this Act;

is guilty of an offence against this Act.

(2) Any person guilty of an offence against this Act is liable, unless some other penalty is provided for that offence, to a penalty not exceeding 4 penalty units.

(3) Proceedings for an offence against this Act shall be before a stipendiary magistrate sitting alone.

(4) Proceedings for an offence against this Act may be instituted at any time within 12 months after the commission of the offence or within 6 months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

(5) Subject as aforesaid, all offences against this Act may be prosecuted in a summary way under the *Justices Act 1886*.

Application of Traffic Act to vehicles in hospital or training centre grounds

64.(1) In this section—

“hospital grounds” means the land on which is situated a psychiatric hospital or other place referred to in section 16 including all land appurtenant thereto and, where the psychiatric hospital or other place is situated on any reserve within the meaning of the *Land Act 1962*, the whole of that reserve.

“training centre grounds” means the land on which is situated a training centre including all land appurtenant thereto and where the training centre is situated on a reserve within the meaning of the *Land Act 1962*, the whole of that reserve.

“vehicle” means a vehicle within the meaning of the *Traffic Act 1949*.

(2) Subject to such exceptions as may be prescribed, any part of any hospital grounds or training centre grounds which at any time is used by a vehicle shall, in relation to and for the purposes of that use, be deemed to be a road within the meaning of the *Traffic Act 1949*, and the provisions of that Act and the regulations thereunder, subject as aforesaid, shall apply and extend accordingly.

(3) The provisions of this section shall apply for the purpose of assisting in the regulation and control and the prohibition of the use of vehicles in hospital grounds or training centre grounds, but shall not apply for any other purpose whatsoever and shall not prejudice or otherwise affect the provisions of any other Act and shall not limit the power to make regulations under this Act for the purpose of regulating, controlling, and prohibiting traffic (or for any of these purposes) in relation to all or any hospital grounds or training centre grounds.

Evidentiary provisions

65. In any proceeding under or for the purposes of this Act—

- (a) any certificate purporting to be under the hand of the director that any place described therein in such manner as the director thinks sufficient to identify the same is a psychiatric hospital, a training centre or other place referred to in section 16, a security patients' hospital, a public hospital, a private hospital, a place of safety, or

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other prescribed place within the meaning of this Act, or that any land, described in such manner as the director thinks sufficient to identify the same, is a part of hospital grounds or training centre grounds, as specified therein, within the meaning of section 64, shall, upon its production, be evidence of such matter;

- (b) it shall not be necessary to prove the appointment of the chief executive or the director or the deputy director, or of any official visitor or of any member or the chairperson of any tribunal, or of any police officer, or of any authorised person;
- (c) a signature purporting to be that of the director, a hospital administrator, a designated medical practitioner, a medical practitioner in charge of the treatment of a person or any other medical practitioner shall be taken to be the signature it purports to be until the contrary is proved;
- (d) any certificate purporting to be under the hand of the director of the receipt or non-receipt of any notice or application required or authorised or permitted by this Act to be given or made to the director shall be evidence of the matter or matters certified to therein;
- (e) a writing purporting to be a medical certificate or medical recommendation shall be taken to be the medical certificate or medical recommendation it purports to be until the contrary is proved;
- (f) a certificate purporting to be under the hand of the medical superintendent of a hospital—
 - (i) that a patient has been admitted under this Act to the hospital; or
 - (ii) as to the date of the patient's admission to the hospital; or
 - (iii) as to the period of the patient's stay in the hospital;shall be evidence of the matters contained therein;
- (g) a document purporting to express a finding or determination made by a tribunal in respect of a patient and purporting to be signed by the chairperson of the tribunal (whether the chairperson at the time the finding or determination was made or at the date of the document) or signed by a person authorised by such

chairperson in that behalf shall be evidence of the making of the finding or determination in respect of that patient and of the matters contained in the document.

Provisions as to custody, conveyance, and detention

66.(1) Any person required or authorised by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in any place shall, while being so conveyed, detained, or kept, as the case may be, be deemed to be in legal custody.

(2) In subsection (1)—

“**convey**” includes any other expression denoting transfer or removal from 1 place to another.

Exercise of powers by hospital administrator

68.(1) Unless otherwise expressly provided by this Act, all or any of the functions and powers conferred by this Act on any hospital administrator, in the case of a private hospital, a public hospital, a psychiatric hospital or a training centre, may be discharged or exercised by a person or a member of a class of person authorised in writing in that behalf by the hospital administrator.

(2) A hospital administrator being a partnership of more than 3 members may exercise all or any of the functions and powers referred to in subsection (1) through any 3 or more members who may authorise in writing any person or persons to exercise such functions and powers of the hospital administrator.

(3) Where by this Act any document or writing is required or permitted to be given to or received by a hospital administrator, then such document or writing is deemed to have been so given or received if it is given to or received by the person for the time being in control of the hospital in question or other person as may be prescribed.

Protection for acts done in pursuance of this Act

69.(1) No matter or thing done or omitted to be done by any person in good faith and without negligence in pursuance of this Act or in the

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execution of the person's functions, powers, or duties under this Act shall subject that person to any liability in respect thereof.

(1A) In no case shall the use in the execution of a function, power or duty under this Act of force that was reasonable in the circumstances and did not cause and was not likely to cause death or grievous bodily harm be held to render the person who used the force or any person assisting the person therein liable to be charged with any offence.

(2) When any question arises as to whether any liability for any act or omission, the subject of any proceedings, is negatived under the provisions of subsection (1) or (1A) and it appears that the act or omission of the person proceeded against was in pursuance of this Act or in the execution of any of the person's functions, powers, or duties under this Act, the burden of proof of negligence and the absence of good faith shall lie upon the person taking those proceedings.

(3) Any proceedings taken against any person for any act or omission which apparently was in pursuance of this Act or in the execution of any of the person's functions, powers, or duties under this Act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging negligence or, as alleged, want of good faith, or both, or, without limiting the provisions of any other Act or any rule thereunder, that the proceedings are frivolous or vexatious.

(4) Nothing in this section shall be so construed as to deprive any person of any defence which the person would have independently of this section.

Nature of proceedings before Mental Health Tribunal

69A.(1) Proceedings before the Mental Health Tribunal shall be deemed to be judicial proceedings.

(2) Unless the judge conducting the tribunal determines otherwise in the case of a particular witness, oral evidence of a witness appearing before the Mental Health Tribunal shall be given upon oath, affirmation or declaration or under some other sanction authorised by law.

(3) The provisions of this section shall not be construed to prejudice the exercise by the Mental Health Tribunal of powers exercisable by it as a commission of inquiry pursuant to section 28C(4) or the exercise by the

judge constituting the tribunal of powers exercisable by the judge as chairperson of such a commission.

Powers of Mental Health Tribunal in respect of patient

70.(1) The Mental Health Tribunal may, of its own motion or on the application of any person, by its order direct 1 or more persons whom it may select for the purpose to visit and examine any person who it believes or suspects on reasonable grounds is detained as mentally ill in any hospital or other place or by any person and to inquire into and report on such matters relating to the person believed or suspected to be detained, as it thinks fit.

(2) The Mental Health Tribunal may, of its own motion or on the application of any person, whether or not an order such as is referred to in subsection (1) has been made, by its order direct the hospital administrator of any hospital or the occupier or resident of any house or other place in which it believes or suspects on reasonable grounds that a person is detained as mentally ill, or any person having custody or care of such a person, to bring the person believed or suspected to be detained before it for examination at a time specified in the order.

(2A) The Mental Health Tribunal is empowered to summon by way of subpoena any person to appear to testify or to produce documents in connection with the examination concerning any person to whom an order made by it under subsection (2) relates.

(3) If on examination of a person ordered to be brought before it and upon consideration of evidence adduced to it in connection with the examination the Mental Health Tribunal is satisfied that the person—

- (a)** is not suffering from mental illness of a nature or to a degree that warrants the person's detention in hospital and does not need to be detained in the interests of the person's own welfare or with a view to the protection of other persons; or
- (b)** is unlawfully detained as a patient;

the Mental Health Tribunal shall by its order direct that the person be immediately discharged from detention by the person who is detaining the person unless the person is lawfully detained for some other cause.

(4) In determining whether a person's mental condition requires that the

person should be detained as a patient the Mental Health Tribunal may take into consideration the fact that a relative or friend of the person is able and willing to exercise proper care of and control over the person and may, as a condition of ordering the person's discharge from detention, require an undertaking in writing from the relative or friend that the relative or friend will exercise proper care of and control over the person for such time and in such manner as the tribunal requires and is specified in the undertaking.

(5) A person who wilfully fails to obey a subpoena issued by the Mental Health Tribunal shall be deemed to be guilty of contempt of the Supreme Court and may be dealt with by the judge who constitutes the tribunal or any other judge of the Supreme Court in respect of the person's disobedience as if the subpoena had been issued out of that court.

(6) This section shall not be construed to prejudice any other remedy available to or other proceeding by or on behalf of a person who is claimed to be unlawfully detained.

Authority of Mental Health Tribunal's orders

71.(1) An order of the Mental Health Tribunal made under section 70(1) constitutes lawful authority to the person to whom it is directed and to every person acting in aid of the person to enter upon and into any premises or place where the person believes or suspects on reasonable grounds the person to whom the order relates is detained, using for that purpose such force as is necessary, and to inquire of any person found therein on such matters as the person believes to be relevant to the matters on which the person is required by the order to report.

(2) A person who refuses or fails to answer a question directed to the person by a person who is making inquiry pursuant to an order of the Mental Health Tribunal is guilty of an offence against this Act.

(3) A person directed by order of the Mental Health Tribunal to inquire into any matter may call to the person's aid any police officer or other person who in the person's opinion may be of assistance to the person therein.

(4) Where any person is before the Mental Health Tribunal for examination as to the mental condition of that person it is lawful for any legally qualified medical practitioner selected by the tribunal to make such examination of and perform such tests on that person as the medical

practitioner considers necessary for a proper assessment of that person's mental condition and to use therein such force as is necessary for the purpose.

Regulations

72.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made with respect to the matters set out in schedule 6.

(3) A regulation may provide—

- (a)** for the payment of fees and expenses; and
- (b)** that the amount of fees or expenses payable is to be the amount approved by the Governor in Council.

PART 7—FINANCIAL PROVISIONS

Definition for pt 7

72A. In this part—

“administrator” means the hospital administrator of a psychiatric hospital, security patients' hospital or other place established under section 16(1).

Patients' Trust Fund

73.(1) All amounts received by an administrator in trust for patients must be paid into a fund called the Patients' Trust Fund.

(2) The administrator must keep a separate account in the fund for each patient who has money in the fund.

(3) The administrator may withdraw amounts from a patient's account in the fund to meet charges for the patient's maintenance as prescribed by regulation.

(4) The administrator must tell the patient if it withdraws an amount under subsection (3).

Amenities account

73A.(1) Interest received on amounts in the Patients' Trust Fund must be paid into a separate amenities account in the fund.

(2) Amounts to the credit of the account must be used to provide things for the benefit of patients in general in the hospital, or a part of the hospital, administered by the administrator.

(3) The amenities account may contain other amounts.

(4) An amount more than the amount prescribed by regulation must not be withdrawn from the amenities account to purchase plant or equipment or to construct capital works unless the chief executive approves the withdrawal.

(5) The amenities account must not be used to pay costs associated with the administration of the Patients' Trust Fund.

Examples of things that may be provided under subsection (2)—

- books, newspapers, journals and other publications for patients
- items for personal care, including haircuts and non-standard toiletries
- sightseeing and other social activities
- improvements and additions to patients' living and recreation facilities, including buildings and fixtures
- equipment and furniture to improve patients' quality of life.

Patients' advisory committee

73B.(1) The administrator must establish a committee to advise on how amounts in the amenities account are to be used.

(2) The majority of the members of the committee must be patients of the hospital who have accounts in the Patients' Trust Fund.

(3) The administrator must consider, but need not take, the committee's advice.

PART 8—TRANSITIONAL PROVISIONS

Division 1—Provisions for Act before commencement of Health and Other Legislation Amendment Act 1998

Mental Health Act 1962 references

77. In an Act or document, a reference to the *Mental Health Act 1962* may, if the context permits, be taken to be a reference to this Act.

Mental Health Act 1974 references

78. In an Act or document, a reference to the *Mental Health Services Act 1974* is a reference to this Act.

References to certain terms under repealed Acts

79. In an Act or document—

- (a) a reference to any of the following terms (or a similar term) may, if the context permits, be taken to be a reference to a patient within the meaning of this Act—
 - a lunatic
 - a mentally ill person
 - an insane person
 - a person not of sound mind
 - a person of unsound mind; and
- (b) a reference to either of the following terms may, if the context permits, be taken to be a reference to a psychiatric hospital—
 - a mental hospital
 - a special hospital.

Division 2—Provision for Health and Other Legislation Amendment Act 1998

Chief executive's first report under s 8 to include a report by chief health officer for period when chief health officer administering Act

80. The report the chief executive must first give the Minister under section 8 must include a report by the chief health officer about the chief health officer's administration of this Act since the end of the period covered by the report that was the last report under the section before it was amended by the *Health and Other Legislation Amendment Act 1998*.

SCHEDULE 5

section 55

Meaning of terms**1.** In this schedule—**“court”** means the Supreme Court or a judge thereof.**“designated medical practitioner”**, in relation to—

- (a) a patient liable to be detained in a public hospital and classified under the regulations made pursuant to the *Health Services Act 1991* as a public patient—means a medical practitioner appointed by the hospital administrator;
- (b) a patient liable to be detained in any hospital or other place not being a public hospital or a private hospital—means a medical practitioner appointed by the director;
- (c) a patient admitted to and for the time being remaining in a psychiatric hospital or any other place established by the Governor in Council pursuant to section 16 and not liable to be detained therein—means a medical practitioner appointed by the director.

“manage the estate”, in relation to any patient, means undertake the custody, management and administration of the property and affairs of the patient.**“patient”** means a person other than a protected person—

- (a) who is declared by the court to be mentally ill and incapable of managing the person’s estate or a person of whose estate or person the court has appointed a committee pursuant to clause 4;
- (b) who is notified to the public trustee pursuant to the provisions of section 55 by the designated medical practitioner as being, in the designated medical practitioner’s opinion, mentally ill and incapable of managing the person’s estate;
- (c) who is notified to the public trustee by the superintendent or person charged with the control of a prison where the person is

 SCHEDULE 5 (continued)

detained as being, in the opinion of a psychiatrist, mentally ill and incapable of managing the person's estate; or

- (d) (without limiting the provisions of paragraphs (b) and (c)) who is notified to the public trustee by or on behalf of the hospital administrator or person charged with the control of a hospital or other place (in which the person, having been duly admitted, is an inmate and is receiving treatment for mental illness) as being, in the opinion of a psychiatrist, mentally ill and incapable of managing the person's estate.

“property” includes real and personal property of every description or kind whatsoever, any estate or interest therein, any debt, any thing in action and any other right or interest whether legal or equitable (including, without prejudice to the generality of the foregoing, rights as to rescission, avoidance or restitution).

“protected person” means a person who or whose estate (in whole or in part) is the subject of a protection order or a certificate of disability under part 6 of the *Public Trustee Act 1978*.²⁰

“public trustee” means the public trustee constituted under the *Public Trustee Act 1978*.

“stock” includes stock (whether debenture, inscribed or other), shares, debentures, units and notes (secured or unsecured) and other like investments.

General function of the public trustee in relation to the estate of a patient

2.(1) Subject to this schedule, the public trustee shall, without further or other authority, manage the estate of every person who is a patient except where the court otherwise directs.

(2) The public trustee shall supervise and enforce the performance of the obligations and duties of all committees of mentally ill persons whether

²⁰ *Public Trustee Act 1978*, part 6 (Management of estates of incapacitated persons)

SCHEDULE 5 (continued)

appointed before or after the commencement of the *Mental Health Act 1974*.

Particulars to be furnished to public trustee

3.(1) Within 14 days of a person admitted to a hospital, psychiatric hospital, training centre or other place referred to in section 16 becoming a patient, the hospital administrator shall cause to be given to the public trustee—

- (a) the name of the patient and the patient's age;
- (b) copies of medical certificates relating to the patient's admission;
- (c) the names and particulars of the places of residence of the patient's nearest relative or nearest relatives.

(2) Every hospital administrator and official visitor shall communicate to the public trustee all particulars that may come to his or her knowledge respecting the property of any patient and, if the hospital administrator or official visitor has reason to believe that the property of any patient is not duly protected, or that the income thereof is not duly applied for the patient's maintenance or benefit, the hospital administrator or official visitor shall report thereon to the Minister as well as to the public trustee.

Committee

4.(1) The court may, on application of the public trustee or any other person, appoint the public trustee or any other person or persons as the committee of the estate of any patient.

(2) Where it is proved to the satisfaction of the court that a person is mentally ill and incapable of managing the person's estate, the court may—

- (a) make a declaration to that effect; and
- (b) direct a reference to the public trustee to make inquiries concerning the property of the person; and
- (c) if necessary, appoint a committee of the person's estate and, where the court considers it desirable to do so, in addition, or in

SCHEDULE 5 (continued)

the alternative, a committee of his or her person.

(3) The court may at any time, on the application of the committee, or of the public trustee, or of any other person appearing to the court to have a proper interest, on proof that there is good cause for doing so, appoint any person or persons as the committee of the estate or person in lieu of the committee previously appointed and may discharge the committee previously appointed from further acting as such and may make all further orders necessary to give proper effect to such appointment and discharge.

(4) The commission *de lunatico inquirendo* is abolished.

(5) The court shall not appoint any person other than the public trustee as the committee of the estate of any person unless the court finds that there is sufficient reason why such person should be so appointed in preference to the public trustee.

Application to be by petition

5.(1) Applications to the court for the appointment of a committee shall be by petition supported by affidavit.

(2) Copies of the petition and affidavit shall be served in the prescribed manner upon the person alleged to be mentally ill and incapable of managing the person's estate, upon the public trustee (unless the public trustee is the petitioner) and upon any other person whom the court may direct to be served.

(2A) It shall not be necessary to serve any person by reason only of the relationship of that person to the person alleged to be mentally ill.

(3) An application to the court for the appointment of a person other than the public trustee as committee of the estate of the person the subject of the application shall be made to the court within 6 months after the person the subject of the application has been first examined and found by a medical practitioner to be mentally ill and incapable of managing the person's estate or within such further period as the court may allow in a particular case.

(4) The public trustee shall be entitled to be heard on any such application and the public trustee's costs (including the costs of obtaining such reports

SCHEDULE 5 (continued)

as the public trustee deems desirable) shall be allowed to the public trustee out of the estate of the person in respect of whom the petition is made.

Termination of management

6.(1) The authority of the public trustee to manage the estate of a patient shall cease—

- (a) when the patient dies and the public trustee receives notice thereof as prescribed; or
- (b) when a committee, not being the public trustee, of the estate of the patient is appointed; or
- (c) when the court or a tribunal so orders; or
- (d) in the case of a patient referred to in section 55—not more than 14 days after the public trustee is notified by the designated medical practitioner that the patient is able to manage the patient's estate; or
- (e) when the public trustee is sooner satisfied that the patient is able to manage the patient's estate.

(1A) The court or a tribunal may order that the authority of the public trustee to manage the estate of a patient shall cease if, on application by the patient or any other person appearing to the court or tribunal to have a proper interest, it is proved to the satisfaction of the court or tribunal that the patient is capable of managing the patient's estate.

(1B) However, a tribunal shall not hear any application in relation to a patient—

- (a) in respect of whom an application has previously been made to the court and has been disposed of or is still pending or in respect of whom the court has previously appointed a committee or made a declaration that the patient is mentally ill and incapable of managing the patient's estate; or
- (b) if a period of less than 12 months has elapsed since a previous application in respect of that patient has been dealt with by a tribunal.

SCHEDULE 5 (continued)

(2) The court may at any time, on the application of the patient, or of the committee, or of any other person appearing to the court to have a proper interest, on proof that a patient of whose estate or person a committee has been appointed is capable of managing the patient's estate, make a declaration to that effect and discharge any committee of the patient's estate or person from acting further as such.

(2A) Unless the court has discharged a committee from acting further as such, any committee appointed shall continue in office until the patient of whose estate he or she is or they are the committee dies.

(3) Where the court has made an order that the authority of the public trustee to manage the estate of a patient should cease or has declared that a patient is capable of managing the patient's estate and discharged the committee of the patient's estate, the court may make all further orders necessary to give effect to such order or declaration and to release the estate of the person concerned from the management of the public trustee or from the control of the committee.

Persons found mentally ill in places beyond the State

7. When the court is satisfied upon the report of the public trustee or otherwise that any person has been found to be mentally ill and incapable of managing the person's estate (whether by that verbal formula or otherwise) by any competent court or commission in any place outside Queensland, the court may appoint the public trustee or any other person or persons a committee of such first mentioned person's estate or person, or both, and may give such other orders in respect of the management of the person's estate or person as it may consider necessary.

Order in protective jurisdiction in reciprocating State to be effective in Queensland on being resealed

8.(1) In this clause—

“reciprocating State” means any State, country or territory which has been declared to be a reciprocating State by a regulation made under clause 40 of schedule 3 to the *Mental Health Act 1962* or clause 41 of this schedule, repealed by the *Public Trustee Act 1978*, or clause 41 of

SCHEDULE 5 (continued)

this schedule, repealed by the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*, or which has been declared to be a reciprocating State by a regulation made under this clause.

(2) If at any time the Governor in Council is satisfied that the laws in force in any State, country or territory outside Queensland are such as to enable powers to be exercised in that State, country or territory in the case of patients residing in Queensland substantially similar to the powers conferred by subclause (3) in the case of persons who are mentally ill (which expression includes persons of unsound mind and lunatics) and residing in that State, territory or country, the Governor in Council may, by regulation, declare that State, territory or country to be a reciprocating State for the purposes of this clause.

(3) When an order or declaration made by a court of competent jurisdiction under the laws of a reciprocating State in the exercise of its protective jurisdiction (or jurisdiction in lunacy or by whatever other name called) is produced to and a copy thereof is deposited with the registrar of the Supreme Court, the order or declaration shall, upon payment of such fees and duties as are prescribed, be sealed with the seal of the Supreme court and shall have the same force, effect and operation, and every person acting thereunder shall have and may exercise the same powers and shall perform the same duties and be subject to the same liabilities in Queensland, as if such order or declaration had been made by the court.

(3A) However, a person other than the public trustee appointed by such an order or declaration shall not act thereunder after it has been so sealed until the person's appointment has been confirmed by the court; and the court may confirm the appointment, or may confirm it upon such terms as the court thinks fit or may refuse to confirm it.

(4) This clause applies to such orders and declarations as are referred to in subclause (3) whether made before or after the commencement of the *Mental Health Act 1974*.

(5) Nothing herein shall limit the operation of clause 7.

SCHEDULE 5 (continued)

Supervision of committee

9.(1) No person other than the public trustee shall be appointed as the committee of the estate of any person in pursuance of this Act nor shall the appointment of any person pursuant to clause 7 be confirmed until the person has given to the public trustee such security as the court directs and approves for the due management of the estate.

(2) Such security may be a bond, with or without a surety or sureties, or such other security as the court directs and approves.

(3) The court may at any time, on the application of the public trustee, require the committee to give to the public trustee further or other security for the due management of the estate.

(4) The court may at any time give leave to the public trustee to enforce any such security and the public trustee shall thereupon proceed by action or otherwise to enforce the same accordingly.

(4A) All moneys received by the public trustee pursuant to subclause (4) shall be deemed part of the estate of which the person who gave the security is or was the committee, and all costs and expenses so incurred by the public trustee shall be paid out of the said estate.

(5) The public trustee may commence or institute proceedings against such committee for any breach of duty and may apply to the court *ex parte* for an injunction to restrain any such breach or any threatened breach of duty.

Statement as to estate to be rendered to public trustee

10.(1) It shall be the duty of every person, other than the public trustee, who has been appointed the committee of the estate of any person in pursuance of this Act, or who has had the person's appointment in regard to the estate of any person confirmed pursuant to clause 7, to render to the public trustee, at such times and in such form as the public trustee requires, a statement showing the property comprised in the estate and the manner in which that property has been managed and applied and the condition of that property and such other particulars relating to the said estate as are required by the public trustee.

SCHEDULE 5 (continued)

(2) Every such statement shall be verified by the affidavit of the committee and, where the public trustee so directs, shall be supported by vouchers.

(3) If any committee fails or refuses to render any such statement verified as aforesaid in the manner and at the times so required every member of such committee shall thereby commit an offence against this Act.

Maximum penalty—20 penalty units.

(4) The public trustee may cause any such statement or the accounts relating thereto to be examined and reported upon by any person appointed by the public trustee in that behalf and the costs of such examination and report shall be payable out of the estate to which the statement or account relates by the committee to the public trustee.

Percentage of moneys in hand of committee to be paid to public trustee

11.(1) When any person other than the public trustee is appointed the committee of any estate in pursuance of this Act, there shall be payable out of that estate by the committee thereof to the public trustee, at such times as the public trustee directs, a sum calculated at the rate of 1% or at such other rate as the court may determine on all moneys collected by or coming under the control of the committee and forming part of the estate.

(2) All moneys so paid to the public trustee shall form part of the public trustee's account.

Reference to court by public trustee

12. The public trustee may file a report in the court in respect of any question arising in regard to the management by a committee of an estate and the court may—

- (a) receive the report in evidence and have regard to the matters contained therein; and

SCHEDULE 5 (continued)

- (b) require the committee to appear before it; and
- (c) make any order that, in the circumstances, it considers desirable.

Effect of appointment of committee

13.(1) Where a person other than the public trustee has been appointed as the committee of the estate of a patient under this Act, the committee shall, subject to any order of the court, by virtue of such appointment, be authorised to—

- (a) take possession of and control and manage all the property of the patient; and
- (b) pay debts and other obligations of the patient; and
- (c) demand, receive and recover all moneys payable or belonging to the patient; and
- (d) let any property of the patient for any period not exceeding 12 months; and
- (e) do such other things as the court in the order appointing the committee or subsequently may direct.

(1A) However, the committee shall not dispose of property, incur any liability or expend any money of the patient (other than by investment of funds in which by law trustees are authorised to invest) where, at any one time, the value of the share or interest of the patient in the property to be disposed of, the liability to be incurred or the amount to be expended exceeds \$20 000 without the specific authority of an order of the court in that particular matter.

(2) The court may, at the time of appointment of the committee or from time to time thereafter, on the application of the committee, the patient or any other person appearing to the court to have a proper interest, give such directions to the committee as the court considers desirable, including general directions as to what powers shall or shall not be exercised by the committee or specific directions as to any particular matter.

(3) Without prejudice to the generality of subclause (2) the powers of the court under this clause extend to giving directions calculated to provide for

SCHEDULE 5 (continued)

or achieve the following purposes—

- (a) the maintenance or benefit of the patient;
- (b) the maintenance or benefit of other persons (whether relatives of the patient or not) for whom a reasonable person, not a patient but otherwise in the position of the patient, might be expected to provide;
- (c) any purpose which a reasonable person, not a patient but otherwise in the position of the patient, might be expected to seek to achieve;

and for the reimbursement, with or without interest, of any person for any expenditure incurred for any of those purposes.

(4) The patient shall be incapable, without the leave of the court, of making any transfer, lease, mortgage or other disposition of the patient's property, or any part thereof, or of entering into any contract (other than for necessities) affecting the same and every such transfer, lease, mortgage or contract, made without such leave, shall be voidable by the patient or by the committee on the patient's behalf.

(5) The court may, by order, give leave to the patient to make any transfer, lease, mortgage, or other disposition of the patient's property or of any part thereof or to enter into any contract, if the court is satisfied that such transfer, lease, mortgage, disposition or contract is for the patient's benefit and that the patient consents thereto with adequate understanding of the nature thereof.

(6) Nothing in this schedule shall affect the law relating to the validity of wills or other testamentary dispositions.

(7) Nothing in this schedule shall invalidate any contract, transfer, lease, mortgage or other disposition entered into or made by a patient if the other party thereto proves that he or she acted in good faith and for valuable consideration and without knowledge that a committee of the patient's estate had been appointed.

(8) Except as expressly provided by this clause, nothing in this schedule shall affect any other provision of law rendering void or voidable any

SCHEDULE 5 (continued)

contract, transfer, lease, mortgage, or other disposition of property entered into or made by a patient.

Transfer of stock of patient

14.(1) Where any stock is standing in the name of or is vested in a patient beneficially entitled thereto, or is standing in the name of a committee of the estate of a patient in trust for the patient, or as part of the patient's property, and the committee dies intestate, or himself or herself becomes mentally ill, or is out of the jurisdiction of or not amenable to the process of the court, or it is uncertain whether the committee is living or dead, or he or she fails to transfer the stock, and to receive and pay over the dividends or income thereof to a new committee for a space of 14 days after a request in writing for that purpose made by the public trustee or a new committee, the court may order some fit person to transfer the stock to the name of the public trustee or a new committee or otherwise, and also to receive and pay over the dividends or income thereof or such sum or sums of money, and in such manner, as may be ordered by the court.

(2) Where any stock is standing in the name of or vested in a person residing out of Queensland, the court, upon proof to its satisfaction that a declaration or order to the effect that such person is a mentally ill person has been made according to the laws of the place where the person is residing and that the person's personal estate has been vested in a public trustee or other person appointed for the management thereof according to the laws of that place, may order some fit person to make such transfer of the stock to the name of such public trustee or other person appointed as aforesaid, or otherwise, and also to receive and pay over the dividends or income thereof, as may be ordered by the court.

(3) A court order made pursuant to this clause is lawful authority for the person to whom it is directed to do all such acts as are referred to in the order and all persons concerned shall do all such acts as are necessary to give effect to the order.

SCHEDULE 5 (continued)

Court may order provision made out of estate where property sold etc.

15.(1) Where any property of a patient who is deceased has been dealt with under this schedule, the *Mental Hygiene Act 1938* or the *Mental Health Act 1962* (whether by sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property, the transfer of money from one account to another or otherwise howsoever) and, under the patient's will or any codicil thereto or upon the patient's intestacy, or by any disposition taking effect on the patient's death, any other person would have taken an interest in the patient's property but for such dealing, the court may, in its discretion, and notwithstanding anything contained in any other Act or law or rule or practice or process of law, on application by or on behalf of the other person or his personal representative, order that such provision as the court thinks fit (not exceeding, in the opinion of the court, in value the benefit that the other person would have taken but for the dealing) shall be made out of the estate of the deceased patient for the other person or the patient's estate.

(2) The provisions of sections 41(2) to (11), 42 to 44 of the *Succession Act 1981* shall apply to any such application and any order made thereon as if such application were an application under part 4 of the said Act by a person entitled to make such application.

(3) Nothing in this clause limits the operation of section 89 of the *Public Trustee Act 1978*.²¹

Court may order costs

16. The court may make such order as it thinks proper as to the costs, charges and expenses of and incidental to any proceedings authorised by this schedule.

²¹ *Public Trustee Act 1978*, section 89 (Court may order provision made out of estate where property sold etc.)

SCHEDULE 5 (continued)

Adaptation of pre-existing provisions as to procedure

17. Where in any Act, rule of court or instrument reference is made to a commission of insanity, or to a writ in the nature of a writ *de lunatico inquirendo*, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the proceedings hereby respectively substituted for them shall be taken to be intended by and comprehended in such reference.

SCHEDULE 6

SUBJECT MATTERS FOR REGULATIONS

section 72

Persons administering Act

1. The functions, powers and duties of persons engaged in the administration of this Act.

Authorised persons

2. The appointment of authorised persons, including mode, purpose and circumstances of appointment, by whom appointed, and any qualifications or disqualifications with respect to appointment.

Reports by official visitors

3. Without limiting the subject matter in respect of matters prescribed pursuant to sections 12 and 13, the reports of official visitors including their transmission or furnishing pursuant to this Act and requirements in respect of their making and content.

Tribunals

4.(1) The carrying out of the objects and purposes of this Act in relation to tribunals.

(2) Without limiting the generality of the foregoing, the nature and subject matter of tribunal proceedings, conferring on any tribunal, chairperson or other member ancillary powers in connection with its, his or her functions under this Act, the functions and duties of officers appointed for the effectual operation of a tribunal, and the conferring and imposing on tribunals and members of such powers and duties as may be considered necessary or desirable for the purpose of the exercise by such tribunals and members of their functions and of—

SCHEDULE 6 (continued)

- (a) providing a safeguard against the abuse of the compulsory powers of detention conferred by this Act in relation to patients admitted to hospitals; and
- (b) providing, subject in any case to the patient's own welfare and the protection of others, a safeguard against the use of the compulsory powers of detention conferred by this Act if suitable treatment and care can be provided without compulsion; and
- (c) providing assistance for the administration of this Act in the interests of patients as well as for the protection of other persons.

(3) The procedure and practice of tribunals including, without limiting the generality of the power to make regulations with respect thereto, fees to be allowed or charged and expenses to be paid, forms for matters and proceedings, the keeping of books, entries, records, documents and accounts, the transfer of proceedings from one tribunal to another, representation and prohibition and limitation of representation before tribunals, the presence at or exclusion from tribunal hearings or proceedings of members of the public, the prohibition of publication of reports of tribunal hearings or proceedings and of names of persons concerned in hearings or proceedings, the empowering of a tribunal to have examinations made by specialists within the meaning of the *Medical Act 1939* and authorising and compelling the attendance of witnesses before such tribunal and the administering of oaths to and the taking of affirmations and declarations of witnesses before tribunals.

Administration of certain hospitals

5. The administration and good government of psychiatric hospitals, security patients' hospitals, training centres and other places referred to in section 16.

Hospital staffs

6. The functions, powers and duties of officers (medical officers and otherwise), nurses and employees in relation to the treatment and control of patients in hospitals.

SCHEDULE 6 (continued)

Treatment of patients

7. Treatment and supervision of patients in hospitals and matters and procedures related and incidental thereto.

Training of nurses etc.

8. Appointment, training, examination and termination of appointment of student nurses and matters and procedures related and incidental thereto.

The nature of arrangements

9. The nature and making of arrangements pursuant to section 17 and the treatment of patients informally admitted.

Transfer, production etc. of patients

10. The transfer, removal, discharge and conveyance of patients under and for the purposes of this Act, the production of any patient detained in a hospital under this Act before any court, tribunal or person as a party or witness to any proceeding or for examination, the assistance of police officers in relation to all or any of the foregoing, and procedures to be followed in relation to all or any of the matters referred to in this clause.

Patients absent without leave

11. Powers and procedures related and incidental to the power of persons referred to in section 47 to take into custody and otherwise deal with patients under that section.

Legal custody

13. Prescribing in whose legal custody a patient of class of patient is or is deemed to be and any circumstances related or incidental thereto.

SCHEDULE 6 (continued)

Charges for treatment

14. Providing charges for the treatment and control of classes of patients specified in relation to psychiatric hospitals, training centres, security patients' hospitals and other places established under section 16(1).

Forms

15. Forms to be used under or for the purposes of this Act.

Service and proof of documents

16. The manner in which any application, recommendation, report, order, notice or other document made under or for the purposes of this Act may be served and proved.

Records

17. The keeping, production and inspection of records under or for the purposes of this Act.

Offences

18. Offences against the regulations and penalties in respect thereof, provided that any such penalty shall not exceed 4 penalty units.

Fees and expenses

19. Fees and expenses payable or to be paid under this Act or in respect of functions or duties performed or carried out under this Act, and exemptions from payment of fees and expenses.

Traffic

20. The regulation, control and prohibition of traffic in or upon hospital grounds within the meaning of section 64.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 2 June 1999. Future amendments of the Mental Health Act 1974 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 79 of 1993	29 April 1994
1A	to Act No. 57 of 1995	20 September 1996
1B	to Act No. 61 of 1996	17 March 1997
1C	to Act No. 5 of 1997	28 July 1997
1D	to Act No. 41 of 1998	21 December 1998

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1
Renumbered provisions	1

6 List of legislation

Mental Health Act 1974 No. 2 (prev Mental Health Services Act 1974)

date of assent 2 April 1974

commenced 2 December 1974 (proc pubd gaz 2 November 1974 p 844)

as amended by—

Age of Majority Act 1974 No. 57 s 8 sch

date of assent 27 September 1974

commenced 1 March 1975 (proc pubd gaz 16 November 1974 p 1083)

Status of Children Act 1978 No. 30 s 14(1) sch

date of assent 8 June 1978

commenced on date of assent

Public Trustee Act 1978 No. 73 s 76(1) sch 1 pt G

date of assent 8 December 1978

commenced 1 January 1979 (proc pubd gaz 23 December 1978 p 1970)

Mental Health Act, Criminal Code and Health Act Amendment Act 1984 No. 66 pt 2

date of assent 12 September 1984

commenced 1 July 1985 (proc pubd gaz 27 April 1985 p 2349)

Mental Health Services Act Amendment Act 1987 No. 11

date of assent 15 April 1987

commenced on date of assent

Corrective Services (Consequential Amendments) Act 1988 No. 88 s 3 sch 1

date of assent 1 December 1988

commenced 15 December 1988 (see s 2(2) and o in c pubd gaz 10 December 1988 p 1675)

Mental Health Services Act and Another Act Amendment Act 1989 No. 49 pt 2

date of assent 5 May 1989

commenced on date of assent

Public Service (Administrative Arrangements) Act 1990 (No. 2) No. 80 s 3 sch 4

date of assent 14 November 1990

commenced 7 December 1989 (see s 2(4)(b))

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990

commenced on date of assent

Health Services Act 1991 No. 24 pt 9

date of assent 5 June 1991

commenced 1 July 1991 (proc pubd gaz 22 June 1991 p 974)

Mental Health Amendment Act 1991 No. 58

date of assent 18 September 1991

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2

date of assent 2 July 1992

commenced on date of assent

Health Legislation Amendment Act 1993 No. 79 pts 1, 10, s 75 sch

date of assent 17 December 1993

ss 1–2 commenced on date of assent

remaining provisions commenced 28 March 1994 (1994 SL No. 104)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Health Legislation Amendment Act (No. 2) 1996 No. 61 ss 1–2, 15 sch

date of assent 9 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 20 December 1996 (1996 SL No. 402)

Criminal Law Amendment Act 1997 No. 3 ss 1, 2(2), 122 sch 2

date of assent 3 April 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1997 (1997 SL No. 152)

Mental Health Amendment Act 1997 No. 5

date of assent 2 May 1997

commenced on date of assent

Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1999 (1999 SL No. 72)

Child Protection Act 1999 No. 10 ss 1, 2(2), 205 sch 3

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force**Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch**

date of assent 30 April 1999

commenced on date of assent

7 List of annotations**Title** amd 1984 No. 66 s 4(1)(a); 1992 No. 36 s 2 sch 2**Short title and commencement****s 1** amd 1984 No. 66 s 4(1)(b); 1991 No. 24 s 9.1(1)**Arrangement of Act****s 2** om 1992 No. 36 s 2 sch 2**Repeals and amendments****s 3** amd 1988 No. 88 s 3(1) sch 1

om 1992 No. 36 s 2 sch 2

Savings and transitional**s 4** amd 1984 No. 66 s 5

om 1992 No. 36 s 2 sch 2

Interpretation**s 5** amd 1984 No. 66 s 6(b); 1993 No. 79 s 75 schdef “**chief executive**” ins 1990 No. 80 s 3 sch 4

om 1998 No. 41 s 14(1) sch 1

def “**chief health officer**” ins 1996 No. 61 s 15 schdef “**Commission**” ins 1988 No. 88 s 3(1) sch 1

om 1999 No. 9 s 3 sch

def “**Deputy Director**” om 1991 No. 24 s 9.3(1)(a)def “**designated authorised person**” ins 1984 No. 66 s 6(a)(i)def “**designated medical practitioner**” ins 1984 No. 66 s 6(a)(i)

amd 1991 No. 24 s 9.3(1)(b)

def “**director**” amd 1991 No. 24 s 9.3(1)(c)

sub 1993 No. 79 s 75 sch

def “**Director-General**” om 1996 No. 61 s 15 schdef “**Director of Intellectual Handicap Services**” ins 1984 No. 66 s 6(a)(ii)

sub 1993 No. 79 s 75 sch

(Note—For construction of this definition see 1988 No. 47 s 4 (rep 1993 No. 32 s 4(1) sch 3 and see also s 4(3) sch 5))

- def “**health service employee**” ins 1997 No. 5 s 3
 def “**hospital**” amd 1984 No. 66 s 6(a)(iii); 1993 No. 79 s 75 sch
 def “**hospital administrator**” amd 1984 No. 66 s 6(a)(iv); 1991 No. 24
 s 9.3(1)(d); 1996 No. 61 s 15 sch
 def “**medical practitioner**” om 1993 No. 79 s 75 sch
 def “**medical treatment**” om 1984 No. 66 s 6(a)(v)
 def “**Mental Health Tribunal**” ins 1984 No. 66 s 6(a)(vi)
 def “**Minister**” om 1992 No. 36 s 2 sch 2
 def “**Minister for Justice**” om 1990 No. 80 s 3 sch 4
 def “**prison**” amd 1988 No. 88 s 3(1) sch 1
 def “**public hospital**” sub 1991 No. 24 s 9.3(1)(e)
 def “**Regional Health Authority**” ins 1993 No. 79 s 75 sch
 om 1996 No. 61 s 15 sch
 def “**resident**” ins 1984 No. 66 s 6(a)(vii)
 def “**responsible medical practitioner**” om 1984 No. 66 s 6(a)(viii)
 def “**Schedule**” om 1992 No. 36 s 2 sch 2
 def “**security patients hospital**” sub 1984 No. 66 s 6(a)(ix)
 amd 1988 No. 88 s 3 sch 1
 def “**stipendiary magistrate**” om 1992 No. 36 s 2 sch 2
 def “**training**” ins 1984 No. 66 s 6(a)(x)
 def “**training centre**” amd 1984 No. 66 s 6(a)(xi)
 def “**treatment**” sub 1984 No. 66 s 6(a)(xii)
 def “**tribunal**” sub 1984 No. 66 s 6(a)(xiii)

Construction and application of this Act

- s 6 amd 1984 No. 66 s 7

Administration of Act

- s 7 amd 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Annual report

- s 8 amd 1984 No. 66 s 8; 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Minister

- prov hdg sub 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

- s 9 amd 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Director, and other officers

- prov hdg amd 1991 No. 24 s 9.4(a)

- s 10 amd 1984 No. 66 s 9; 1991 No. 24 s 9.4(b)–(e); 1993 No. 79 s 75 sch;
 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Delegations

- s 11 sub 1984 No. 66 s 10; 1993 No. 79 s 75 sch; 1996 No. 61 s 15 sch
 amd 1998 No. 41 s 14(1) sch 1

Official visitors

- s 12 amd 1984 No. 66 s 11

Visits by official visitors

- s 13 amd 1984 No. 66 s 12; 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1
 (Note—For construction of this section see 1988 No. 47 s 5, as amd 1989
 No. 49 s 6, (rep 1993 No. 32 s 4(1) sch 3 and see also s 4(3) sch 5))

Patient Review Tribunals**prov hdg** sub 1984 No. 66 s 13(a)**s 14** amd 1984 No. 66 s 13(b)–(h); 1991 No. 58 s 3; 1993 No. 79 s 75 sch; 1996 No. 37 s 147 sch 2; 1999 No. 19 s 3 sch**Powers and proceedings of and appeals from tribunal****prov hdg** amd 1984 No. 66 s 14(a)**s 15** amd 1984 No. 66 s 14(b)–(d); 1990 No. 88 s 3 sch; 1991 No. 58 s 3 sch**Distribution of tribunals' findings etc.****s 15A** ins 1984 No. 66 s 14A**Psychiatric hospitals, training centres and other places****s 16** amd 1984 No. 66 s 15; 1989 No. 49 s 3; 1991 No. 24 s 9.5; 1993 No. 79 s 75 sch; 1996 No. 61 s 15 sch**Informal admission of patients****s 17** amd 1974 No. 57 s 8 sch; 1984 No. 66 s 16**Application for admission****s 18** amd 1984 No. 66 s 17; 1991 No. 24 s 9.6**Applications in respect of patients already in hospital****s 19** amd 1984 No. 66 s 18**Effect of application for admission****s 20** amd 1984 No. 66 s 19**Duration of authority for detention****s 21** amd 1984 No. 66 s 20**Admission applications generally****s 22** amd 1984 No. 66 s 21**Medical recommendations generally****s 23** amd 1984 No. 66 s 22**Incorrect or defective application****s 24** amd 1984 No. 66 s 23**Warrant to remove to place of safety****s 25** amd 1984 No. 66 s 24**Removal without warrant to place of safety****s 26** amd 1984 No. 66 s 25; 1993 No. 79 s 75 sch**Procedure on and following removal to place of safety****s 27** amd 1984 No. 66 s 26**Interpretation****s 28A** ins 1984 No. 66 s 27

amd 1988 No. 88 s 3(1) sch 1; 1997 No. 3 s 122 sch 2; 1998 No. 41 s 14(1) sch 1

Mental Health Tribunal**s 28B** ins 1984 No. 66 s 27

amd 1993 No. 79 ss 76, 75 sch

Jurisdiction and proceedings of tribunal

s 28C ins 1984 No. 66 s 27
amd 1993 No. 79 s 75 sch

References to tribunal

s 28D ins 1984 No. 66 s 27
amd 1997 No. 3 s 122 sch 2

Examinations upon tribunal's order

s 28E ins 1984 No. 66 s 27

Entry of not guilty plea by court where accused mentally ill

s 29 sub 1984 No. 66 s 28

Persons charged with simple offences mentally ill

s 29A ins 1984 No. 66 s 28
amd 1987 No. 11 s 3; 1990 No. 80 s 3 sch 4; 1992 No. 36 s 2 sch 2; 1998
No. 41 s 14(1) sch 1

Patients under pt 3, div 2 or 3 charged with indictable offences

s 29B ins 1984 No. 66 s 28
amd 1990 No. 80 s 3 sch 4; 1993 No. 79 s 75 sch; 1998 No. 41 s 14(1)
sch 1

Persons charged with indictable offences mentally ill upon examination of witnesses

s 29C ins 1984 No. 66 s 28
amd 1990 No. 80 s 3 sch 4; 1998 No. 41 s 14(1) sch 1

Examinations of patients referred to in ss 29B(1) and 29C(4)

s 30 sub 1984 No. 66 s 28
amd 1990 No. 80 s 3 sch 4; 1998 No. 41 s 14(1) sch 1

Persons mentally ill while in custody awaiting examination of witnesses

s 31 sub 1984 No. 66 s 28
amd 1988 No. 88 s 3(1) sch 1; 1990 No. 80 s 3 sch 4; 1993 No. 79 s 75
sch; 1998 No. 41 s 14(1) sch 1; 1999 No. 9 s 3 sch

Action on persons found not to be in need of detention

s 31A ins 1984 No. 66 s 28
amd 1990 No. 80 s 3 sch 4; 1993 No. 79 s 75 sch; 1998 No. 41 s 14(1)
sch 1; 1999 No. 19 s 3 sch

Admission to hospital not to prejudice

s 31B ins 1984 No. 66 s 28

Persons mentally ill while in custody after committal for trial or sentence

s 32 sub 1984 No. 66 s 28
amd 1999 No. 19 s 3 sch

Procedures of Mental Health Tribunal

s 33 sub 1984 No. 66 s 28
amd 1987 No. 11 s 4; 1990 No. 80 s 3 sch 4; 1993 No. 79 s 75 sch; 1998
No. 41 s 14(1) sch 1

Procedure on finding of unsoundness of mind

s 33A ins 1997 No. 5 s 4

Procedure upon finding of unfit for trial

s 34 sub 1984 No. 66 s 28
amd 1990 No. 80 s 3 sch 4

Leave of absence

s 34A ins 1997 No. 5 s 5

Consequences of Mental Health Tribunal's findings or Governor in Council's order

prov hdg sub 1993 No. 79 s 75 sch
s 35 sub 1984 No. 66 s 28

Consequences to proceedings of findings of Mental Health Tribunal

s 35A ins 1984 No. 66 s 28

Review of patient detained as restricted patient under this part

s 36 sub 1984 No. 66 s 28
amd 1987 No. 11 s 5

Appeal against finding of tribunal

s 37 sub 1984 No. 66 s 28

Persons mentally ill where ss 613 and 645 of the Criminal Code applicable

s 38 sub 1984 No. 66 s 28
amd 1988 No. 88 s 3(1) sch 1; 1990 No. 80 s 3 sch 4; 1993 No. 79 s 75
sch; 1998 No. 41 s 14(1) sch 1

Persons mentally ill where s 647 of the Criminal Code applicable

s 39 sub 1984 No. 66 s 28
amd 1988 No. 88 s 3(1) sch 1; 1990 No. 80 s 3 sch 4; 1998 No. 41 s 14(1)
sch 1

Special provisions as to patients in custody

s 40 sub 1984 No. 66 s 28

Transfer of detained person by director

s 41 sub 1984 No. 66 s 28

Granting of leave to detained persons

s 42 sub 1984 No. 66 s 28
amd 1988 No. 88 s 3(1) sch 1; 1999 No. 9 s 3 sch

Admission of prisoners to hospital for treatment

s 43 sub 1984 No. 66 s 28
amd 1988 No. 88 s 3(1) sch 1; 1999 No. 9 s 3 sch

Finality of Mental Health Tribunal's decisions

s 43A ins 1984 No. 66 s 28
amd 1993 No. 79 s 75 sch; 1997 No. 3 s 122 sch 2

Finality of decision of Court of Appeal

prov hdg amd 1993 No. 79 s 75 sch

s 43B ins 1984 No. 66 s 28
amd 1993 No. 79 s 75 sch

Accused's right to trial notwithstanding lack of criminal responsibility

s 43C ins 1984 No. 66 s 28
amd 1993 No. 79 s 75 sch

Findings upon accused's mental condition not to be published to prejudice of trial

s 43D ins 1984 No. 66 s 28
amd 1993 No. 79 s 75 sch

Custody of accused in security patients' hospital during proceedings

s 43E ins 1984 No. 66 s 28

Transfer of patients

s 44 amd 1984 No. 66 s 29

Removal of patients out of Queensland

s 45 amd 1984 No. 66 s 30

Leave of absence from hospital

s 46 amd 1984 No. 66 s 31

Leave of absence for detainees under s 18 of the Criminal Law Amendment Act 1945

s 46A ins 1987 No. 11 s 6

Return and re-admission of patients absent without leave

s 47 amd 1984 No. 66 s 32

Discharge of patients generally

s 48 amd 1984 No. 66 s 33

Restrictions on discharge by certain persons

s 49 amd 1984 No. 66 s 34

Restrictions on leave and discharge of certain persons

s 50 amd 1984 No. 66 s 35; 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1) sch 1

Powers over restricted persons in certain circumstances

s 50A ins 1984 No. 66 s 36

Incidental powers for purposes of ss 50 and 50A

s 50B ins 1984 No. 66 s 36

Relatives and nearest relatives of patients

s 51 amd 1978 No. 30 s 14(1) sch; 1984 No. 66 s 37

Guardians and custodians as nearest relatives

s 52 amd 1999 No. 10 s 205 sch 3

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s 53 sub 1984 No. 66 s 38
amd 1993 No. 79 s 75 sch; 1996 No. 61 s 15 sch; 1998 No. 41 s 14(1)
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Visiting and examination of patients

s 54 amd 1984 No. 66 s 39

Management of the estates of patients

s 55 amd 1978 No. 73 s 76(1)(a); 1984 No. 66 s 40

Notification of patient needing coercion or restraint

s 56 om 1984 No. 66 s 41

Forgery of documents and use of forged documents

s 57 amd 1993 No. 79 s 75 sch

Wilfully making, or making use of, false entry

s 58 amd 1984 No. 66 s 57; 1993 No. 79 s 75 sch

Ill-treatment of patient or resident

prov hdg amd 1984 No. 66 s 42(a)

s 59 amd 1984 No. 66 ss 42(b)–(d), 57; 1993 No. 79 s 75 sch

Assisting patients to absent themselves without leave

s 60 amd 1984 No. 66 s 57; 1993 No. 79 s 75 sch

Obstruction

s 61 amd 1984 No. 66 ss 43, 57; 1993 No. 79 s 75 sch

Penalties

s 63 amd 1984 No. 66 s 44; 1993 No. 79 s 75 sch

Application of Traffic Act to vehicles in hospital or training centre grounds

prov hdg amd 1984 No. 66 s 45(a)

s 64 amd 1984 No. 66 s 45(b)–(c)

Evidentiary provisions

s 65 amd 1984 No. 66 s 46; 1993 No. 79 s 75 sch; 1996 No. 61 s 15 sch; 1998
No. 41 s 14(1) sch 1

Retaking of persons escaping from legal custody

s 67 om 1984 No. 66 s 47

Exercise of powers by hospital administrator

s 68 amd 1984 No. 66 s 48

Protection for acts done in pursuance of this Act

s 69 amd 1984 No. 66 s 49

Nature of proceedings before Mental Health Tribunal

s 69A ins 1984 No. 66 s 50

sub 1987 No. 11 s 7

Powers of Mental Health Tribunal in respect of patient

s 70 sub 1984 No. 66 s 51

Authority of Mental Health Tribunal's orders

s 71 sub 1984 No. 66 s 52

Regulations

s 72 amd 1984 No. 66 s 53
sub 1993 No. 79 s 75 sch
amd 1995 No. 57 s 4 sch 1

PART 7—FINANCIAL PROVISIONS

pt hdg ins 1993 No. 79 s 77

Definition for pt 7

prov hdg sub 1996 No. 61 s 10 sch
s 72A ins 1993 No. 79 s 77
sub 1996 No. 61 s 15 sch

Patients' Trust Fund

s 73 ins 1984 No. 66 s 54
sub 1991 No. 24 s 9.7; 1993 No. 79 s 78; 1996 No. 61 s 15 sch
(**Note**—For construction of this section see 1988 No. 47 s 7, as amd 1989 No. 49 s 8, (rep 1993 No. 32 s 4(1) sch 3 and see also s 4(3) sch 5))

Amenities account

s 73A ins 1993 No. 79 s 78
amd 1996 No. 61 s 15 sch

Patients' advisory committee

s 73B ins 1993 No. 79 s 78
amd 1996 No. 61 s 15 sch

Power to accept gifts etc.

s 74 ins 1984 No. 66 s 54
sub 1991 No. 24 s 9.8
amd 1993 No. 79 s 79
om 1996 No. 61 s 15 sch
(**Note**—For construction of this section see 1988 No. 47 s 7, as amd 1989 No. 49 s 8, (rep 1993 No. 32 s 4(1) sch 3 and see also s 4(3) sch 5))

Investment of amounts held in trust

s 75 ins 1984 No. 66 s 54
sub 1991 No. 24 s 9.9; 1993 No. 79 s 80
om 1996 No. 61 s 15 sch
(**Note**—For construction of this section see 1988 No. 47 s 7, as amd 1989 No. 49 s 8, (rep 1993 No. 32 s 4(1) sch 3 and see also s 4(3) sch 5))

Power to convert property

s 76 ins 1984 No. 66 s 54
om 1996 No. 61 s 15 sch

PART 8—TRANSITIONAL PROVISIONS

pt hdg prev pt hdg ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))
pres pt hdg ins 1995 No. 57 s 4 sch 1
sub 1997 No. 5 s 6; 1998 No. 41 s 14(1) sch 1

Division 1—Provisions for Act before commencement of Health and Other Legislation Amendment Act 1998**div hdg** ins 1998 No. 41 s 14(1) sch 1**Mental Health Act 1962 references****s 77** prev s 77 ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))
pres s 77 ins 1995 No. 57 s 4 sch 1**Mental Health Act 1974 references****s 78** prev s 78 ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))
pres s 78 ins 1995 No. 57 s 4 sch 1**References to certain terms under repealed Acts****s 79** prev s 79 ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))
pres s 79 ins 1995 No. 57 s 4 sch 1**Division 2—Provision for Health and Other Legislation Amendment Act 1998****div hdg** ins 1998 No. 41 s 14(1) sch 1**Chief executive's first report under s 8 to include a report by chief health officer for period when chief health officer administering Act****s 80** orig s 80 ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))
prev s 80 ins 1997 No. 5 s 7
exp 3 May 1997 (see s 80(5))
pres s 80 ins 1998 No. 41 s 14(1) sch 1**Maintenance charges at security patients' hospitals and other places****s 81** ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))**Maintenance charges at psychiatric hospitals****s 82** ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))**Application of s 20A of Acts Interpretation Act 1954 and expiry of Part and Sch 1****s 83** ins 1993 No. 79 s 81
exp 28 April 1994 (see s 83(2))**SCHEDULE 1—ADMINISTRATION OF CERTAIN HOSPITALS BY REGIONAL HEALTH AUTHORITIES**om 1992 No. 36 s 2 sch 2
ins 1993 No. 79 s 82
exp 28 April 1994 (see s 83(2))**SCHEDULE 2**amd 1988 No. 88 s 3(1) sch 1
om 1992 No. 36 s 2 sch 2

SCHEDULE 3—TRANSITIONAL PROVISIONS

om 1992 No. 36 s 2 sch 2

SCHEDULE 4

om 1992 No. 36 s 2 sch 2

SCHEDULE 5

amd 1978 No. 73 s 76(1) sch 1 pt G

sub 1984 No. 66 s 55

Meaning of terms

s 1 amd 1991 No. 24 s 9.10

Order in protective jurisdiction in reciprocating State to be effective in Queensland on being resealed

s 8 amd 1993 No. 79 s 75 sch

Statement as to estate to be rendered to public trustee

s 10 amd 1993 No. 79 s 75 sch

SCHEDULE 6—SUBJECT MATTERS FOR REGULATIONS**Administration of certain hospitals**

s 5 amd 1989 No. 49 s 4(1)

Training of nurses etc.

s 8 amd 1990 No. 88 s 3 sch

Retaking of escaped patients

s 12 om 1984 No. 66 s 56(a)

Charges for treatment

s 14 amd 1993 No. 79 s 83

Service and proof of documents

s 16 sub 1984 No. 66 s 56(b)

Offences

s 18 amd 1993 No. 79 s 75 sch

Matters prescribed

s 21 om 1993 No. 79 s 75 sch

Generally

s 22 om 1993 No. 79 s 75 sch

8 List of forms**Form 35b—Notice Requiring Examination of Patient by Psychiatrist**

pubd gaz 17 November 1995 p 1139

Form 73—Application to Patient Review Tribunal for Review of Capability of Patient

pubd gaz 17 November 1995 p 1139

Form 74—Acute Care Certificate

pubd gaz 17 November 1995 p 1139

9 Transitional and savings provisions**Health Services Act 1991 No. 24 ss 9.1(2) and 9.3(2) provide—**

9.1(2) A reference in any Act passed before the commencement of this section or in any instrument or other document made before the commencement of this section to the *Mental Health Services Act 1974* or to that Act as amended to any year specified in the reference is to be construed as a reference to the *Mental Health Act 1974* or, as the case may be, that Act as amended to the year so specified.

This subsection applies without prejudice to the operation of the *Acts Interpretation Act 1954–1990*.

9.3(2) A reference in any Act passed before the commencement of this section or in any instrument or other document made before the commencement of this section to the term Director of Psychiatric Services referred to in subsection (1)(c) is to be construed as a reference to the Director of Mental Health.

10 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Child Protection Act 1999 No. 10 s 205 sch 3 reads as follows—

MENTAL HEALTH ACT 1974

1. Section 52(1)(a), ‘, by virtue of a declaration made under section 47 of the *Children’s Services Act 1965*,’—

omit.