

Queensland



ANNO TRICESIMO TERTIO

ELIZABETHAE SECUNDAE REGINAE

No. 66 of 1984

An Act to amend the Mental Health Act 1974, the Mental Health Act 1974–1978, the Health Act 1937–1984 and The Criminal Code each in certain particulars and for related purposes

[ASSENTED TO 12TH SEPTEMBER, 1984]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Mental Health Act, Criminal Code and Health Act Amendment Act 1984*.

2. **Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) The remaining provisions of this Act or such of them as are specified by Proclamation shall commence on the date appointed by Proclamation for the commencement of those remaining provisions or, as the case may be, those specified provisions.

3. **Arrangement.** This Act is arranged as follows:—

PART I—PRELIMINARY (SS. 1-3);

PART II—AMENDMENT OF MENTAL HEALTH ACT (SS. 4-57);

PART III—AMENDMENT OF CRIMINAL CODE (SS. 58-59);

PART IV—AMENDMENT OF HEALTH ACT (SS. 60-63).

PART II—AMENDMENT OF MENTAL HEALTH ACT

4. **Amendment of long and short titles.** (1) The *Mental Health Act 1974* is amended by—

(a) in its long title, inserting after the words “mentally ill persons” the words “and the Training and Care of intellectually handicapped persons”;

(b) in section 1, inserting in its short title after the words “Mental Health” the word “Services”.

(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 Act 1974* or to that Act as amended to any year specified in the reference shall be construed as a reference to the *Mental Health Services 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 1954-1977*.

4A. **Citation.** (1) In this Part the *Mental Health Act 1974-1978* is referred to as the Principal Act.

(2) The Principal Act as amended by this Part may be cited as the *Mental Health Services Act 1974-1984*.

5. **Amendment of s. 4. Savings and transitional.** Section 4 of the Principal Act is amended by, in subsection (1), omitting from provision (ii) of paragraph (f) the words “or, as the case may be, a training centre”.

6. Amendment of s. 5. Interpretation. Section 5 of the Principal Act is amended by—

(a) in subsection (1),

(i) inserting after the definition “Deputy Director” the following definitions:—

““designated authorized person” means a person designated and authorized by the Minister, in writing, to act as an authorized 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 *Hospitals Act 1936* or under that Act as amended 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;

(d) any other patient, means the medical practitioner for the time being in charge of the treatment of the patient;”;

(ii) inserting after the definition “Director-General” the following definition:—

““Director of Intellectual Handicap Services” means the officer in charge of the Intellectual Handicap Services Branch of the Department of Health at Brisbane: The term includes any person who for the time being occupies the office or performs the duties of the officer in charge of that branch;”;

(iii) in the definition “hospital”, omitting the words “a training centre;”;

(iv) in the definition “hospital administrator” omitting the words “a training centre,” and the words “training centre;”;

(v) omitting the definition “medical treatment”;

(vi) inserting after the definition “medical practitioner” the following definition:—

““Mental Health Tribunal” means the Mental Health Tribunal established under Part IV;”;

(vii) inserting after the definition “public hospital” the following definition:—

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

(viii) omitting the definition “responsible medical practitioner”;

(ix) omitting the definition “security patients’ hospital” and substituting the following definition:—

“ “security patients’ hospital” means a security patients’ hospital within the meaning of the *Prisons Act* 1958–1974 and a security patients’ hospital established under section 16;”;

(x) inserting after the definition “the Supreme Court” the following definition:—

“ “training” in relation to a resident, includes observation, assessment, intervention and care and, where necessary, education, supervision, social rehabilitation, help and advice;”;

(xi) in the definition “training centre”, adding at the end thereof the following words:—

“ : The term includes a community villa or residential centre for the intellectually handicapped ”;

(xii) omitting the definition “treatment” and substituting the following definition:—

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

(xiii) omitting the definition “tribunal” and substituting the following definition:—

“ “Tribunal” means a Patient Review Tribunal constituted under section 14;”;

(b) omitting subsection (2) and substituting the following subsection:—

“(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.”.

7. Amendment of s. 6. Construction and application of Act. Section 6 of the Principal Act is amended by—

(a) omitting the word “and” where it occurs between paragraphs (b) and (c);

(b) adding at the end of paragraph (c), after the word “others”, the following words:—

“ ;

(d) so that a person shall not be considered to be suffering from mental illness by reason only that—

(i) he expresses or refuses or fails to express a particular political, anarchic, religious or irreligious, legal or illegal, or moral or immoral opinion; or

(ii) he engages in or refuses or fails to engage in a particular political, anarchic, religious or irreligious, legal or illegal or moral or immoral activity”.

8. Amendment of s. 8. Annual report. Section 8 of the Principal Act is amended by omitting all words from and including the words “if Parliament” to the end of the section.

9. Amendment of s. 10. Director, Deputy Director, and other officers. Section 10 of the Principal Act is amended by omitting subsection (5) and substituting the following subsection:—

“(5) Where the Director is unable through absence, illness or other cause to discharge, exercise and perform his functions, powers and duties under this Act or in the event of a vacancy existing in the office of Director, the Deputy Director may discharge, exercise and perform all and any of those functions, powers and duties; and where both the Director and the Deputy Director are so unable through absence, illness or other cause or in the event of vacancies existing concurrently in the offices of Director and Deputy Director the Governor in Council may appoint a person to discharge, exercise and perform the functions, powers and duties of the Director or the Deputy Director or each of them for the time being and the person so appointed shall have the necessary authority accordingly.”.

10. Repeal of and new s. 11. Delegation by Director. The Principal Act is amended by repealing section 11 and substituting the following section:—

“**11. Power of delegation.** (1) The Minister and, with his approval, the Director-General or the Director may either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate—

(a) to a person named therein; or

(b) to the holder of an office specifying its title but without naming the holder of the office for the time being,

all or any of his functions, powers and duties under this Act except this power of delegation.

A delegation to the holder of an office as referred to in provision (b) shall be taken to be, for as long as it subsists, to the holder of that office from time to time including any person who at any time performs the duties of that office.

(2) A function, power or duty delegated under subsection (1), if it is discharged, exercised or performed by the delegate, shall be discharged, exercised or performed in accordance with the instrument of delegation.

(3) A delegation may be made subject to such terms or limitations as the person making the delegation thinks fit including a requirement that the delegate shall report to him upon the discharge, exercise or performance of the delegated function, power or duty.

(4) The Minister, Director-General or Director may make such and so many delegations of the same function, power or duty and to such numbers of persons or holders of office as he considers necessary or desirable.

(5) The Minister and, with his approval, the Director-General or the Director may at any time revoke a delegation made by him under subsection (1).

(6) A delegation does not prevent the discharge of a function or the exercise of a power or the performance of a duty, the subject of the delegation, by the person who made the delegation.”.

11. Amendment of s. 12. Official visitors. Section 12 of the Principal Act is amended by—

(a) in subsection (1),

(i) inserting after the word “hospital” the words “or training centre”;

(ii) inserting after the words “medical practitioner” the words “or a person qualified to practise a profession that requires a special knowledge and interest with respect to mental health”;

(b) in subsection (2), inserting after the word “hospital” the words “or training centre”;

(c) adding at the end of the section the following subsection:—

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

12. Amendment of s. 13. Visits by official visitors. Section 13 of the Principal Act is amended by—

(a) in subsection (1), inserting after the words “every hospital”, wherever they occur, the words “or training centre”;

(b) omitting subsection (2), and substituting the following subsection:—

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

(a) where the report relates to a visit made at the direction of the Minister or Director-General, to the person who gave the direction;

(b) where the report relates to a visit to a hospital, other than a visit referred to in provision (a), to the Director; or

(c) where the report relates to a visit to a training centre, other than a visit referred to in provision (a), to the Director of Intellectual Handicap Services.”.

13. Amendment of s. 14. Mental Health Review Tribunals. Section 14 of the Principal Act is amended by—

(a) omitting the note appearing in and at the beginning of the section and substituting the note “Patient Review Tribunals”;

(b) in subsection (2), omitting the words “ Mental Health ” and substituting the word “ Patient ”;

(c) omitting subsection (3) and substituting the following subsection:—

“ (3) Each Tribunal shall consist of not less than three and not more than five members, appointed by the Governor in Council, of whom—

(a) one shall be a Judge of District Courts, who shall be chairman of the Tribunal;

(b) one at least shall be a medical practitioner; and

(c) one at least shall be a person qualified to practise a profession that requires a special knowledge and interest with respect to mental illness.”;

(d) omitting subsection (4);

(e) in subsection (5),

(i) omitting from paragraph (c) subparagraphs (i), (ii) and (iii) and substituting the following subparagraphs:—

“ (i) The Minister shall, in the case of a vacancy caused or about to be caused by the retirement on the expiration of his term of office of a member appointed in compliance with the requirements of provision (b) of subsection (3), 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 recognized by the Minister as representative of psychiatrists.

(ii) Within four weeks after an association is notified by the Minister under subparagraph (i) there shall be submitted to the Minister by or on behalf of the association a list of the names of at least three 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.”;

(ii) renumbering subparagraph (iv) of paragraph (c) as subparagraph (iii);

(iii) omitting from paragraph (c) subparagraph (v);

(iv) renumbering subparagraph (vi) of paragraph (c) as subparagraph (iv);

(f) omitting subsection (6) and substituting the following subsection:—

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

(a) dies;

(b) being chairman, ceases to be a Judge of District Courts;

(c) attains the age of 70 years;

(d) tenders his resignation from office, in writing, addressed to the Minister; or

(e) is removed from office by the Governor in Council.”;

(g) omitting subsections (9) and (10) and substituting the following subsections:—

“(9) The Governor in Council may appoint a Judge of District Courts to act as chairman of a Tribunal during the absence through illness or other cause of the person who holds the office of chairman.

While the appointee so acts he shall be deemed to be a member of the Tribunal and its chairman.

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

(h) omitting subsections (12) and (13).

14. Amendment of s. 15. Powers and proceedings of Tribunals. Section 15 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section, inserting after the word “of” the words “and appeals from”;

(b) renumbering subsection (1) as subsection (1A);

(c) inserting before subsection (1A) the following subsection:—

“(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 IV applies.

A Tribunal shall discharge its functions, exercise its powers and perform its duties conferred or imposed on it by Part IV in accordance with that Part.”;

(d) omitting subsection (6) and substituting the following subsections:—

“(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 Division II of Part III, 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 his detention in a hospital and does not need to be detained in the interests of his 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.

It is competent to a Tribunal to exercise in respect of any application to it two or more of the powers conferred on it by this subsection that are not inconsistent.

Every order and recommendation of a Tribunal made pursuant to this subsection 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 subsection (6) 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 him relayed to the Director.

(e) omitting subsections (8) and (9) and substituting the following subsections:—

“(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 authorized 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; and
- (d) any other person determined by the Tribunal.

(9) Where the Tribunal has made an order under subsection (6) then, unless he 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 seven days after receipt by him of the order or such shorter period as is practicable, either—

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

Where the Director has made an application under this subsection 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 but the Director is not thereby precluded from directing the discharge of the patient at any time.

Upon application made to it by the Director the Mental Health Tribunal may extend for such time as it thinks fit the period of seven days within which the Director may make application to it to comply with this subsection and if such an extension is granted this subsection shall be read and construed as if the reference to seven days in the first paragraph 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 paragraph (a) of subsection (6) 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—

- the patient,

an authorized person,
the patient's nearest relative,
a person who made on behalf of the patient the application to
the Tribunal,
any other person, by leave of the Mental Health Tribunal
and such application shall be made—

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

Notification of the making of an application under this subsection shall be given, forthwith upon its making, to the Director and if before he 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:—

- (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."

14A. New s. 15A. The Principal Act is amended by inserting after section 15 the following section:—

“15A. Distribution of Tribunals’ findings etc. 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;
- (b) the applicant to the Tribunal, if he is not the patient;
- (c) the hospital administrator of the hospital in which the patient is;
- (d) the Director; and
- (e) any other persons prescribed.”.

15. Amendment of s. 16. Psychiatric hospitals, training centres and other places. Section 16 of the Principal Act is amended by—

- (a) in subsection (1),
 - (i) inserting after the words “ training centres,” the words “ security patients’ hospitals ”;
 - (ii) omitting all words from and including the words “ including any place ” to the end of the subsection;
- (b) omitting subsection (3) and substituting the following subsection:—

“(3) Subject to the Minister and to the Director-General, the Director is charged with the administration of psychiatric hospitals, training centres, security patients’ hospitals and other places established under this section.

In respect of training centres the Director may discharge his responsibility under this subsection through the Director of Intellectual Handicap Services.”;

- (c) in subsection (4),
 - (i) inserting after provision (b) the following provision:—
 - “(c) any security patients’ hospital;”;
 - (ii) re-designating provision (c) as provision (d);
 - (iii) inserting after the words “ training centre ” where they lastly occur the words “ , security patients’ hospital ”.

16. Amendment of s. 17. Informal admission of patients. Section 17 of the Principal Act is amended by—

- (a) numbering the existing provisions as subsection (1) and adding at the end of that subsection, after the words “ a hospital ” the words “ after the patient has been examined and his 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 ”;

(b) adding at the end of the section the following subsection:—

“(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.”.

17. Amendment of s. 18. Application for admission. Section 18 of the Principal Act is amended by—

(a) in subsection (2), omitting from provision (a) the words “of a nature or degree which” and substituting the words “of a nature or to a degree that”;

(b) in subsection (3), omitting the words “founded on” and substituting the words “supported by”.

18. Amendment of s. 19. Applications in respect of patients already in hospital. Section 19 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:—

“(2) If in the case of a patient who is an inpatient 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, he 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.”.

19. Amendment of s. 20. Effect of application for admission. Section 20 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(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 authorized person to take the patient and convey him to hospital at any time—

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

within seven days from the day on which the medical recommendation was given for the purposes of the application.”;

(b) in subsection (2), adding at the end of the subsection the following paragraph:—

“Any member of the police force who is taking a patient and conveying him to hospital or is assisting therein shall be accompanied by an authorized person.”.

20. Amendment of s. 21. Duration of authority for detention. Section 21 of the Principal Act is amended by—

(a) omitting subsection (3) and substituting the following subsection:—

“ (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 three 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 his admission

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

(b) in subsection (4), omitting the words “ two months ” and substituting the words “ one month ”;

(c) in subsection (6),

(i) omitting paragraph (a) and substituting the following paragraph:—

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

(i) shall forthwith make an application to the Tribunal to review the detention; and

(ii) shall cause the patient, if he 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.”;

(ii) inserting in paragraph (b) after the words “ or relative ” the words “ or by any other person by leave of the Tribunal ”;

(iii) omitting from paragraph (b) the words “ by a relative ” and substituting the words “ by a person ”.

21. Amendment of s. 22. Admission applications generally. Section 22 of the Principal Act is amended by omitting the word “ fourteen ” and substituting the word “ seven ”.

22. Amendment of s. 23. Medical recommendations generally. Section 23 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “ signed on or before the date of the application ” and substituting the word “ made ”;

(b) in subsection (2), omitting the word “ fourteen ” and substituting the word “ seven ”.

23. Amendment of s. 24. Incorrect or defective application. Section 24 of the Principal Act is amended by—

(a) in subsection (1), omitting the words “ on which it is founded ” and substituting the words “ by which it is supported ”;

(b) omitting subsection (2) and substituting the following subsection:—

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

- (a) he shall return the application to the applicant;
- (b) he shall return the medical recommendation to the medical practitioner who has made and signed it; and
- (c) he shall notify the medical practitioner in charge of the treatment of the patient.”

24. Amendment of s. 25. Warrant to remove to place of safety.
Section 25 of the Principal Act is amended by—

(a) in subsection (1), omitting from paragraph (b) all words from and including the words “or, if more than one,” to the end of the paragraph and substituting the words “in the Magistrates Courts District in which the patient then is or, where in respect of any such district there is more than one such clerk, to one of those clerks”;

(b) in subsection (3),

(i) omitting paragraph (a) and substituting the following paragraph:—

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

- (i) shall be accompanied by a medical practitioner and a designated authorized person;
- (ii) 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;
- (iii) shall make the copy information referred to in subparagraph (ii) available upon request to the medical practitioner and the designated authorized person accompanying him for their inspection; and
- (iv) shall deliver the copy information referred to in subparagraph (ii) to the hospital administrator or person in charge of the place of safety to which he has removed the person in respect of whom the warrant was issued.

(ii) omitting paragraph (b) and substituting the following paragraph:—

“(b) If the medical practitioner or the designated authorized person accompanying the member of the police force inform that member in writing—

- (i) that, in his opinion, the person in respect of whom the warrant is issued is not mentally ill; or
- (ii) that, in his 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 member of the police force 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).”;

(iii) omitting paragraph (c).

25. Amendment of s. 26. Removal without warrant to place of safety. Section 26 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

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

A member of the police force who removes a person to a place of safety pursuant to this subsection 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.”;

(b) in subsection (3)—

(i) inserting after the words “every road” the words “, airport and aerodrome”;

(ii) inserting after the word “vehicle”, the word “aircraft”.

26. Amendment of s. 27. Procedure on and following removal to place of safety. Section 27 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsections:—

“(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 authorized person with a view to the making of an application in respect of him under Division II or of other arrangements for his treatment.

This subsection does not authorize the detention of any person in any place of safety for a period exceeding three days from the day on which he was first removed to a place of safety, whether or not he has been examined or interviewed as referred to in this subsection.”;

(b) in subsection (2), omitting paragraph (b) and substituting the following paragraph:—

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

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

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

(c) omitting subsection (4) and substituting the following subsection:—

“(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 he 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.

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.”.

27. New ss. 28A to 28E. The Principal Act is amended by inserting after section 28 the following sections:—

“28A. Interpretation. In this Part—

“diminished responsibility” means that state of abnormality of mind described in section 304A of *The Criminal Code*;

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

“Parole Board” means the Parole Board preserved, continued in existence and constituted under the *Offenders Probation and Parole Act 1980*;

“unsoundness of mind” means that state of mental disease or natural mental infirmity described in section 27 of *The Criminal Code*.

28B. Mental Health Tribunal. (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 two psychiatrists.

The two psychiatrists shall not be a constituent part of the tribunal.

(3) Each of them the Judge who shall constitute the Mental Health Tribunal and the two psychiatrists who shall assist him shall be appointed by Order in Council.

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

Unless his office is sooner vacated as prescribed the Judge who constitutes the tribunal and each of the psychiatrists who assist him shall continue to hold office until his successor assumes office in his 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 his 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) attains the age of 70 years or sooner dies;
 - (ii) resigns his 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 his term of appointment another person who is eligible for appointment shall be appointed to fill that vacancy.

The appointment of a person appointed to fill a casual vacancy shall continue for as long as the appointment of his predecessor in office would have continued had the casual vacancy not occurred.

(7) At any time—

- (a) the Governor in Council may, by Order in Council, 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 his 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.

28C. Jurisdiction and Proceedings of tribunal. (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 authorized by this Act to make.

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 he deems necessary or convenient for regulating the procedure and practice of the tribunal and upon being sanctioned by the Governor in Council by Order in Council 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 Acts, 1950 to 1954* apply and the Judge constituting the tribunal shall be deemed to be the chairman 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 his counsel or solicitor or by his agent authorized by him 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 he should be present the Judge may order that the proceedings be held in that person's absence whereupon the proceedings may lawfully proceed in his 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.

28D. References to tribunal. (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;
- (b) the person concerned or his 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 intends to raise at his trial the defence of insanity or diminished responsibility shall be reasonable cause for the purposes of that subsection.

28E. Examinations upon tribunal's order. (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.

The order of the tribunal shall be lawful authority for making the 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.

The tribunal shall not make an order contrary to the requirements of this subsection 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—
 - the person is wanting of understanding, for the purpose of the application of section 613 of *The Criminal Code*;
 - the person is not of sound mind, for the purpose of the application of section 645 of *The Criminal Code*;
 - the person was suffering from unsoundness of mind or diminished responsibility, at the time the alleged offence was committed;
 - a power conferred by section 29 on a court should be exercised; or
 - a power conferred by section 43E on a court should be exercised; or

(b) for the purpose of sentencing,
and for no other purpose”.

28. Repeal of ss. 29 to 43 and new sections in lieu. The Principal Act is amended by repealing sections 29 to 43 and substituting the following sections:—

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

(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 he is mentally ill; or

(b) that he 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 his 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 he is mentally ill; or

(b) that he 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 his 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 he 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 his own welfare or with a view to the protection of other persons, the court shall order that he be detained in a security patients' hospital until the Mental Health Tribunal determines otherwise.

Where a court remands an accused under this section by reason that it is alleged or it appears that he was or may have been mentally ill at the time the alleged offence was committed or that he is mentally ill and it does not appear to the court that he 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.

29A. Persons charged with simple offences mentally ill. (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.

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

(a) is suffering from mental illness of a nature or to a degree that warrants his detention in a hospital; and

(b) ought to be so detained in the interests of his 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.

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 member of the police force or other person named in the order for the purpose to convey the defendant in respect of whom the order was made to the hospital specified in the order; and

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

The patient shall be deemed to have been admitted to the hospital pursuant to Division II of Part III 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 his detention had been renewed for a period of three 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 Under Secretary, Department of Justice, and the Director as soon as possible, and in any case within seven 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 Division II or III of Part III otherwise than under the authority of an order made under subsection (2); or

- (b) after being admitted to a hospital pursuant to Division II or III of Part III is charged with a simple offence, other than an indictable offence punishable on summary conviction,

the Director shall, upon being notified thereof, notify the Under Secretary, Department of 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 provision (a), the clerk of the court shall notify the complainant.

A patient referred to in this subsection shall be treated as a restricted patient as provided by section 50 and, unless his liability to be detained is extended and renewed in accordance with section 21 (2) and (3), he shall be liable to be detained for a period of three months from the expiration of the period prescribed by section 21 (1) for which he may be detained (which period of three months shall be deemed to be a period of renewal under paragraph (a) of section 21 (3)) and for any further period for which the authority for his detention may be renewed under paragraph (b) of section 21 (3), unless he 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 his 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 complaint;
- (c) the likely duration of the patient's mental illness and the likely outcome of treatment;
- (d) any other matter likely to assist the Minister for Justice 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 his examination of the patient and the Director, having regard to the report and to the matter referred to in subsection (7), shall give his report to the Minister for Justice and shall furnish to that Minister a copy of the report by the psychiatrist.

(9) Upon consideration of the reports referred to in subsection (8) and any other material that he considers relevant the Minister for Justice—

- (a) may direct that the hearing of the complaint not proceed;
- (b) if the patient is no longer detained or in the Minister'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 three months.

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

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 Minister for Justice its report concerning the mental condition of the patient and shall state whether in its opinion he needs to be further detained on account of mental illness and whether he is fit for trial.

If the Tribunal reports that in its opinion the patient does not need to be further detained on account of mental illness and that he is fit for trial, the Minister for Justice 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.

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 Minister for Justice shall forthwith cause—

the Director; and

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 Minister for Justice directs under subsection (9) or (10) 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* 1886–1982 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 Minister for Justice directs under subsection (9) that the hearing of a complaint not proceed;

(b) a Tribunal reports under subsection (10) that a patient needs to be further detained on account of mental illness or that he is not fit for trial; or

(c) within three months after the deferment of a determination under subsection (9) neither the Minister for Justice has directed as referred to in provision (a) nor a Tribunal has reported as referred to in provision (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 Division II of Part III but shall not by reason of subsection (4) be treated as a restricted patient as provided by section 50.

In no case shall a complaint deemed pursuant to this subsection 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 him from informing the court that he 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*.

29B. Patients under Division II or III of Part III charged with indictable offences. (1) Where a person—

- (a) after being admitted to a hospital pursuant to Division II or III of Part III, is charged with an indictable offence;
- (b) after being charged with an indictable offence, is admitted to a hospital pursuant to Division II or III of Part III 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 Division II or III of Part III,

he 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—

the Under Secretary, Department of Justice, and

except in a case referred to in provision (a) of subsection (1), the Commissioner of Police,

thereof and the Under Secretary, 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 provision (c) of subsection (1), shall notify the registrar of the court to which the person has been committed for trial or sentence.

29C. Persons charged with indictable offences mentally ill upon examination of witnesses. (1) Where justices taking an examination of witnesses in relation to an indictable offence are satisfied on the evidence of two 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 his detention in a hospital; and
- (b) ought to be so detained in the interests of his own welfare or with a view to the protection of other persons,

they shall—

- (c) order that he be admitted to a security patients' hospital; and

(d) upon making that order, adjourn the examination to a date to be fixed and remand him accordingly, unless they are satisfied that the evidence heard by them before they made that order is sufficient to put the defendant upon his 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 him for trial to a criminal sittings of an appropriate court.

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

(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 recognizances.

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

(a) for any member of the police force 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 him until he 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 provision (c) of subsection (1), is made shall give notice in the prescribed form of the making of the order to the Under Secretary, Department of Justice, and the Director as soon as possible, and in any case within seven 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.

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

(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 his 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*;

(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 his examination of the patient and the Director, having regard to that report and to the matters referred to in subsection (1), shall give his report to the Minister for Justice and shall furnish to that Minister a copy of the report by the psychiatrist.

(3) The Director's report to the Minister for Justice shall be made within three months from the Director's receipt of the notification or notice referred to in subsection (1).

(4) Unless the Director reports to the Minister for Justice 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 him that the patient does not need to be detained on account of mental illness he shall, forthwith notify the Under Secretary, Department of Justice, accordingly and thereupon the provisions of section 31A shall apply.

31. Persons mentally ill while in custody awaiting examination of witnesses. (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 his place of custody and admitted to a security patients' hospital for treatment for mental illness, and his admission to the hospital shall be based on an application made in accordance with this section by a person who is an authorized person in respect of that place of custody.

For the purposes of this section an authorized person is—

- (a) in respect of a prison, a superintendent of the prison or such other person as is prescribed in respect of the prison;
- (b) in respect of a place of custody other than a prison, 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.

The application and recommendation shall be in accordance with such other conditions and requirements as are prescribed and where the place of custody is a prison shall be made through the Comptroller-General of Prisons.

An application duly made and the recommendation on which it is founded shall together be lawful authority for the hospital administrator to admit the patient to the hospital and detain him until he is dealt with otherwise in accordance with this section.

Upon the admission of a person to a security patients' hospital pursuant to this section the Comptroller-General of Prisons, in the case of a person admitted to the hospital from a prison, or the authorized person who made the relevant application, in any other case, shall forthwith notify the Director.

(3) Within three 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 his opinion whether—

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

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 he does not need to be so detained the hospital administrator shall inform the Director and the Comptroller-General of Prisons and, where the person charged was admitted from a place of custody other than a prison, the authorized person in respect of that place and the Comptroller-General of Prisons shall cause the person charged—

- (a) where he was admitted from a prison, to be returned to the prison from which he was admitted or to be removed to some other prison; or
- (b) where he was admitted from a place of custody other than a prison, to be removed to a prison.

(4) Each of them the Comptroller-General of Prisons and the person in charge of a place of custody other than a prison has and may exercise with respect to the removal of a person pursuant to this section from a prison or, as the case may be, a place of custody other than a prison to a security patients' hospital the power and authority that the Comptroller-General of Prisons has under section 16 of the *Prisons Act 1958-1974* in relation to an order by him under that section and the Comptroller-General of Prisons has and may exercise that power and authority with respect to the return or removal of a person from a security patients' hospital to a prison pursuant to this section.

(5) Upon being notified that a person has been admitted to a security patients' hospital pursuant to this section the Director shall notify the Under Secretary, Department of Justice, and the Commissioner of Police and the Under Secretary 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 he is otherwise dealt with pursuant to this Part.

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 him to be examined by a psychiatrist who in making his examination shall have regard to the matters referred to in section 30 (1).

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

(7) Within such time or times as are prescribed the psychiatrist shall give to the Director a report on his examination of the patient made under subsection (6) and the Director, having regard to that report and to the matters referred to in section 30 (1), shall give his report to the Minister for Justice and shall furnish to that Minister a copy of the report by the psychiatrist.

The Director's report to the Minister for Justice shall be made within three months from the Director's receipt of the notification referred to in subsection (2).

(8) Unless the Director reports to the Minister for Justice 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 him that the patient does not need to be detained on account of mental illness he shall forthwith notify the Under Secretary, Department of Justice, accordingly and thereupon the provisions of section 31A shall apply.

31A. Action on persons found not to be in need of detention.

(1) Where—

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;

pursuant to section 34 (2) the Minister for Justice has ordered that proceedings be continued against a person; or

pursuant to section 34 (5) the Governor in Council has ordered that proceedings be continued against a person,

(a) the Under Secretary, Department of 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 the person are to be held;

(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;

- (iii) to the Commissioner of Police; and
 - (iv) to any other person prescribed;
- (b) if that person has been committed for trial or sentence before a court in connexion with the charge against him, he shall be brought before the court at the place to which he has been committed or, with his consent at any other place, as soon as is practicable to be dealt with according to law;
- (c) if that person has not been committed for trial or sentence in connexion with the charge against him, he shall be brought before justices as soon as is practicable and in any case within seven days from the date of the Director's report or notification or the order of the Minister for Justice or Governor in Council and the justices shall—
- (i) make such order as they think fit and are authorized by the *Justices Act* 1886–1982 to make;
 - (ii) remand him in custody or on bail;
 - (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;
 - (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 member of the police force or other person prescribed is authorized 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).

31B. Admission to hospital not to prejudice. Where a person has been admitted to hospital as referred to in section 29B or 29C neither he nor any surety of his shall suffer any detriment by reason of that person's failure to appear before justices in respect of the charge against him if his failure is due to his admission to hospital as aforesaid.

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

(2) The provisions of section 31 apply to and in connexion 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 he were of a class of person referred to in subsection (1) of that section except that in

the application of subsection (5) of that section 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.

33. Procedures of Mental Health Tribunal. (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 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 are so in dispute that it would be unsafe to make a determination such as is referred to in provision (a) or (b) of subsection (1), 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 Under Secretary, Department of Justice, who shall notify—
 - the Director,
 - the Commissioner of Police,
 - 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,
 - 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, he be detained in a security patients' hospital or other hospital.

(5) An order made by the Mental Health Tribunal as referred to in provision (b) of subsection (4) 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* 1980-1984 and the provisions of that Act shall apply to and in connexion with that grant of bail.

34. Procedure upon finding of unfit for trial. (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 his fitness for trial at least once in every three months for a period of 12 months commencing on the 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.

The order of the Mental Health Tribunal made under this subsection is lawful authority to all persons concerned to detain the persons 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 Minister for Justice 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 Minister for Justice who shall submit the report together with his 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 he 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 six months and may, thereafter, defer that question for any period or periods not exceeding six 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 Minister for Justice who shall submit the report together with his 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) he 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 him 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 Minister for Justice 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.

35. Consequences to person to whom findings of Mental Health Tribunal or Order in Council relate. (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 three 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.

35A. Consequences to proceedings of findings of Mental Health Tribunal. 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 him 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.

36. Review of patient detained as restricted patient under this Part. Except where it is otherwise provided in this Part, where a patient is detained as a restricted patient under this Part—

- (a) his liability to be detained shall be reviewed by a Tribunal as if he had been admitted to hospital pursuant to Division II of Part III;
- (b) he shall not be released, including on leave of absence, unless a Tribunal has found that he can be released having regard to the interests of his own welfare and the protection of other persons; and
- (c) he shall not be transferred from one hospital to another unless a Tribunal or the Director, by writing under his hand, so orders.

37. Appeal against finding of Tribunal. (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 Crown Law Officer;
 - the patient concerned or his legal adviser or the patient's nearest relative;
 - the Director.

(3) An appeal to the Mental Health Tribunal pursuant to subsection (1) shall be instituted by way of application made within seven 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.

The provisions of paragraphs (a) to (f) of section 15 (11) 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.

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.

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

38. Persons mentally ill where sections 613 and 645 of The Criminal Code applicable. (1) Where a person charged with an indictable offence has, by reason of his 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 he 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 he 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 he 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.

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

(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 member of the police force 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*, 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 Under Secretary, Department of Justice, and to the Director as soon as is practicable after it is made and in any case within seven 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 his 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 his 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 his examination, shall give his report to the Minister for Justice and shall furnish to that Minister 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 his examination of the patient and to any other information that it considers relevant shall give its report to the Minister for Justice.

(7) The Minister for Justice shall, subject to there being no appeal duly instituted to the Mental Health Tribunal against the findings of the Tribunal, submit the report he 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 he is charged.

Such recommendation shall be made to the Governor in Council within three months of the making of the court order in relation to the patient under section 613 or 645 of *The Criminal Code* or within three 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 Minister for Justice submitted under subsection (7) the Governor in Council may—

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

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

- (a) a Patient Review Tribunal is authorized and required to take in respect of the patient all such steps as such a Tribunal was authorized and required by subsection (6) to take in respect of him when the matter of his mental condition was referred to it under subsection (5);
- (b) the Minister for Justice shall take in respect of the patient all such steps as he was required by subsection (7) to take in respect of him; and
- (c) the Governor in Council shall exercise in respect of the patient one of the powers conferred on him by subsection (8), at least once before the expiration of the period of deferment.

The Governor in Council may exercise his power to defer determination of a matter from time to time and whenever he does so the provisions of this subsection shall be given effect.

(10) If, within a period of three 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 he is charged or that the patient be tried for the offence with which he 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 he is charged or where proceedings against the patient are deemed to have been discontinued—

- (a) the Under Secretary, Department of 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 Police, the Comptroller-General of Prisons, the Director and all other persons prescribed;
- (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 he is charged.

(12) Where the Governor in Council has ordered that the patient be not proceeded against for the offence with which he 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 Under Secretary, Department of 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 Police, the Director and all other persons prescribed; and
- (b) pending further proceedings against him, the patient shall be brought before justices as soon as possible and in any case within seven days from the making of the order by the Governor in Council and the justices shall remand him, 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 member of the police force or other person prescribed is authorized to convey the patient from a hospital to appear before justices in accordance with subsection (13).

39. Persons mentally ill where section 647 of The Criminal Code applicable. (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 he 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 Code* 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' 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 paragraph (c) or (e) of subsection (1) shall be given effect and shall be lawful authority—

- (a) for a member of the police force 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 Under Secretary, Department of Justice, and to the Director as soon as is practicable after it is made and in any case within seven days after it is made.

(4) Within three months after the making of the court order under section 647 of *The Criminal Code* or within three 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.

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 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 (4) 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.

The Tribunal that has reviewed a patient's mental condition under this subsection shall make its recommendation to the Parole Board as to whether the patient can be released having regard to the interests of his own welfare and to the protection of other persons.

(7) The Parole Board shall not release a person who is or was a patient referred to in this section unless a Tribunal has so recommended to it that the person can be released.

40. Special provisions as to patients in custody. Where a patient who is liable to be detained under Part III 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 him in custody), he shall not cease at any time before he 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 him, 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 he is discharged from custody, he 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 he is discharged from custody, he shall continue to be so liable and to be so subject as if his 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 he had absented himself from hospital without leave on the day of his discharge from custody.

41. Transfer of detained person by Director. (1) The Director may order, by writing under his hand, 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 he thinks sufficient.

(2) The Director may, by writing under his hand, 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 he 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 his order in connexion with the funeral of anyone determined by the Director to be a close relative of that person or in connexion 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 member of the police force is necessary in transferring, removing, conveying, admitting or returning a person the subject of an order under this section, he shall certify as to his opinion by endorsement on the order to that effect.

Any member of the police force 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 member of the police force to render such assistance.

42. Granting of leave to detained persons. A person detained under this Part in a hospital may be granted leave as and in 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 Comptroller-General of Prisons where prescribed.

43. Admission of prisoners to hospital for treatment. (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 Health Act Amendment Act 1984*, may be removed from a prison and admitted to a hospital for treatment for mental illness.

Every such admission shall be based on an application made by an authorized person through the Comptroller-General of Prisons in accordance with this section.

For the purposes of this section an authorized person is a superintendent of a prison or such other person as is prescribed to be an authorized person for the purposes of this section.

(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.

(4) The Comptroller-General of Prisons shall furnish that application and the medical recommendation on which it is founded to the hospital administrator of the security patients' hospital to which the prisoner is taken and those documents shall be lawful authority for the hospital administrator to admit the prisoner and detain him until he is otherwise dealt with in accordance with this section.

(5) Within three days from the day of the admission of a person to a hospital pursuant to this section he shall be examined by a psychiatrist who shall certify to the hospital administrator his opinion whether the person is mentally ill and needs to be detained in a hospital on account of mental illness.

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 the hospital administrator shall inform the Director and the Comptroller-General of Prisons and the Comptroller-General of Prisons shall cause the person to be returned to the prison from which he was admitted or to be removed to some other prison.

(6) A person admitted to a hospital pursuant to this section and in respect of whom a psychiatrist has certified that in his 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 he does not need to be detained any longer on account of mental illness, continue to be detained in the hospital to which he was admitted or in such other hospital as the Director from time to time directs in writing for the balance of the period in respect of which the court ordered him to be imprisoned or detained less any remissions which he would have been granted had his detention continued to be in a prison, and thereupon the provisions of subsection (7) apply in respect of him.

Subject to this subsection, the provisions of this Act relating to the treatment or custody of a patient apply, with all necessary adaptations, to a person admitted to a hospital pursuant to this section.

A psychiatrist secondly referred to in the preceding provisions of this subsection 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.

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 twelve months until the provisions of subsection (7) apply in respect of the patient and he shall make a report with respect to each such review to the Director.

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 the person detained shall be forthwith returned to such prison as the Comptroller-General of Prisons directs.

(7) At the expiration of his 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 he shall be deemed—

- (a) to have been admitted to the hospital where he then is as if an application had been made pursuant to Division II of Part III and as if the authority for his detention had been renewed for a period of 12 months following such expiration; and
- (b) to be a restricted patient and shall be treated as provided by section 50.

This subsection applies subject to subsection (8).

(8) As soon as is practicable within the period commencing 14 days before the expiration of his period of imprisonment or detention and terminating seven 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 his detention in a hospital; and
- (b) the patient ought to be so detained as a restricted patient in the interests of his own welfare or with a view to the protection of other persons;

and make such other recommendation as he thinks fit to the Director.

Upon his 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;
- (b) determine that the patient not be or not continue to be such a restricted patient and order his transfer (after the expiration of his period of imprisonment or detention) to another hospital if he is detained in a security patients' hospital; or
- (c) determine that the patient be discharged from detention upon the expiration of his 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 his detention in a hospital and does not need to be detained in the interests of his 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 subsections (7) and (8) the expression “his period of imprisonment or detention” means the period for which a person admitted to a hospital pursuant to this section had been ordered by a court to be imprisoned or detained or, where he had been ordered to be imprisoned or detained for more than one period, the period as aforesaid that is the last to expire, less any remissions that he would have been granted had he continued to be detained in a prison.

(10) The Comptroller-General of Prisons has and may exercise, with respect to the removal of a person, pursuant to this section, from a prison to a hospital or the removal or return of a person, pursuant to this section, from a hospital to a prison, the power and authority he has under section 16 of the *Prisons Act 1958–1974* with respect to an order by him under that section.

(11) Notwithstanding any other provision of this Act the Parole Board may release on parole under the *Offenders Probation and Parole Act 1980* any prisoner transferred to and detained in a security patients’ hospital or other hospital, if a Patient Review Tribunal, having reviewed the mental condition of the prisoner, has determined that he may be so released having regard to his own safety and the safety of other persons.

43A. Finality of Mental Health Tribunal’s decisions. (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 his mental condition at the material time as an issue upon his trial and if he does so raise that issue those findings shall not be admissible in evidence upon his trial.

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

- (a) the person to whose mental condition the decision relates, if the decision has been made by the Mental Health Tribunal in a reference instituted to it by a Crown Law Officer or the Director and he is aggrieved thereby;
- (b) the person to whose mental condition the decision relates, if the decision of the Mental Health Tribunal is that he was suffering from unsoundness of mind at the time an alleged offence was committed and has been made in a reference instituted by or on behalf of that person in which he was seeking a decision that he was suffering from diminished responsibility at that time;
- (c) the person to whose mental condition the decision relates, if the decision of the Mental Health Tribunal is that he is unfit for trial and he is aggrieved thereby;

- (d) the Crown Law Officer, if the decision of the Mental Health Tribunal is that the person to whose mental condition the decision relates was suffering from unsoundness of mind or from diminished responsibility at the time an alleged offence was committed and has been made in a reference instituted by or on behalf of that person,

and shall not be available in any other circumstances.

Notwithstanding the foregoing provisions of this subsection 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 Criminal Appeal from a decision of the Mental Health Tribunal shall, within 28 days 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.

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 Criminal 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 Criminal Appeal.

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 Criminal Appeal.

(5) Where the Court of Criminal 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), (4), (5) and (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 Criminal Appeal.

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

(2) A finding by the Court of Criminal 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 his mental condition at the material time as an issue upon his trial but if he does raise that issue those findings shall not be admissible in evidence upon his trial.

43C. Accused's right to trial notwithstanding lack of criminal responsibility. If a person desires to be brought to trial for the offence

with which he is charged notwithstanding that the Mental Health Tribunal or the Court of Criminal Appeal has found him to be not criminally responsible by reason of his being of unsound mind, he 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 his desire whereupon, unless he has been found to be not fit for trial, all necessary steps shall be taken to have his case brought on for trial as soon as is practicable.

43D. Findings upon accused's mental condition not to be published to prejudice of trial. Where the Mental Health Tribunal or the Court of Criminal Appeal has given a decision concerning—

- a person's mental condition at the time of the commission of the alleged offence with which he is charged; or
- 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—

- (a) in the case of a decision that will result in the accused person being brought to trial, the conclusion of the trial;
- (b) in the case of a decision of the Court of Criminal 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;
- (c) 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 Criminal 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.

43E. Custody of accused in security patients' hospital during proceedings.

(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 he should be detained in a security patients' hospital during such adjournment, the court may order that he be remanded in custody in a security patients' hospital.

- (2) A court order made under subsection (1) is lawful authority—
 - (a) for a member of the police force 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 him 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 member of the police force or any other person prescribed for the purpose is authorized 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.

29. Amendment of s. 44. Transfer of patients. Section 44 of the Principal Act is amended by—

(a) omitting subsection (1) and substituting the following subsection:—

“(1) A patient liable to be detained in a hospital pursuant to Division II of Part III 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.

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.”;

(b) in subsection (2), omitting the words “under his hand” and substituting the words “signed by him”;

(c) in the proviso to subsection (2), inserting after the words “who is” the words “being treated as”;

(d) omitting subsection (3) and substituting the following subsection:—

“(3) Where a patient liable to be detained in a hospital pursuant to an application for admission under Division II of Part III 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 him as if the application for admission had been an application for admission to that other hospital and as if he had been admitted to that other hospital at the time of his original admission to hospital pursuant to the application for admission.”;

(e) adding at the end of the section the following subsection:—

“(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”.

30. Amendment of s. 45. Removal of patients out of Queensland. Section 45 of the Principal Act is amended by omitting all words preceding the proviso and substituting the following words:—

“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 IV 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 him; and

- (b) that it would be in the interests of his welfare that he should be removed from Queensland to that place,

the Mental Health Tribunal may order that he be removed from Queensland and may make such further or other order directing or authorizing his removal or touching his 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.”.

31. Amendment of s. 46. Leave of absence from hospital. Section 46 of the Principal Act is amended by omitting the words “responsible medical practitioner” wherever they occur and substituting in each case the words “designated medical practitioner”.

32. Amendment of s. 47. Return and re-admission of patients absent without leave. Section 47 of the Principal Act is amended by—

- (a) in subsection (1),

(i) inserting after the words “in a hospital” the words “other than a patient liable to be detained under Part IV”;

(ii) omitting the words “responsible medical practitioner” and substituting the words “designated medical practitioner”;

(iii) inserting after the words “by any person” the words “or member of a class of person”;

- (b) omitting subsection (2) and substituting the following subsection:—

“(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 IV or a patient who is required by this Act to be treated as a restricted patient as provided by section 50 his liability to be taken into custody under subsection (1) shall cease upon the expiration of the period of 28 days from the commencement of his absence without leave, failure to return or absence without permission referred to in subsection (1), unless he has within that period returned or been so taken into custody.”

33. Amendment of s. 48. Discharge of patients generally. Section 48 of the Principal Act is amended by—

- (a) in subsection (1),

(i) inserting after the words “discharging him from” the words “liability to”;

(ii) inserting after the words “order for discharge” the words “from liability to detention”;

- (b) in subsection (2),

(i) inserting after the words "order for discharge" the words "from liability to detention";

(ii) omitting the words "responsible medical practitioner" and substituting the words "designated medical practitioner";

(c) in subsection (3), omitting the words "from hospital of a patient forthwith upon his recovery from mental illness" and substituting the words "from liability to detention and removal from hospital of a person who is not mentally ill".

34. Amendment of s. 49. Restrictions on discharge by certain persons. Section 49 of the Principal Act is amended by—

(a) in subsection (1),

(i) inserting after the words "order for discharge" where they firstly occur the words "from liability to detention";

(ii) omitting the words "except after such person giving" and substituting the words "unless such relative or authorized person has given";

(iii) omitting the words "for discharge" where they secondly and thirdly occur;

(iv) omitting the words "responsible medical practitioner" and substituting the words "designated medical practitioner";

(b) in subsection (2),

(i) inserting after the words "order for discharge" where they firstly and secondly occur the words "from liability to detention";

(ii) omitting from paragraph (b) the words "for the discharge" and substituting the words "for discharge from liability to detention";

(iii) omitting from paragraph (b) the word "six" and substituting the word "three";

(iv) omitting the words "responsible medical practitioner" where they twice occur and substituting in each case the words "designated medical practitioner";

(c) in subsection (3), omitting the words "responsible medical practitioner" and substituting the words "designated medical practitioner".

35. Amendment of s. 50. Restrictions on leave and discharge of certain persons. Section 50 of the Principal Act is amended by—

(a) in subsection (1), omitting the words "be detained" and substituting the word "detention";

(b) in subsection (2), omitting the word "eighteen" where it twice occurs and substituting in each case the expression "16";

(c) in subsections (4) and (5), omitting the words "responsible medical practitioner" where they twice occur and substituting in each case the words "designated medical practitioner";

(d) in subsection (6),

(i) inserting after the words "for discharge" where they firstly occur the words "from liability to detention";

(ii) omitting the words “for discharge” where they secondly and thirdly occur;

(iii) omitting the words “responsible medical practitioner” where they twice occur and substituting in each case the words “designated medical practitioner”;

(iv) inserting after the words “member of the police force” the words “or any person or member of a class of person authorized in writing by the hospital administrator”;

(e) in subsection (7), omitting from paragraph (a) the words “six months after a determination provided for in subsection (1) and at least once in every period of twelve months thereafter,” and substituting the words “three 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”;

(f) in subsection (8), omitting paragraph (b) and substituting the following paragraph:—

“(b) 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—

(i) in respect of a patient for review of his classification as a restricted patient; or

(ii) by or on behalf of a patient for his discharge from liability to detention.”;

(g) in subsection (9), omitting the word “eighteen” and substituting the expression “16”;

(h) in subsection (10) inserting after the words “be discharged from”, where they occur in paragraph (c), the words “liability to”.

36. New ss. 50A and 50B. The Principal Act is amended by, in Part VI, adding after section 50 the following sections:—

“**50A. Powers over restricted persons in certain circumstances.** (1) The Director may, in writing signed by him, 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 he thinks sufficient;

(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 his 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 he is removed pursuant to the order.

An order of the Director made under this subsection 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 member of the police force is necessary or desirable for carrying out the terms of an order made under subsection (1) he shall certify as to that opinion by endorsement on the order.

Any member of the police force 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 member of the police force to render such assistance.

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

(a) any member of the police force; or

(b) any person or member of a class of person authorized 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 him to the hospital from which he is absent without leave or to the custody from which he escaped or to such place as is specified by the Director in writing.

50B. Incidental powers for purposes of ss. 50 and 50A. It is lawful for a person who seeks to exercise any power or authority conferred on him 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.”.

37. Amendment of s. 51. Relatives and nearest relatives of patients. Section 51 of the Principal Act is amended by—

(a) inserting after subsection (2) the following subsection:—

“(2A) In relation to a patient—

(a) in respect of whom an application under Division II of Part III 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 provision (a), for a period not less than three years immediately prior to the making of the application; or

- (d) in the case of a patient described in provision (b), for a period not less than three years immediately prior to her or his becoming liable to be detained under this Act.”;
- (b) in subsection (3), inserting after the word “ surviving ” the words “ and, in a case to which subsection (2A) is relevant, who consents in writing to be the nearest relative ”.

38. Repeal of and new s. 53. The Principal Act is amended by repealing section 53 and substituting the following section:—

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

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

(a) pursuant to the patient’s written application made to the Director-General wherein the patient acknowledges that he 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 Director-General’s consent given in relation to a particular case.

Penalty: \$2 000.

(3) For the purpose of assisting the Director-General in the matter of giving or withholding his consent, referred to in subsection (2), in a particular case there shall be established a consultative committee consisting of such persons as the Minister from time to time appoints by notification published in the Gazette and the committee’s function shall be to consider and recommend to the Director-General with respect to any reference submitted to it by him as to whether, in a particular case, he should give or withhold his consent to the performance or carrying out of any proscribed treatment.

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

39. Amendment of s. 54. Visiting and examining of patients. Section 54 of the Principal Act is amended by—

(a) omitting subsection (2) and substituting the following subsection:—

“ (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 authorized 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.”;

(b) adding at the end of the section the following subsection:—

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

40. Amendment of s. 55. Management of the estates of patients. Section 55 of the Principal Act is amended by—

(a) in subsection (2), omitting the words “responsible medical practitioner” and substituting the words “designated medical practitioner”;

(b) adding at the end of subsection (2) the following paragraph:—

“In this subsection the expression “managing his estate” means undertaking the custody, management and administration of the property and affairs of the patient.”; and

(c) omitting subsection (3).

41. Repeal of s. 56. Notification of patient needing coercion or restraint. The Principal Act is amended by repealing section 56.

42. Amendment of s. 59. Ill-treatment of patient. Section 59 of the Principal Act is amended by—

(a) adding to the note appearing in and at the beginning of the section the words “or resident”;

(b) Omitting subsection (1) and substituting the following subsection:—

“ (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 out-patient; 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 and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding \$800, or to both.”;

(c) in subsection (2), inserting after the word “patient” the words “or resident”;

(d) omitting subsections (3) and (4).

43. Amendment of s. 61. Obstruction. Section 61 of the Principal Act is amended by omitting subsection (3).

44. Amendment of s. 63. Penalties. Section 63 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“ (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 him under this Act; or

(b) wilfully fails to fulfil any undertaking given by him for the purposes of this Act,

is guilty of an offence against this Act.”.

45. Amendment of s. 64. Application of Traffic Act to vehicles in hospital grounds. Section 64 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section, inserting after the word “ hospital ” the words “ or training centre ”;

(b) in subsection (1),

(i) omitting from the definition “ hospital grounds ” the words “, a training centre ” and the words “, training centre ”;

(ii) omitting from the definition “ hospital grounds ” the expression “ 1973 ” and substituting the expression “ 1982 ”;

(iii) inserting after the definition “ hospital grounds ” the following definition:—

“ “ 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* 1962–1984, the whole of that reserve;”

(c) in subsections (2) and (3), inserting after the words “ hospital grounds ” wherever they occur the words “ or training centre grounds ”.

46. Amendment of s. 65. Evidentiary provisions. Section 65 of the Principal Act is amended by—

(a) in paragraph (a), inserting after the words “ hospital grounds ” the words “ or training centre grounds ”;

(b) in paragraph (c), omitting the words “ responsible medical practitioner ” and substituting the words “ designated medical practitioner ”;

(c) adding after the words “ contrary is proved ” where they occur in paragraph (e) the following words:—

“ ;

-
- (f) a certificate purporting to be under the hand of the medical superintendent of a hospital—
that a patient has been admitted under this Act to the hospital;
as to the date of his admission to the hospital; or
as to the period of his stay in the hospital,
shall be evidence and, in the absence of evidence to the contrary, conclusive 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 chairman of the Tribunal (whether the chairman at the time the finding or determination was made or at the date of the document) or signed by a person authorized by such chairman in that behalf shall be evidence and, in the absence of evidence to the contrary, conclusive evidence of the making of the finding or determination in respect of that patient and of the matters contained in the document ”.

47. Repeal of s. 67. Retaking of persons escaping from legal custody. The Principal Act is amended by repealing section 67.

48. Amendment of s. 68. Exercise of powers by hospital administrator. Section 68 of the Principal Act is amended by, in subsection (1), omitting all words from and including the words “ in the case of ” to the end of the subsection and substituting the words “ 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 authorized in writing in that behalf by the hospital administrator ”.

49. Amendment of s. 69. Protection for acts done in pursuance of this Act. Section 69 of the Principal Act is amended by adding at the end of subsection (1) the following paragraph:—

“ 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 him therein liable to be charged with any offence.”.

50. New s. 69A. The Principal Act is amended by inserting after section 69 the following section:—

“ 69A. Nature of proceedings before Mental Health Tribunal. Proceedings before the Mental Health Tribunal shall be deemed to be judicial proceedings and evidence therein shall be taken upon oath, affirmation or other sanction authorized by law.”.

51. Repeal of and new s. 70. The Principal Act is amended by repealing section 70 and substituting the following section:—

“ 70. Powers of Mental Health Tribunal in respect of patient. (1) The Mental Health Tribunal may, of its own motion or on the application of

any person, by its order direct one 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.

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

(3) If on examination of a person ordered to be brought before it and upon consideration of evidence adduced to it in connexion 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 his detention in hospital and does not need to be detained in the interests of his 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 he be immediately discharged from detention by the person who is detaining him unless he is lawfully detained for some other cause.

(4) In determining whether a person's mental condition requires that he 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 him and may, as a condition of ordering his discharge from detention, require an undertaking in writing from the relative or friend that he 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 his 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.”.

52. Repeal of and new s. 71. The Principal Act is amended by repealing section 71 and substituting the following section:—

“**71. Authority of Mental Health Tribunal’s orders.** (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 him to enter upon and into any premises or place where he 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 he believes to be relevant to the matters on which he is required by the order to report.

(2) A person who refuses or fails to answer a question directed to him 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 his aid any member of the police force or other person who in his opinion may be of assistance to him 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 he considers necessary for a proper assessment of that person’s mental condition and to use therein such force as is necessary for the purpose.”

53. Amendment of s. 72. Regulations. Section 72 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(4) Regulations may provide for the payment of fees and expenses, being remuneration payable for performing or carrying out functions or duties for the purposes of this Act, and may provide that the amount thereof shall be as is from time to time approved by the Governor in Council.”

54. New ss. 73, 74, 75 and 76. The Principal Act is amended by inserting after section 72 the following sections:—

“**73. Patients’ Trust Fund.** (1) Moneys received by a hospital administrator or person in charge of a training centre in trust for a patient in the hospital, place, institution or training centre under his charge shall be paid into a fund called the “Patients’ Trust Fund” maintained by the hospital administrator or person in charge and, subject to this Act, shall be applied from that fund in accordance with this section.

(2) Moneys to the credit of a patient in the Patients’ Trust Fund shall be applied towards meeting charges for his maintenance as prescribed and to the benefit of the patient or to any lawful purpose directed by him.

(3) Moneys to the credit of a patient in the Patients’ Trust Fund shall be paid—

(a) in the event of the patient’s discharge from the hospital, place, institution or training centre, to him or to such lawful object as he directs;

- (b) in the event of the patient's transfer to another hospital, place, institution or training centre, to the hospital administrator or person in charge of that other hospital, place, institution or training centre in trust for the patient; or
- (c) in the event of the patient's death, to such lawful object as he has directed or in the absence of a direction to his personal representative.

(4) Interest or other income received in respect of moneys in the Patients' Trust Fund—

- (a) being moneys kept in any savings bank account or other interest-bearing account;
- (b) being moneys kept in any one or more of the investments authorised by section 75, if the Under Secretary, Department of Health, or other person authorised by him for the purpose so approves,

shall be paid into a common account maintained within the Patients' Trust Fund and be applied, in the case where the hospital is conducted by a Hospitals Board constituted under the *Hospitals Act* 1936–1983, in accordance with the provisions of that Act, and in any other case—

- (i) where the amount available to be applied is \$1 000 or more, in a manner approved by the Minister; or
- (ii) where the amount available to be applied is less than \$1 000 in a manner approved by the Director in the provision of amenities for patients generally.

(5) Nothing in this section affects the powers of The Public Trustee of Queensland pursuant to the *Public Trustee Act* 1978–1981 or section 55.

74. Power to accept gifts etc., and to establish a Trust Fund. (1) A hospital administrator and a person in charge of a training centre is authorized to acquire, by gift *inter vivos* or bequest, property given or bequeathed to the hospital, place or institution of which he is administrator or the training centre of which he is in charge or for the benefit of patients therein unless in a particular case or class of case the Minister has directed that property should not be so acquired and, with the approval of the Minister, first had and obtained, is authorised to apply such property on the conditions or for the purposes to which a proposed gift or a bequest is subject.

(2) The rule of law relating to perpetuities shall not apply to any such condition to which the hospital administrator or person in charge has agreed.

(3) A hospital administrator or person in charge of a training centre may establish and administer a Trust Fund for any purpose in connexion with the conduct of the hospital, place, institution or training centre concerned and if he does so, shall establish at a bank one or more bank accounts in respect of the Trust Fund.

(4) The Trust Fund established shall be applied to the purposes to which the moneys therein have been directed to be applied but in the

absence of such a direction shall be applied in aid of the conduct of the hospital, place, institution or training centre concerned—

- (a) where the amount available to be applied is \$1 000 or more, in a manner approved by the Minister; or
- (b) where the amount available to be applied is less than \$1 000, in a manner approved by the Under Secretary, Department of Health or, in the case where the hospital is conducted by a Hospitals Board constituted under the *Hospitals Act 1936-1983*, by that Board as it thinks fit.

(5) Moneys shall not be paid into a Trust Fund established under subsection (3) if they should be paid into the Patients' Trust Fund pursuant to section 73.

(6) Interest or other income received from the investment of moneys credited to a Trust Fund established under subsection (3), not being interest referable to moneys specifically invested and required to be applied to a purpose directed, shall be apportioned among the capital sums comprising the investment in the proportion that each capital sum bears to the whole of the investment and shall be credited to the accounts by way of increase of the appropriate capital sum and shall be applied to the purpose to which the capital sum is to be applied.

75. Investment of moneys. (1) Moneys held in trust in a fund referred to in section 73 or 74 may, until required for a purpose to which the moneys may lawfully be applied, with the approval of the Under Secretary, Department of Health, first had and obtained, be invested in the name of the Director of Finance, Department of Health, in any one or more of the investments referred to in section 48 (1) of the *Statutory Bodies Financial Arrangements Act 1982*.

(2) Every security or safe custody acknowledgment or other document evidencing title issued in respect of any investment authorized by subsection (1) shall be held by the Director of Finance, Department of Health, who shall record particulars of the investment in a Register of Investments kept by him.

(3) Subsection (1)—

- (a) shall not apply in respect of moneys acquired under an instrument that expressly directs to the contrary; and
- (b) shall not be construed to restrict, in relation to particular moneys, the powers of investment conferred by an instrument under which those moneys have been acquired.

(4) Where a hospital administrator or person in charge of a training centre has invested moneys pursuant to this Act or pursuant to the directions of a donor or testator he may from time to time, with the Minister's approval given on the advice of the Treasurer, vary or transfer those investments into other investments subject, in the case of moneys acquired by him under an instrument referred to in subsection (3), to the other investments being in accordance with that instrument or this Act.

76. Power to convert property. A hospital administrator or person in charge of a training centre who has acquired any investment or property that is not money under the authority conferred by section 74 may, unless the terms and conditions on which he has acquired the investment or property expressly or impliedly exclude it, sell and convert that investment or property into money and apply the net proceeds thereof in accordance with this Act or such terms and conditions.”.

55. Repeal of and new Fifth Schedule. The Principal Act is amended by repealing the clauses of the Fifth Schedule and substituting the following clauses:—

“ **1. Meaning of terms.** In this Schedule, unless the contrary intention appears—

“ 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 *Hospitals Act 1936* or under that Act as amended 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 his 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 his 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 detained as being, in the opinion of a psychiatrist, mentally ill and incapable of managing his 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 his 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 VI of the *Public Trustee Act 1978-1981*;

“Public Trustee” means The Public Trustee of Queensland constituted under the *Public Trustee Act 1978-1981*;

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

2. General function of the Public Trustee in relation to the estate of a patient. (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 appointed before or after the commencement of the *Mental Health Services Act 1974*.

3. Particulars to be furnished to Public Trustee. (1) Within fourteen days of a person admitted to a hospital, psychiatric hospital, training centre or other place referred to in section 16 of this Act becoming a patient, the hospital administrator shall cause to be given to the Public Trustee—

- (a) the name of the patient and his age;
- (b) copies of medical certificates relating to his admission;
- (c) the names and particulars of the places of residence of his 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 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 his maintenance or benefit, the hospital administrator or official visitor shall report thereon to the Minister as well as to the Public Trustee.

4. Committee. (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 his estate, the Court may—

- (a) make a declaration to that effect;
- (b) direct a reference to the Public Trustee to make enquiries concerning the property of the person; and,
- (c) if necessary, appoint a Committee of his estate and, where the Court considers it desirable to do so, in addition, or in the alternative, a Committee of his 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.

5. Application to be by petition. (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 his estate, upon the Public Trustee (unless he is the petitioner) and upon any other person whom the Court may direct to be served.

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) (a) 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 six 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 his estate or within such further period as the Court may allow in a particular case.

(b) The Public Trustee shall be entitled to be heard on any such application and his costs (including the costs of obtaining such reports as he deems desirable) shall be allowed to the Public Trustee out of the estate of the person in respect of whom the petition is made.

6. Termination of management. (1) (a) The authority of the Public Trustee to manage the estate of a patient shall cease—

- (i) when the patient dies and the Public Trustee receives notice thereof as prescribed;

- (ii) when a Committee, not being the Public Trustee, of the estate of the patient is appointed;
- (iii) when the Court or a Tribunal so orders;
- (iv) in the case of a patient referred to in section 55 of this Act, not more than fourteen days after the Public Trustee is notified by the designated medical practitioner that the patient is able to manage his estate; or
- (v) when the Public Trustee is sooner satisfied that the patient is able to manage his estate.

(b) 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 his estate:

Provided that a Tribunal shall not hear any application in relation to a patient—

- (i) 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 his estate; or
- (ii) if a period of less than twelve months has elapsed since a previous application in respect of that patient has been dealt with by a Tribunal.

(2) (a) 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 his estate, make a declaration to that effect and discharge any Committee of his estate or person from acting further as such.

(b) 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 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 his estate and discharged the Committee of his 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.

7. Persons found mentally ill in places beyond the State. 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 his 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 his estate or person as it may consider necessary.

8. Order in protective jurisdiction in reciprocating State to be effective in Queensland on being resealed. (1) In this clause—"reciprocating State" means any State, country or territory which has been declared to be a reciprocating State by a Proclamation made under clause 40 of the Third Schedule to *The Mental Health Acts, 1962 to 1964* or clause 41 of this Schedule, repealed by the *Public Trustee Act 1978*, or clause 41 of 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 Proclamation 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 Order in Council, 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 of Queensland, 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:

Provided that 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 his 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 Services Act 1974*.

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

9. Supervision of Committee. (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 he 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.

All moneys received by the Public Trustee pursuant to this subclause 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.

10. Statement as to estate to be rendered to Public Trustee. (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 his 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.

(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 and shall be liable to a penalty not exceeding \$1 000 for every such offence.

(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 him 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.

11. Percentage of moneys in hand of Committee to be paid to Public Trustee. (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 one per

centum 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.

12. Reference to Court by Public Trustee. 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;
- (b) require the Committee to appear before it; and
- (c) make any order that, in the circumstances, it considers desirable.

13. Effect of appointment of Committee. (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 authorized to—

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

Provided that the Committee shall not dispose of property, incur any liability or expend any money of the patient (other than by investment in funds in which by law trustees are authorized 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 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; and
- (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 his 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 his behalf.

(5) The Court may, by order, give leave to the patient to make any transfer, lease, mortgage, or other disposition of his 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 his benefit and that he 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 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 contract, transfer, lease, mortgage, or other disposition of property entered into or made by a patient.

14. Transfer of stock of patient. (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 him, or as part of his property, and the Committee dies intestate, or himself 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 fails to transfer the stock, and to receive and pay over the dividends or income thereof to a new Committee for a space of fourteen 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 he is residing and that his 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.

15. Court may order provision made out of estate where property sold, etc. (1) Where any property of a patient who is deceased has been dealt with under this Schedule, *The Mental Hygiene Act of 1938* or *The Mental Health Acts, 1962 to 1964* (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 his will or any codicil thereto or upon his intestacy, or by any disposition taking effect on his death, any other person would have taken an interest in his 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 his estate.

(2) The provisions of subsections (2) to (11) of section 41 and of sections 42, 43 and 44 of the *Succession Act 1981–1983* shall apply to any such application and any order made thereon as if such application were an application under Part IV 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 1978–1981*.

16. Court may order costs. The Court may make such order as it thinks proper as to the costs, charges and expenses of and incidental to any proceedings authorized by this Schedule.

17. Adaptation of pre-existing provisions as to procedure. 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.”.

56. Amendment of Sixth Schedule. The Sixth Schedule to the Principal Act is amended by—

(a) omitting clause 12;

(b) omitting clause 16 and substituting the following clause:—

“ 16. **Service and proof of documents.** 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.”

57. Increases in pecuniary penalties. The provisions of the Principal Act specified in the first column of the following Table are amended as indicated in the second column of that Table:—

TABLE

Section 58: Wilfully making, or making use of, false entry	Omit \$400; insert \$800
Section 59 (2): Ill-treatment of patient	Omit \$400; insert \$800
Section 60: Assisting patients to absent themselves without leave	Omit \$400 where it twice occurs; insert \$800 in each case
Section 61: Obstruction	Omit \$200; insert \$400

PART III—AMENDMENT OF CRIMINAL CODE

58. Amendment of s. 645. Accused Person Insane during Trial. Section 645 of *The Criminal Code* is amended by omitting from the first paragraph the words “ laws relating to insane persons ” and substituting the words “ *Mental Health Services Act 1974–1984* ”.

59. Amendment of s. 647. Acquittal on ground of Insanity. Section 647 of *The Criminal Code* is amended by omitting from the first paragraph the words “ until Her Majesty’s pleasure is known ” and substituting the words “ until he is dealt with pursuant to the *Mental Health Services Act 1974–1984* ”.

PART IV—AMENDMENT OF HEALTH ACT

60. Citation. (1) In this Part the *Health Act 1937–1982* as amended by the *Food and Health Acts Amendment Act 1984* is referred to as the Health Act.

(2) The Health Act as amended by this Part may be cited as the *Health Act 1937–1984*.

61. Amendment of s. 63. Interpretation. Section 63 of the Health Act is amended by—

(a) inserting after the definition “Licence” the following definition:—
“Medical cases”—Includes cases of mental illness;”;

(b) in the definition “Registered nurse”, omitting the expression “mental nurse” and substituting the expression “psychiatric nurse”.

62. Amendment of s. 64. Private hospitals to be licensed. Section 64 of the Health Act is amended by, in paragraph (c), omitting the words “the *Mental Health Act 1974–1978*” and substituting the words “the *Mental Health Services Act 1974–1984*”.

63. Amendment of s. 66. Kinds of licences. Section 66 of the Health Act is amended by—

(a) omitting the expression “mental nurse” where it occurs in paragraphs (e) and (f) and substituting in each case the expression “psychiatric nurse”;

(b) omitting the second proviso and substituting the following proviso:—

“Provided further that, in the case of a combined general private and maternity hospital,

where the nurse (being the holder of the licence or the person employed in charge) is registered as a general nurse only, there shall be employed in the hospital a registered midwifery nurse and the services of a registered midwifery nurse shall be retained therein for such time as maternity cases are being treated in the hospital;

where the nurse (being the holder of the licence or the person employed in charge) is registered as a midwifery nurse only, there shall be employed in the hospital a registered general nurse and the services of a registered general nurse shall be retained therein for such time as medical or surgical cases (other than cases of mental illness) are being treated in the hospital;

where the nurse (being the holder of the licence or the person employed in charge) is not registered as a psychiatric nurse, there shall be employed in the hospital a registered psychiatric nurse and the services of a registered psychiatric nurse shall be retained therein for such time as cases of mental illness are being treated in the hospital.”