

NORTHERN TERRITORY OF AUSTRALIA

MENTAL HEALTH ACT

As in force at 1 May 1997

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 1997

MENTAL HEALTH ACT

An Act to provide for the care and treatment of mentally ill persons

Part I Preliminary

1 Short title

This Act may be cited as the *Mental Health Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Repeal and savings

- (1) The Ordinances listed in the Schedule are repealed.
- (2) Notwithstanding the repeals effected by subsection (1):
 - (a) an arrangement or order made under the repealed Ordinances and in force immediately before the commencement of this Act continues to have effect as though made under this Act, but may be revoked or varied by an arrangement made under this Act; and
 - (b) where, immediately before the commencement of this Act, the estate of a person was being administered under the repealed Ordinances, it may continue to be so administered as though those Ordinances had not been repealed until the making of a protection order under the *Aged and Infirm Persons Property Act* in respect of that estate.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

Chief Health Officer means the Chief Health Officer within the meaning of the *Public Health Act* and includes a person performing the duties of the Chief Health Officer.

hospital means a hospital within the meaning of the *Hospitals and Medical Services Act*.

voluntary patient means a patient who has been voluntarily admitted to a hospital within the meaning of subsection (4).

- (2) A person shall not be considered to be a mentally ill person by reason only that he expresses or refuses or fails to express a particular political, anarchic, religious, irreligious, legal, illegal, moral, or immoral opinion or engages in or refuses or fails to engage in a particular political, anarchic, religious, irreligious, legal, illegal, moral or immoral activity.
- (3) Evidence of the taking of or addiction to a drug or psychotropic substance is not of itself evidence of mental illness, but a biochemical or psychological effect of a drug or psychotropic substance may be an indication of mental illness.
- (4) A person shall be deemed to have been voluntarily admitted to a hospital if he is admitted on the voluntary application of himself or, if he is an infant, of his parent or guardian.

Part II Voluntary patients

5 Admission of voluntary patient

Within 3 days (not inclusive of Saturdays, Sundays and public holidays) after the voluntary admission of a person to a hospital as a mentally ill person, the person in charge of the hospital shall, unless the person admitted to the hospital is capable of managing himself and his affairs:

- (a) notify the Chief Health Officer that the person has been so admitted; and
- (b) ensure that the person has been psychiatrically examined by 2 medical practitioners acting independently of each other, whether the examination took place before or after admission.

6 Discharge of voluntary patient

A voluntary patient in a hospital shall be discharged from the hospital, subject to the reasonable rules of the hospital concerning the admission and discharge of patients, upon his request or, if he is an infant, upon the request of his parent or guardian.

Part III Compulsory detention of mentally ill persons

Division 1 Taking persons into custody

7 Warrant to take person into custody

(1) Where it is made to appear to a magistrate after reasonable inquiry that a person may be suffering from a mental illness and, by reason of the illness, may:

- (a) require care, treatment or control;
- (b) be incapable of managing himself or his affairs;
- (c) be under inadequate care or control; or
- (d) be likely, by act or neglect, to cause death or serious bodily harm to himself or another person,

the magistrate may issue a warrant to take that person into custody and to hold him in custody for a period not exceeding 3 days (not inclusive of Saturdays, Sundays and public holidays).

(2) A person who executes a warrant issued under this section:

- (a) shall, within 24 hours after it is executed, or as soon as possible thereafter, serve a copy of the warrant, or cause it to be served, on the Chief Health Officer; and
- (b) is not required to serve a copy of the warrant on the person taken into custody unless:
 - (i) the magistrate issuing the warrant directs him to do so; or
 - (ii) the person taken into custody asks him to do so.

8 Telephone application for warrant

(1) Where it is impracticable for a person to appear before a magistrate to make an application for a warrant under section 7, he may make the application by telephone or otherwise and the magistrate may, if he is satisfied that the issue of the warrant is justified, sign the warrant and authorize the person applying for it to act according to its terms without having the warrant in his possession.

(2) Where a magistrate signs a warrant in pursuance of subsection (1), he shall cause a copy of that warrant to be served on the Chief Health Officer within 24 hours after the warrant is signed, or as soon as possible thereafter.

- (3) Where a person is authorized under subsection (1) to act without having a warrant in his possession:
- (a) he shall, before he acts, complete a form of warrant substantially in the terms of the warrant issued by the magistrate, writing on it a statement that a warrant in those terms was issued and giving the name of the magistrate who issued it and the date on which and the time and place at which it was issued;
 - (b) he shall carry that copy of the warrant with him while he acts; and
 - (c) production of that copy of the warrant shall be deemed to be production of the warrant.

9 Taking into custody without warrant

- (1) Where:
- (a) a medical practitioner who is performing duty in or in the vicinity of a hospital; or
 - (b) a member of the Police Force,
- has reasonable cause to believe that a person:
- (c) by reason of a mental illness:
 - (i) requires care, treatment or control; and
 - (ii) is incapable of managing himself or his affairs;
 - (d) is not under adequate care and control;
 - (e) is likely, by act or neglect, to cause death or serious bodily harm to himself or another person; and
 - (f) should in his own interest or in the public interest be taken into custody immediately,

that medical practitioner or member of the Police Force may take that person into custody without a warrant.

- (2) Where a person takes another person into custody under this section, he shall, within 24 hours, or as soon as possible thereafter, make, or ensure that the Chief Health Officer makes, an application to a magistrate under this Act for an order that that person be kept in custody.

- (3) Where a magistrate makes an order in pursuance of subsection (2), otherwise than on the application of the Chief Health Officer, the magistrate shall cause a copy of that order to be served on the Chief Health Officer within 24 hours after the order is made, or as soon as possible thereafter.
- (4) Subsection (1) does not require a member of the Police Force to act in person if, in the opinion of that member, it would be less disturbing to the person being taken into custody if he were transported by ambulance or otherwise.
- (5) For the purpose of taking a person into custody under subsection (1), a member of the Police Force may enter onto private property.

10 Admission to hospital

- (1) A person who takes or holds another person in custody under this Act:
 - (a) may take such reasonable measures as are immediately necessary to control that person; and
 - (b) shall forthwith arrange for that person to be admitted to a hospital.
- (2) Subject to this Act, it is lawful for the person in charge of a hospital to hold a person who has been taken into custody under this Act.
- (3) Where a person taken into custody under this Act cannot be immediately admitted to a hospital, it is lawful for the person in charge of a police station or other place of safety to hold him until it becomes practicable to admit him to a hospital.
- (4) Nothing contained in this Act requires a person to keep another person in custody if, in the opinion of that first-mentioned person, that second-mentioned person no longer requires observation, care, treatment or control in a hospital as a mentally ill person.

Division 2 Orders re persons in custody

11 Application to keep person in custody

- (1) Where a person is taken into custody in accordance with a warrant under this Act, the Chief Health Officer shall, unless the person is sooner released, appear before a magistrate, within 3 days (inclusive of Saturdays, Sundays and public holidays) after a copy of the warrant is served on the Chief Health Officer, or as soon as practicable thereafter, to apply for an order under this Act to keep

that person in custody.

- (2) Before a person is transferred to the Territory in pursuance of an arrangement made under this Act, or within 3 days (not inclusive of Saturdays, Sundays and public holidays) after a person is so transferred, the Chief Health Officer shall appear before a magistrate to apply for an order under this Act to keep that person in custody in the Territory.
- (3) Where a person is held in custody under this Act (whether so held for a period of 6 months or less or for a period longer than 6 months and whether so held in pursuance of an order made under this Act or in pursuance of an arrangement made with a State), the Chief Health Officer shall, unless the person is sooner released, appear before a magistrate at intervals not exceeding 6 months:
 - (a) to make a report to the magistrate; and
 - (b) to apply for such further order, if any, as may be necessary to continue to keep the person in custody.
- (4) Where a person is transferred from the Territory in pursuance of an arrangement made under this Act, the Chief Health Officer shall, unless a magistrate orders otherwise or the person is sooner released, appear before a magistrate at intervals not exceeding 6 months:
 - (a) to make a report to the magistrate; and
 - (b) to apply for such further order, if any, as may be necessary to continue to keep the person in custody.

12 Report to be made

When the Chief Health Officer appears before a magistrate under section 11, he shall make a report to the magistrate concerning:

- (a) the mental health of the person taken or held in custody;
- (b) the care that is being given to and the control that is being exercised over that person;
- (c) the treatment, if any, that has been given to that person and whether that treatment was given:
 - (i) as recognized standard medical treatment;
 - (ii) with the authority of a magistrate (or, if the person has been transferred from the Territory, with proper authority); or

- (iii) in an emergency; and
- (d) the steps that the Chief Health Officer has taken to ascertain whether there is a near relative or other person who should be given the opportunity to be heard before an order is made in relation to the person taken or held in custody.

13 Order to hold person in custody

- (1) Where it is made to appear to a magistrate after reasonable inquiry upon the hearing of an application under this Act for an order that a person be kept in custody, that a person:

- (a) by reason of a mental illness:
 - (i) requires care, treatment or control; and
 - (ii) is incapable of managing himself or his affairs;
- (b) is not under adequate care and control; and
- (c) is likely, by act or neglect, to cause death or serious bodily harm to himself or another person,

the magistrate may make an order that that person be kept in custody for a period for observation, care, treatment or control.

- (2) A magistrate shall not, unless he is satisfied that it would be detrimental to the interests of the person in custody to do otherwise, make an order that a person be kept in custody under this Act for a period longer than 6 months at any one time.
- (3) A magistrate may adjourn the hearing of an application under section 11 for a period not exceeding 14 days at any one time, and may order that the person who is the subject of the application be kept in custody during the adjournment.

14 Order re treatment

- (1) At any time after a magistrate issues a warrant or makes an order under this Act and before the person who is the subject of the warrant or order is taken into custody or while he is still in custody, a magistrate may make an order in relation to that person authorizing:
- (a) a treatment that may be given to that person;
 - (b) an operation that may be performed on that person;
 - (c) a procedure that may be carried out in respect of that person;

- (d) a method of control that may be exercised over that person; or
 - (e) the removal of that person from one hospital or place to another hospital or place (including a place outside the Territory).
- (2) The Chief Health Officer shall not allow:
- (a) a particular treatment to be given to;
 - (b) an operation to be performed on;
 - (c) a procedure to be carried out in respect of;
 - (d) a method of control to be exercised over; or
 - (e) the removal from a hospital of,
- a person who is held in custody under this Act, unless:
- (f) it has been authorized by a magistrate;
 - (g) by reason of an emergency, it is not practicable to delay the treatment, operation, procedure, control or removal; or
 - (h) in the case of a treatment – it is, in the opinion of the Chief Health Officer, a recognized standard medical treatment.
- (3) A magistrate shall not make an order under subsection (1)(a) or (b) except for the purpose of treating an illness.
- (4) Without limiting the generality of subsection (3), a magistrate shall not authorize the sterilizing of a person for the reason only that that person is mentally ill.

15 Order to release from custody

- (1) Notwithstanding anything elsewhere contained in this Act, a magistrate may order that a person held in custody under this Act be released on such conditions relating to observation, care, treatment and control as the magistrate thinks fit.
- (2) An order made under subsection (1) may include an order:
- (a) that a relative, friend or other person may exercise a power of a parent in relation to that person released from custody as though that person were a child;
 - (b) that a person may enter onto private property for the purpose of observation, care, treatment or control of the person released from custody;

- (c) that the Chief Health Officer or another person shall make a report to a magistrate, at such intervals as the magistrate specifies, on the care and treatment given to, and the control exercised over, the person released from custody; or
 - (d) that the person released from custody shall not be subjected to:
 - (i) a particular treatment;
 - (ii) an operation;
 - (iii) a method of control; or
 - (iv) removal from an area or place,except by authority of a magistrate or by reason of an emergency.
- (3) Where an order is made under this Act that a person be released from custody and that another person have the powers of a parent in relation to that person released from custody, the order does not prevent that second-mentioned person from immediately applying for the first-mentioned person to be admitted to hospital as a voluntary patient under this Act.

16 Property of mentally ill person

A magistrate who hears an application for an order under this Act may order the Public Trustee or any other person to make an application under the *Aged and Infirm Persons Property Act* for a protection order in respect of the estate of the person who is the subject of the application to the magistrate.

Division 3 General

17 Assistance

A member of the public may give such assistance as is reasonably necessary to a medical practitioner or a member of the Police Force who is lawfully taking a person into custody under this Act.

18 Search

A person who is holding another person in custody under this Act may, in the interests of that second-mentioned person:

- (a) search; or
- (b) remove an article, including an item of clothing from,

that second-mentioned person.

19 Next of kin, &c.

A person who takes, or is holding, another person in custody under this Act shall comply with any reasonable request by that second-mentioned person:

- (a) to notify his whereabouts to his next of kin or the person having legal custody or guardianship of him; or
- (b) to contact a legal practitioner or medical practitioner on his behalf.

20 Communications

- (1) A person shall not prevent a person who is in custody under this Act from communicating, whether by sealed mail or otherwise, with any other person, or from receiving visitors at reasonable times within the hours set aside for visitors at the place where he is held in custody, unless a medical practitioner determines that such restrictions are necessary for the successful treatment of the person held in custody or for the physical or mental health or safety of others (including the staff and other patients).
- (2) A restriction placed on communication under subsection (1) shall be recorded in the clinical records of the person being treated and shall be signed by the medical practitioner who determines that it is necessary.

21 Treatment outside hospital

Nothing in this Act prevents the person in charge of a hospital from permitting a patient to leave a hospital in the course of his treatment, and a person who is so permitted to leave the hospital shall not be held to have been released from custody or to have been removed from that hospital by reason only that he was so permitted to leave.

Part IV Offenders and disorderly persons

21A Application

Where, after the commencement of the *Sentencing Act*, a court finds a person guilty of an offence and the court is of the opinion that the person may be mentally ill, the court shall not make an order under this Part in respect of the person but shall deal with the person under Part 4 of the *Sentencing Act*.

22 Adjourment, &c., to allow treatment

- (1) The power of a court or magistrate to deal with a person who has been charged with an offence or in respect of whom a complaint has been made includes power:
 - (a) to adjourn the proceedings at any stage while the person is receiving care, treatment or control for a mental illness;
 - (b) to discharge the defendant without proceeding to conviction, or upon conviction without penalty, where the defendant is receiving or has received care, treatment or control for a mental illness; and
 - (c) to suspend the execution of a sentence, including a fine, or to release a person on a bond, upon condition that the defendant voluntarily submit to care, treatment or control for a mental illness.
- (2) This section does not empower a court or magistrate to order care, treatment or control for a mental illness without the patient's consent.

23 Custody during treatment

- (1) Where a person who is in custody, whether or not under sentence of imprisonment, is in need of care, treatment or control for a mental illness, a court or magistrate may make an order relating to the custody of the person while he receives that care, treatment or control.
- (2) An order made under subsection (1) may include provision:
 - (a) that the person be not kept locked up;
 - (b) that the person be not kept under close guard;
 - (c) that the person be allowed freedom to leave the hospital at which he is receiving treatment;
 - (d) that prison regulations be not applicable to the person while he is in hospital;
 - (e) that the person be released on parole notwithstanding that a minimum term of imprisonment was not specified or that he has not completed his minimum term of imprisonment;
 - (f) that the person be granted remissions of sentence additional to the remissions that would otherwise be granted; or

- (g) that the person be released for a period while he receives care, treatment or control, and that the period during which he was released be counted as part of his sentence.
- (3) A person responsible for holding a person in custody adequately discharges his responsibility if he is complying with an order made under subsection (1).
- (4) An order made under subsection (1) is subject to such conditions, if any, as are specified in the order.
- (5) An order, or a condition of an order, made under subsection (1) may be varied or revoked at any time.
- (6) This section does not empower a court or magistrate to order care, treatment or control for a mental illness without the patient's consent.

24 Care without consent

- (1) Where it is made to appear to a court or magistrate after reasonable inquiry that a person who is in custody, whether or not under sentence of imprisonment:
 - (a) by reason of a mental illness:
 - (i) requires care, treatment or control; and
 - (ii) is incapable of managing himself or his affairs;
 - (b) is not, or is not likely, upon his release, to be under adequate care and control; and
 - (c) is likely, by act or neglect, to cause death or serious bodily harm to himself or another person,

the court or magistrate may call for a report from the Chief Health Officer and a report from the secretary of the department responsible for the custody of the person who is in custody.

- (2) A court or magistrate may, after receiving the reports referred to in subsection (1), order that the person who is the subject of the reports be cared for and controlled without his consent for a mental illness for a period while he is in custody.
- (3) A court or magistrate shall not, unless satisfied that it would be detrimental to the interests of the person the subject of the order to do otherwise, make an order under subsection (2) for a period longer than 6 months at any one time.

- (4) At intervals not exceeding 6 months while an order made under subsection (2) is in force, the Chief Health Officer and the secretary of the department responsible for the custody of the person who is the subject of the order shall appear before a court or magistrate:
- (a) to make reports; and
 - (b) to apply for such further order, if any, as may be necessary under subsection (2).
- (5) When the Chief Health Officer appears before a court or magistrate under this section, he shall make a report concerning:
- (a) the mental health of the person in custody;
 - (b) the care that is being given to that person in a hospital or by or under the supervision of a doctor or nurse and the control that is being exercised over that person in a hospital or by or under the supervision of a doctor or nurse; and
 - (c) the treatment, if any, that has been given to that person and whether that treatment was given:
 - (i) as recognized standard medical treatment;
 - (ii) with proper authority; or
 - (iii) in an emergency.
- (6) When a person other than the Chief Health Officer appears before a court or magistrate under this section, he shall make a report concerning:
- (a) the care that is being given to the person in custody otherwise than in a hospital or by or under the supervision of a doctor or nurse and the control that is being exercised over that person otherwise than in a hospital or by or under the supervision of a doctor or nurse; and
 - (b) the steps that have been taken to ascertain whether there is a near relative or other person who should be given the opportunity to be heard before an order is made under subsection (2).
- (7) An order made under subsection (2) ceases to be in force:
- (a) by effluxion of time;
 - (b) if it is revoked; or

- (c) upon the release from custody, otherwise than in pursuance of an order made under section 23, of the person who is the subject of the order.

25 Treatment without consent

- (1) At any time while an order under section 24 is in force, a court or magistrate may make an order in relation to the person who is the subject of the order authorizing:
 - (a) a treatment that may be given to that person;
 - (b) an operation that may be performed on that person;
 - (c) a procedure that may be carried out in respect of that person;
 - (d) a method of control that may be exercised over that person; or
 - (e) the removal of that person from one hospital or place to another hospital or place (including a place outside the Territory).
- (2) The Chief Health Officer shall not allow:
 - (a) a particular treatment to be given to;
 - (b) an operation to be performed on;
 - (c) a procedure to be carried out in respect of;
 - (d) a method of control to be exercised over; or
 - (e) the removal from a hospital of,

a person who is the subject of an order made under section 24, unless:
 - (f) it has been authorized by a court or magistrate;
 - (g) by reason of an emergency, it is not practicable to delay the treatment, operation, procedure, control or removal; or
 - (h) in the case of a treatment – it is, in the opinion of the Chief Health Officer, a recognized standard medical treatment.
- (3) A court or magistrate shall not make an order under subsection (1)(a) or (b) except for the purpose of treating an illness.
- (4) Without limiting the generality of subsection (3), a court or magistrate shall not authorize the sterilizing of a person for the reason only that that person is mentally ill.

Part V Arrangements with States

26 Arrangements with States

- (1) Subject to this Act, the Territory may make arrangements with another State or Territory of the Commonwealth for the transfer of a person:
 - (a) from the Territory to that other State or Territory; or
 - (b) from that other State or Territory to the Territory,for the purpose of care, treatment or control as a mentally ill person.
- (2) An arrangement made under subsection (1) may include provisions concerning:
 - (a) the powers of courts, institutions and persons in relation to persons transferred;
 - (b) custody and guardianship of persons transferred;
 - (c) maintenance of, and expenses in relation to, persons transferred; and
 - (d) the return of a person transferred to the place from which he was transferred or to another place.
- (3) Subject to this Act, a court, an institution or a person, as the case may be, may exercise the powers and carry out the functions conferred on it or him by or under an arrangement made under this section.

27 Magistrate must authorize transfer

- (1) A person shall not be transferred from the Territory in pursuance of an arrangement made under this Act unless a magistrate has made an order under this Act authorizing the transfer.
- (2) A magistrate shall not authorize the transfer of a person from the Territory under this Act unless he is satisfied:
 - (a) that that person will be returned to the Territory at the request of the Chief Health Officer; or
 - (b) that it is in the best interests of that person that he should cease to reside in the Territory.

28 Magistrate may order release

A person who has been transferred to the Territory in pursuance of an arrangement made under this Act shall not be held in custody in the Territory after the date from which a magistrate has ordered that he be released from custody or returned to the place from which he was transferred or to another place.

Part VI General

Division 1 Procedure before courts and magistrates

29 Legal representation

A court or magistrate shall not make an order under this Act unless:

- (a) the person in custody is represented by a legal practitioner; or
- (b) the court or magistrate is satisfied that, in the circumstances of the case, such representation is not necessary.

30 Court or magistrate may make inquiries

- (1) Before a court or magistrate issues a warrant or makes an order under this Act, it or he may make such inquiries and inform itself or himself in such manner as it or he thinks fit.
- (2) Without limiting the generality of subsection (1), a court or magistrate may:
 - (a) appoint legal representation for a person held in custody additional to the legal representation that, but for this section, that person would have; and
 - (b) order that a person held in custody be examined, by such persons and in such manner as the court or magistrate directs, and that the results of the examination be given to a legal representative of the person examined.

31 Powers of legal practitioner

- (1) A legal practitioner who is appointed to represent a person who is held in custody may, subject to such order, if any, as a court or magistrate on the application of the Chief Health Officer may make, incur such reasonable expenses as are reasonably necessary to represent that person.

- (2) Without limiting the generality of subsection (1), a legal practitioner may, at any time, ask a court or magistrate to make or revoke an order under this Act.
- (3) A court or magistrate may order that the Territory shall pay all or part of the reasonable costs and disbursements of a legal practitioner appointed to represent a person who is held in custody.

32 Coroners Act to apply

- (1) Subject to this Act:
 - (a) Parts I, II, V and VI of the *Coroners Act* apply, changing what needs to be changed, to and in respect of the action of a magistrate under Division 2 of Part III and sections 24 and 25 of this Act as though the magistrate were a Coroner and an inquiry under this Act were an inquest in a Coroner's Court; and
 - (b) a court may likewise conduct its proceedings under sections 24 and 25 as though its powers included the powers of a Coroner and an inquiry under this Act were an inquest.
- (2) Proceedings before a court or magistrate under this Act shall be informal and the rules of evidence shall not apply.
- (3) Without limiting the generality of subsection (2), a court or magistrate may receive the report or other evidence of a medical practitioner without calling the medical practitioner.

33 Chief Health Officer, &c., may be represented

A person who is the Chief Health Officer or the secretary of a department may make an application to, and appear before, a court or magistrate in person or by his representative.

Division 2 Review of orders

34 Supreme Court may review

- (1) For the purposes of this section, a prescribed person, in relation to an order, is a person who is:
 - (a) the subject of the order;
 - (b) the parent, grandparent, spouse, adult child, adult grandchild, guardian or person having legal custody of that person;

- (c) a de facto partner of that person, meaning:
 - (i) where that person is a man – a woman who is living with him as his wife on a bona fide domestic basis although not married to him; and
 - (ii) where that person is a woman – a man who is living with her as her husband on a bona fide domestic basis although not married to her; or

(d) the Chief Health Officer,

or any other person who, in the opinion of the Supreme Court, has, by reason of ties of blood or friendship or for any other reason, a bona fide interest in the welfare of the person who is the subject of the order.

- (2) A prescribed person may make an application to the Supreme Court to review an order made by a court or magistrate under this Act.
- (3) Where an application is made to the Supreme Court under subsection (2), the Supreme Court may rehear the application that was made to the court or magistrate and, for that purpose, the Supreme Court has all the powers that the magistrate had at the time of hearing the application.
- (4) The Supreme Court shall not hear an application under this section unless:
 - (a) all persons who, in the opinion of the Supreme Court, are interested in the application, are represented; or
 - (b) the Supreme Court is satisfied that, in the circumstances of the case, such representation is not necessary.

Division 3 Miscellaneous

35 Chief Health Officer must authorize hospitalization

- (1) The person in charge of a hospital shall not permit a patient, whether or not he is a voluntary patient, to remain for more than 3 days (not inclusive of Saturdays, Sundays and public holidays) in that hospital for observation, care, treatment or control as a mentally ill person unless:
 - (a) that patient is capable of managing himself and his affairs; or
 - (b) within that time the Chief Health Officer is satisfied, after sighting the reports of 2 medical practitioners who have

examined the patient psychiatrically while acting independently of each other, that the patient should be permitted to remain for observation, care, treatment or control as a mentally ill person.

- (2) The person in charge of a hospital shall not permit a patient, whether or not he is a voluntary patient, to remain in that hospital for observation, care, treatment or control as a mentally ill person unless at intervals of not more than 6 months the Chief Health Officer is satisfied, after sighting the reports of 2 medical practitioners who have examined the person psychiatrically while acting independently of each other, that the person should be permitted to remain for observation, care, treatment or control as a mentally ill person.

36 Chief Health Officer must authorize treatment

- (1) The person in charge of a hospital shall not allow:

- (a) a particular treatment to be given to;
- (b) an operation to be performed on;
- (c) a procedure to be carried out in respect of; or
- (d) a method of control to be exercised over,

a patient, whether or not he is a voluntary patient, who is in that hospital for observation, care, treatment or control as a mentally ill person unless:

- (e) that patient is capable of managing himself and his affairs;
- (f) the Chief Health Officer is satisfied, after sighting the reports of 2 medical practitioners who have examined the person psychiatrically while acting independently of each other, that that treatment, operation, procedure or method of control will not be detrimental to the patient's best interest;
- (g) by reason of an emergency, it is not practicable to delay the treatment, operation, procedure or control; or
- (h) in the case of a treatment – the Chief Health Officer:
 - (i) is of the opinion that it is a recognized standard medical treatment; and
 - (ii) has authorized its use as a matter of course.

- (2) Where an action is taken in an emergency in relation to a patient who is in a hospital for observation, care, treatment or control as a mentally ill person, the person in charge of the hospital shall, within 24 hours after the taking of the action, or as soon as possible thereafter, make a full report to the Chief Health Officer concerning the circumstances of the action.

37 Research

The person in charge of a hospital shall not allow experimentation or research to be carried out using a patient, whether or not he is a voluntary patient, who is in that hospital for observation, care, treatment or control as a mentally ill person unless that person in charge of the hospital is satisfied that the experimentation or research will not be detrimental to the best interest of that patient.

38 Chief Health Officer is a guardian

- (1) Subject to this Act, the Chief Health Officer has all the powers of a guardian in relation to the person, but not the property, of a patient who:
- (a) is in a hospital for observation, care, treatment or control as a mentally ill person, whether or not he is a voluntary patient; and
 - (b) in the opinion of the Chief Health Officer, is incapable of managing himself or his affairs.
- (2) The Chief Health Officer shall not exercise a power under subsection (1) in relation to a patient unless he is satisfied that:
- (a) no person other than the Chief Health Officer has custody of that patient; or
 - (b) it is not practicable, in all the circumstances of the case, to contact that other person who has custody of the patient in the time available and, by reason of:
 - (i) an emergency; or
 - (ii) the trivial nature of the action that the Chief Health Officer proposes to take,it is desirable that the action should be taken without first contacting that other person who has custody of the patient.

- (3) The Chief Health Officer shall not exercise a power under subsection (1) in relation to a patient if:
- (a) a person other than the Chief Health Officer has custody of that patient; and
 - (b) the Chief Health Officer has reason to believe that, if that person were contacted, he would not authorize the action that the Chief Health Officer proposes to take.
- (4) The Chief Health Officer shall not exercise a power under subsection (1) in relation to a patient unless:
- (a) a court or magistrate has approved his exercise of the power; or
 - (b) he is satisfied that it is not practicable, in all the circumstances of the case, to make an application to a court or magistrate in the time available and, by reason of:
 - (i) an emergency; or
 - (ii) the trivial nature of the action that the Chief Health Officer proposes to take,it is desirable that the action should be taken before the application is made.
- (5) For the purposes of subsection (4), the Supreme Court, a court of summary jurisdiction or a magistrate has power to hear and determine an application made by the Chief Health Officer for approval to exercise a power under subsection (1) in relation to a patient.

39 Statements

A statement made by a person while he was in custody under this Act may not be used against him in any criminal proceedings.

40 Rules of Court

The rules of the Supreme Court and of the Coroner's Court, and the practice and procedure of the Supreme Court and of the Coroner's Court in the absence of rules, may include provisions relating to the making or hearing of an application under this Act to or by the Supreme Court or a magistrate, as the case may be.

41 Annual report

- (1) The Minister shall table an annual report in the Legislative Assembly on the operation of this Act.
- (2) A report that is required to be tabled under subsection (1) shall be tabled within 4 months after the expiration of the period in respect of which it is made.

42 Regulations

The Administrator may make regulations, not inconsistent with this Act, prescribing all matters required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule

section 3

ORDINANCES REPEALED

No. and year	Short Title
No. 1 of 1940	<i>Mental Defectives Ordinance 1940</i>
No. 1 of 1941	<i>Mental Defectives Ordinance 1941</i>
No. 13 of 1955	<i>Mental Defectives Ordinance 1955</i>
No. 22 of 1957	<i>Mental Defectives Ordinance 1957</i>
No. 71 of 1964	<i>Mental Defectives Ordinance 1964</i>
No. 17 of 1968	<i>Mental Defectives Ordinance 1968</i>
No. 23 of 1969	<i>Mental Defectives Ordinance 1969</i>

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Mental Health Act 1979 (Act No. 5, 1980)***

Assent date	7 January 1980
Commenced	1 April 1980 (<i>Gaz</i> G13, 28 March 1980, p 6)

Statute Law Revision Act (No. 3) 1981 (Act No. 91, 1981)

Assent date	21 September 1981
Commenced	21 September 1981

De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)

Assent date	24 December 1991
Commenced	1 January 1992 (s 2)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 35, 1995) and <i>Gaz</i> S15, 13 June 1996)

Statute Law Revision Act 1997 (Act No. 17, 1997)

Assent date	21 September 1981
Commenced	s 16: 10 December 1997; rem: 1 May 1997 (<i>Gaz</i> G17, 30 April 1997, p 2)

3 LIST OF AMENDMENTS

s 4	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 5	amd No. 17, 1997, s 17
s 7	amd No. 91, 1981, s 2; No. 17, 1997, s 17
ss 8 – 9	amd No. 17, 1997, s 17
ss 11 – 12	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 14	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 15	amd No. 17, 1997, s 17
s 21A	ins No. 17, 1996, s 3

ENDNOTES

s 24	amd No. 17, 1997, s 17
s 25	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 26	amd No. 91, 1981, s 2
s 27	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 28	amd No. 91, 1981, s 2
s 31	amd No. 91, 1981, s 2; No. 17, 1997, s 17
s 33	amd No. 17, 1997, s 17; No. 17, 1997, s 17
s 34	amd No. 82, 1991, s 11; No. 17, 1997, s 17
ss 35 – 36	amd No. 17, 1997, s 17
s 38	amd No. 17, 1997, s 17