

THE NORTHERN TERRITORY OF AUSTRALIA

MENTAL HEALTH ACT

No. 5 of 1980

TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Repeal and savings
4. Interpretation

PART II - VOLUNTARY PATIENTS

5. Admission of voluntary patient
6. Discharge of voluntary patient

PART III - COMPULSORY DETENTION OF
MENTALLY ILL PERSONS

Division 1 - Taking Persons into Custody

7. Warrant to take person into custody
8. Telephone application for warrant
9. Taking into custody without warrant
10. Admission to hospital

Division 2 - Orders re Persons in Custody

11. Application to keep person in custody
12. Report to be made
13. Order to hold person in custody
14. Order re treatment
15. Order to release from custody
16. Property of mentally ill person

Division 3 - General

17. Assistance
18. Search

19. Next of kin, &c.
20. Communications
21. Treatment outside hospital

PART IV - OFFENDERS AND DISORDERLY PERSONS

22. Adjournment, &c., to allow treatment
23. Custody during treatment
24. Care without consent
25. Treatment without consent

PART V - ARRANGEMENTS WITH STATES

26. Arrangements with States
27. Magistrate must authorize transfer
28. Magistrate may order release

PART VI - GENERAL

Division 1 - Procedure before Courts and Magistrates

29. Legal representation
30. Court or magistrate may make inquiries
31. Powers of legal practitioner
32. Coroners Act to apply
33. Chief Medical Officer, &c., may be represented

Division 2 - Review of Orders

34. Supreme Court may review

Division 3 - Miscellaneous

35. Chief Medical Officer must authorize hospitalization
36. Chief Medical Officer must authorize treatment
37. Research
38. Chief Medical Officer is a guardian
39. Statements
40. Rules of Court
41. Annual Report
42. Regulations

SCHEDULE

THE NORTHERN TERRITORY OF AUSTRALIA

No. 5 of 1980

AN ACT

To provide for the care and treatment of
mentally ill persons

[Assented to 7 January 1980]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART I - PRELIMINARY

- | | |
|---|--------------------|
| 1. This Act may be cited as the <u>Mental Health Act 1979</u> . | Short title |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> . | Commencement |
| 3.(1) The Ordinances listed in the Schedule are repealed. | Repeal and savings |
| (2) Notwithstanding the repeals effected by sub-section (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 <u>Aged and Infirm Persons Property Act</u> in respect of that estate. | |
| 4.(1) In this Act, unless the contrary intention appears - | Interpretation |
| "Chief Medical Officer" means the Chief Medical Officer within the meaning of the <u>Public Health Act</u> and includes a person performing the duties of the Chief Medical Officer; | |

Mental Health

"hospital" means a hospital within the meaning of the Hospitals and Medical Services Act;

"legal practitioner" means a legal practitioner within the meaning of the Legal Practitioners Act;

"magistrate" means a Magistrate within the meaning of the Magistrates Act;

"medical practitioner" means a registered medical practitioner within the meaning of the Medical Practitioners Registration Act;

"voluntary patient" means a patient who has been voluntarily admitted to a hospital within the meaning of sub-section (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

Admission of
voluntary
patient

5. 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 Medical 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.

Mental Health

6. 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.

Discharge of
voluntary
patient

PART III - COMPULSORY DETENTION OF MENTALLY
ILL PERSONS

Division 1 - Taking Persons into Custody

7.(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 -

Warrant to
take person
into custody

- (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 Medical 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.(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

Telephone
application
for warrant

Mental Health

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 sub-section (1), he shall cause a copy of that warrant to be served on the Chief Medical Officer within 24 hours after the warrant is signed, or as soon as possible thereafter.

(3) Where a person is authorized under sub-section (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.

Taking into
custody with-
out warrant

9.(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

Mental Health

- (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 Medical 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 sub-section (2), otherwise than on the application of the Chief Medical Officer, the magistrate shall cause a copy of that order to be served on the Chief Medical Officer within 24 hours after the order is made, or as soon as possible thereafter.

(4) Sub-section (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 sub-section (1), a member of the Police Force may enter onto private property.

10.(1) A person who takes or holds another person in custody under this Act -

Admission
to hospital

(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.

Mental Health

Division 2 - Orders re Persons in Custody

Application to
keep person
in custody

11.(1) Where a person is taken into custody in accordance with a warrant under this Act, the Chief Medical 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 Medical 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 Northern 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 Medical Officer shall appear before a magistrate to apply for an order under this Act to keep that person in custody in the Northern 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 Medical 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 Northern Territory in pursuance of an arrangement made under this Act, the Chief Medical 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.

Report to
be made

12. When the Chief Medical 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;

Mental Health

- (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 Northern Territory, with proper authority); or
 - (iii) in an emergency; and
- (d) the steps that the Chief Medical 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.(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 -

Order to
hold person
in custody

- (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.

Mental Health

(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.

Order re
treatment

14.(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 Northern Territory).

(2) The Chief Medical 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 Medical Officer, a recognized standard medical treatment.

Mental Health

(3) A magistrate shall not make an order under sub-section (1)(a) or (b) except for the purpose of treating an illness.

(4) Without limiting the generality of sub-section (3), a magistrate shall not authorize the sterilizing of a person for the reason only that that person is mentally ill.

15.(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.

Order to
release
from
custody

(2) An order made under sub-section (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 Medical 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.

Mental Health

Property of
mentally ill
person

16. 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

Assistance

17. 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.

Search

18. 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.

Next of kin,
&c.

19. 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.

Communications

20.(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 sub-section (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.

Mental Health

21. 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.

Treatment
outside
hospital

PART IV - OFFENDERS AND DISORDERLY PERSONS

22.(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 -

Adjournment,
&c., to allow
treatment

- (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.(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.

Custody
during
treatment

(2) An order made under sub-section (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;

Mental Health

- (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 sub-section (1).

(4) An order made under sub-section (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 sub-section (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.

Care without
consent

24.(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

Mental Health

Chief Medical 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 sub-section (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 sub-section (2) for a period longer than 6 months at any one time.

(4) At intervals not exceeding 6 months while an order made under sub-section (2) is in force, the Chief Medical 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 sub-section (2).

(5) When the Chief Medical 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.

Mental Health

(6) When a person other than the Chief Medical 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 sub-section (2).

(7) An order made under sub-section (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.

Treatment
without
consent

25.(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 Northern Territory).

Mental Health

- (2) The Chief Medical 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 Medical Officer, a recognized standard medical treatment.

(3) A court or magistrate shall not make an order under sub-section (1)(a) or (b) except for the purpose of treating an illness.

(4) Without limiting the generality of sub-section (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.(1) Subject to this Act, the Northern Territory may make arrangements with another State or Territory of the Commonwealth for the transfer of a person -

Arrangements
with States

- (a) from the Northern Territory to that other State or Territory; or
- (b) from that other State or Territory to the Northern Territory,

for the purpose of care, treatment or control as a mentally ill person.

(2) An arrangement made under sub-section (1) may include provisions concerning -

- (a) the powers of courts, institutions and persons in relation to persons transferred;

Mental Health

- (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.

Magistrate
must
authorize
transfer

27.(1) A person shall not be transferred from the Northern 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 Northern Territory under this Act unless he is satisfied -

- (a) that that person will be returned to the Northern Territory at the request of the Chief Medical Officer; or
- (b) that it is in the best interests of that person that he should cease to reside in the Northern Territory.

Magistrate
may order
release

28. A person who has been transferred to the Northern Territory in pursuance of an arrangement made under this Act shall not be held in custody in the Northern 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

Legal
representation

29. 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.

Mental Health

30.(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.

Court or
magistrate
may make
inquiries

(2) Without limiting the generality of sub-section (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.(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 Medical Officer may make, incur such reasonable expenses as are reasonably necessary to represent that person.

Powers of
legal
practitioner

(2) Without limiting the generality of sub-section (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 Northern 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.(1) Subject to this Act -

Coroners Act
to apply

- (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.

Mental Health

(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 sub-section (2), a court or magistrate may receive the report or other evidence of a medical practitioner without calling the medical practitioner.

Chief Medical
Officer, &c.,
may be re-
presented

33. A person who is the Chief Medical 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

Supreme
Court may
review

34.(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; or
- (c) the Chief Medical 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 sub-section (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.

Mental Health

Division 3 - Miscellaneous

35.(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 -

Chief Medical Officer must authorize hospitalization

- (a) that patient is capable of managing himself and his affairs; or
- (b) within that time the Chief Medical 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 Medical 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.(1) The person in charge of a hospital shall not allow -

Chief Medical Officer must authorize treatment

- (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 Medical Officer is satisfied, after sighting the reports of 2 medical practitioners who have examined the person psychiatrically while acting independently of

Mental Health

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 Medical 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 Medical Officer concerning the circumstances of the action.

Research

37. 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.

Chief Medical Officer is a guardian

38.(1) Subject to this Act, the Chief Medical 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 Medical Officer, is incapable of managing himself or his affairs.

(2) The Chief Medical Officer shall not exercise a power under sub-section (1) in relation to a patient unless he is satisfied that -

- (a) no person other than the Chief Medical Officer has custody of that patient; or

Mental Health

- (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 Medical 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 Medical Officer shall not exercise a power under sub-section (1) in relation to a patient if -
 - (a) a person other than the Chief Medical Officer has custody of that patient; and
 - (b) the Chief Medical Officer has reason to believe that, if that person were contacted, he would not authorize the action that the Chief Medical Officer proposes to take.
- (4) The Chief Medical Officer shall not exercise a power under sub-section (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 Medical Officer proposes to take,

it is desirable that the action should be taken before the application is made.
- (5) For the purposes of sub-section (4), the Supreme Court, a court of summary jurisdiction or a magistrate has power to hear and determine an application made by the Chief Medical Officer for approval to exercise a power under sub-section (1) in relation to a patient.

Mental Health

Statements

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

Rules of Court

40. 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.

Annual Report

41.(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 sub-section (1) shall be tabled within 4 months after the expiration of the period in respect of which it is made.

Regulations

42. 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	<u>Mental Defectives Ordinance 1940</u>
No. 1 of 1941	<u>Mental Defectives Ordinance 1941</u>
No. 13 of 1955	<u>Mental Defectives Ordinance 1955</u>
No. 22 of 1957	<u>Mental Defectives Ordinance 1957</u>
No. 71 of 1964	<u>Mental Defectives Ordinance 1964</u>
No. 17 of 1968	<u>Mental Defectives Ordinance 1968</u>
No. 23 of 1969	<u>Mental Defectives Ordinance 1969</u>
