

South Australia

MENTAL HEALTH ACT 1993

An Act to make provision for the treatment and protection of persons who have a mental illness; to repeal the Mental Health Act 1977; to amend the Adoption Act 1988; the Administration and Probate Act 1919; the Aged and Infirm Persons' Property Act 1940 and the Consent to Medical and Dental Procedures Act 1985; and for other purposes.

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **6 July 2000**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

MENTAL HEALTH ACT 1993

being

Mental Health Act 1993 No. 59 of 1993
[Assented to 27 May 1993]¹

as amended by

Mental Health (Transitional Provision) Amendment Act 1994 No. 10 of 1994
[Assented to 21 April 1994]

Consent to Medical Treatment and Palliative Care Act 1995 No. 26 of 1995
[Assented to 27 April 1995]²

District Court (Administrative and Disciplinary Division) Amendment Act 2000 No. 4 of 2000 [Assented to 20 April 2000]³

South Australian Health Commission (Administrative Arrangements) Amendment Act 2000 No. 34 of 2000 [Assented to 6 July 2000]⁴

¹ Came into operation (except cl. 1(1) of Sched.) 6 March 1995; cl. 1(1) of Sched. came into operation 10 March 1995: *Gaz.* 2 March 1995, p. 734.

² Came into operation 30 November 1995: *Gaz.* 30 November 1995, p. 1500.

³ Schedule 1 (cl. 25) came into operation 1 June 2000: *Gaz.* 18 May 2000, p. 2554.

⁴ **Schedule 1 (cl. 12) came into operation 6 July 2000: *Gaz.* 6 July 2000, p. 5.**

NOTE:

. Asterisks indicate repeal or deletion of text.

. Entries appearing in bold type indicate the amendments incorporated since the last reprint.

. For the legislative history of the Act see Appendix 1.

SUMMARY OF PROVISIONS

PART 1 PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2 ADMINISTRATION

DIVISION 1-GENERAL

4. Delegation
5. Objectives

DIVISION 2-CHIEF ADVISOR IN PSYCHIATRY

6. Chief Advisor in Psychiatry
7. Functions of Chief Advisor

DIVISION 3-APPROVED TREATMENT CENTRES

8. Declaration of approved treatment centres
9. Register of patients
10. Particulars relating to admission of patients to approved treatment centres

PART 3 ADMISSION AND DETENTION IN APPROVED TREATMENT CENTRES OF PERSONS WHO HAVE A MENTAL ILLNESS

DIVISION 1-VOLUNTARY ADMISSION

11. Admission of voluntary patients

DIVISION 2-DETENTION

12. Orders for admission and detention
13. Continuing detention orders
14. Duty of director of an approved treatment centre in relation to detention orders
15. Patients to be given statement of their rights on initial admission
16. Transfer of patients
17. Leave of absence

PART 4 TREATMENT OF PERSONS WHO HAVE A MENTAL ILLNESS

18. Treatment is authorised during initial detention in an approved treatment centre
19. Orders for treatment for patients subject to continuing detention orders
20. Treatment orders for persons who refuse or fail to undergo treatment
21. Revocation of treatment orders
22. Prescribed psychiatric treatment

PART 5 POWERS OF APPREHENSION, CONVEYANCE, ETC., OF PERSONS WHO HAVE A MENTAL ILLNESS

23. Powers of members of police force and ambulance officers

PART 6 REVIEWS AND APPEALS

DIVISION 1-REVIEWS

24. Review of initial detention orders

25. Decisions on reviews

DIVISION 2-APPEALS

26. Appeals against initial detention
27. Representation upon appeals to Board
28. Appeals to District Court and Supreme Court

**PART 7
MISCELLANEOUS**

29. Board must give statement of appeal rights
30. Neglect or illtreatment
31. Offences in relation to authorisations and orders
32. Medical practitioner cannot act under this Act in respect of a relative
33. Removing a patient from an approved treatment centre
34. Duty to maintain confidentiality
35. Prohibition of publication of reports of proceedings
36. Protection from liability
37. Regulations

SCHEDULE

*Division 1-Repeal
Division 2-Amendment of Acts
Division 3-Transitional Provisions*

**APPENDIX 1
LEGISLATIVE HISTORY**

**APPENDIX 2
DIVISIONAL PENALTIES AND EXPIATION FEES**

Mental Health Act 1993

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Mental Health Act 1993*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears-

"**ambulance officer**" means a person who is employed as an ambulance officer, or is engaged as a volunteer ambulance officer, with an organisation that provides ambulance services;

"**approved treatment centre**" means any hospital, clinic or other premises, or any particular part of such a place, declared under Part 2 to be an approved treatment centre for the purposes of this Act;

"**the Board**" means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

"**category A treatment**" means psychosurgery or any other treatment declared by regulation to be category A treatment;

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

"**the Health Commission**" means the South Australian Health Commission;

"**consent**", in relation to treatment, means informed consent;

"**director**", in relation to an approved treatment centre, means the person for the time being in charge of the treatment centre or a person duly authorised to admit patients to the treatment centre;

"**medical agent**" means a person appointed under a medical power of attorney under the *Consent to Medical Treatment and Palliative Care Act 1995* to be the medical agent of another;

"**medical practitioner**" means a person registered on the general register under the *Medical Practitioners Act 1983*;

"**mental illness**" means any illness or disorder of the mind;

"**patient**" means any person who has a mental illness and who has been admitted to an approved treatment centre, notwithstanding that he or she may be unlawfully at large or on leave of absence from the centre;

"**prescribed psychiatric treatment**" means category A treatment and category B treatment;

"**psychiatrist**" means a person registered under the *Medical Practitioners Act 1983* as a specialist in psychiatry;

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

"**the Public Advocate**" means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*;

"**putative spouse**" means a person who is a putative spouse within the meaning of the *Family Relationships Act 1975*, whether declared as such

under that Act or not;

"**relative**" of a person means-

- (a) a spouse;
- (b) a parent;
- (c) a person (not being a guardian appointed under any Act or law) who acts *in loco parentis* in relation to the person;
- (d) a brother or sister of or over 18 years of age;
- (e) a son or daughter of or over 18 years of age;

"**senior psychiatrist**" means a person who has, since qualifying for registration as a specialist in psychiatry, had at least five years' experience as a practising psychiatrist;

"**spouse**" includes a putative spouse.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Mental Health Act 1993

**PART 2
ADMINISTRATION**

DIVISION 1-GENERAL

Delegation

4. (1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act-

- (a) to a particular person or body; or
- (b) to the person for the time being holding or acting in a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation-

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act in a matter; and
- (c) is revocable at will by the delegator.

Objectives

5. (1) The Minister, the Board, directors of approved treatment centres and any court or other body or person engaged in the administration of this Act must, in performing their functions under this Act, seek-

- (a) to ensure that patients receive the best possible treatment and care; and
- (b) to minimise restrictions upon the liberty of patients and interference with their rights, dignity and self respect, so far as is consistent with the proper protection and care of the patients themselves and with the protection of the public.

(2) The Minister must endeavour-

- (a) to work towards ameliorating the adverse effects of mental illness upon family life;
- (b) to rationalise and co-ordinate services for persons who have a mental illness;
- (c) to assist and encourage voluntary agencies that provide services for persons who have a mental illness;
- (d) to assist and encourage the development of services designed to reduce the incidence of mental illness in the community;
- (e) to promote research into the problems of mental illness;
- (f) to promote a high standard of training for those responsible for the care of persons who have a mental illness;
- (g) to promote informed public opinion on matters of mental health by the dissemination of knowledge and generally to promote public understanding of and (wherever practicable) involvement in measures for the prevention, treatment and cure of mental illness.

DIVISION 2-CHIEF ADVISOR IN PSYCHIATRY

Chief Advisor in Psychiatry

6. (1) There will be a Chief Advisor in Psychiatry.

(2) The Governor may, by notice in the Gazette, appoint a senior

psychiatrist to be the Chief Advisor in Psychiatry.

(3) The terms and conditions of appointment of the Chief Advisor in Psychiatry will be as determined by the Governor.

Functions of Chief Advisor

7. The functions of the Chief Advisor in Psychiatry are-

- (a) to advise the Minister on matters relating to psychiatry; and
- (b) to perform such other functions as may be assigned to the Chief Advisor in Psychiatry by this Act or any other Act or by the Minister.

DIVISION 3-APPROVED TREATMENT CENTRES

Declaration of approved treatment centres

8. (1) The Minister may declare, by notice in the *Gazette*, any hospital, clinic or other premises, or any particular part of such a place, to be an approved treatment centre for the purposes of this Act.

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

Register of patients

9. (1) The director of an approved treatment centre must keep or cause to be kept records relating to every patient admitted into the centre.

(2) The records must be kept in a form approved by the Minister and set out-

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

Particulars relating to admission of patients to approved treatment centres

10. (1) Where, in the opinion of the Minister, a person seeking information under this section has a proper interest in the matter, he or she must inform the inquirer-

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

(2) The director of an approved treatment centre must, upon the discharge of a patient from the centre, furnish the patient, upon request, free of charge, with a copy of any orders, certificates or authorisations upon which he or she was admitted, detained or treated.

Mental Health Act 1993

PART 3

**ADMISSION AND DETENTION IN APPROVED TREATMENT CENTRES OF
PERSONS WHO HAVE A MENTAL ILLNESS**

DIVISION 1-VOLUNTARY ADMISSION

Admission of voluntary patients

11. (1) A person may be admitted as a patient in an approved treatment centre on his or her own request.

(2) Subject to subsection (3), a person admitted to an approved treatment centre under this section may leave the centre at any time.

(3) Orders for detention in an approved treatment centre can be made in respect of a person who has already been admitted to the treatment centre under this section and section 12 applies (with necessary adaptations) accordingly.

DIVISION 2-DETENTION

Orders for admission and detention

12. (1) If, after examining a person, a medical practitioner is satisfied-

- (a) that the person has a mental illness that requires immediate treatment; and
- (b) that such treatment is available in an approved treatment centre; and
- (c) that the person should be admitted as a patient and detained in an approved treatment centre in the interests of his or her own health and safety or for the protection of other persons,

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

(2) An order under subsection (1), unless earlier revoked, expires three days after the day on which it is made.

(3) A person admitted and detained in an approved treatment centre pursuant to an order under subsection (1) must be examined by a psychiatrist-

- (a) if it is practicable for the examination to take place within 24 hours of admission-within that period; or
- (b) if it is not practicable for an examination to take place within 24 hours of admission-as soon as practicable after admission.

(4) When the psychiatrist has completed the examination-

- (a) he or she must, if not satisfied that the continued detention of the patient is justified, revoke the order; or
- (b) he or she may, if satisfied that the continued detention of the patient is justified, confirm the order.

(5) If an order for detention has been confirmed under subsection (4), a psychiatrist may, before the order expires and after examination of the patient (which should be carried out during the 24 hours prior to that expiry), make an order for the further detention of the patient for a period not exceeding 21 days commencing on that expiry.

(6) A further order (but one only) may be made for the detention of the patient for a period not exceeding 21 days commencing on the expiry of the order under subsection (5), if two psychiatrists (only one of whom may be one of the psychiatrists who made the orders under subsections (1) and (5)) think it is justified after each has separately examined the patient.

(7) An order cannot be made under subsection (1) in relation to a patient

who is being detained pursuant to an order under subsection (5) or (6).

(8) The director of an approved treatment centre in which a patient is detained pursuant to an order made under subsection (5) or (6) may revoke that order at any time during the period for which it is effective.

(9) A psychiatrist who makes an order for detention under subsection (5) or (6) must forthwith furnish the director of the treatment centre with a written report of the results of his or her examination of the patient and of the grounds on which the order was made.

(10) On receiving a report under subsection (9) the director must forward a copy of the report to the Board.

Continuing detention orders

13. (1) If the Board is satisfied on an application under this section-

- (a) that a person who is being detained in an approved treatment centre pursuant to this Act (including detention under this section) still has a mental illness that requires treatment; and
- (b) that the person should be further detained in an approved treatment centre in the interests of his or her own health and safety or for the protection of other persons,

the Board may order that the person be detained in that centre or some other approved treatment centre for a further period, not exceeding 12 months, specified in the order.

(2) An application under subsection (1) may be made by the Public Advocate or by the director of an approved treatment centre or an employee in the centre authorised by the director for the purpose.

(3) The Board may, on application, revoke an order made under subsection (1).

(4) An application for revocation of an order may be made by-

- (a) the patient; or
- (b) the Public Advocate, on his or her own initiative, or at the request and on behalf of the patient; or
- (c) a medical practitioner; or
- (d) a relative of the patient; or
- (e) a guardian or medical agent of the patient; or
- (f) any other person who satisfies the Board that he or she has a proper interest in the welfare of the patient.

Duty of director of an approved treatment centre in relation to detention orders

14. (1) The director of an approved treatment centre is, subject to subsection (2), authorised and required to comply with an order under this Part.

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

Patients to be given statement of their rights on initial admission

15. (1) Where a patient is detained in an approved treatment centre, the director must ensure that the patient is given, upon commencement of the

detention or as soon as practicable thereafter, a printed statement in the prescribed form-

- (a) informing the patient of his or her legal rights; and
- (b) containing such other information as may be prescribed.

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

(3) If a patient is illiterate, or too disturbed to read and comprehend the statement, the director must take such steps (if any) as may be practicable in the circumstances to convey the information contained in the statement to the patient.

(4) Where there is a relative of the patient whose whereabouts is known to or readily ascertainable by the director, the director must, unless he or she is of the opinion that it would not be in the best interests of the patient to do so, cause a copy of the statement referred to in subsection (1) to be sent, or given, to that relative as soon as practicable after the commencement of the detention.

Transfer of patients

16. Where a patient is detained in an approved treatment centre and the director of the centre is satisfied, upon the certificate of a psychiatrist, that another approved treatment centre is better equipped for the care and treatment of that patient, the director-

- (a) may authorise the transfer of the patient to that other centre; and
- (b) must, unless of the opinion that it would not be in the best interests of the patient to do so, notify a relative of the patient of the transfer of the patient to that other centre, being a relative whose whereabouts is known to or readily ascertainable by the director.

Leave of absence

17. (1) The director of an approved treatment centre may authorise a patient who is being detained in the centre to leave the centre for such purposes and for such period as the director thinks fit.

(2) Leave of absence may be granted subject to such conditions as the director thinks fit.

(3) The director of an approved treatment centre has an absolute discretion to cancel any leave of absence granted under this section.

PART 4

TREATMENT OF PERSONS WHO HAVE A MENTAL ILLNESS

Treatment is authorised during initial detention in an approved treatment centre

18. (1) A patient detained in an approved treatment centre pursuant to section 12 may, while so detained, be given such treatment for his or her mental illness or any other illness as is authorised by a medical practitioner who has examined the patient.

(2) Treatment may be given pursuant to subsection (1) notwithstanding the absence or refusal of consent to the treatment.

(3) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

Orders for treatment for patients subject to continuing detention orders

19. (1) Subject to subsection (2), treatment for his or her mental illness cannot be given to a person who is subject to an order of the Board for detention in an approved treatment centre unless the treatment has been authorised by order of the Board on an application under this section.

(2) The authorisation of the Board is not required if-

(a) the nature of the patient's mental illness is such that the treatment is urgently needed for the protection of the patient or other persons; and

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

(3) An application under this section may be made by a medical practitioner or the director of the approved treatment centre in which the person is being detained.

(4) Treatment of a mental illness pursuant to an order under this section and treatment for any other illness may be given to the patient notwithstanding the absence or refusal of consent to the treatment.

(5) This section does not apply to prescribed psychiatric treatment, or to prescribed treatment within the meaning of the *Guardianship and Administration Act 1993*.

Treatment orders for persons who refuse or fail to undergo treatment

20. (1) If the Board is satisfied, on an application under this section-

(a) that a person has a mental illness that is amenable to treatment; and

(b) that a medical practitioner has authorised treatment for the illness (not being prescribed psychiatric treatment) for the person but the person has refused or failed, or is likely to refuse or fail, to undergo the treatment; and

(c) that the person should be given treatment for the illness in the interests of his or her own health and safety or for the protection of other persons; and

(d) that an order under this section should, in all the circumstances, be made,

the Board may, by order, authorise the giving of treatment to the person for his or her mental illness for a period, not exceeding 12 months, specified in the order.

(2) An application under subsection (1) may be made by the Public Advocate, a medical practitioner or a guardian, relative or medical agent of the person the subject of the application.

Mental Health Act 1993

(3) Treatment may be given pursuant to an order under this section notwithstanding the absence or refusal of consent to the treatment.

(4) The Registrar must, not less than two months before the expiry of an order under this section that endures for a period of six months or more, send a notice to the person who made the application for the order and to each other person empowered to make such an application, reminding him or her of the date on which the order will expire.

Revocation of treatment orders

21. (1) The Board may, on an application under this section, revoke an order under this Part.

(2) An application for revocation of an order under this Part may be made by-

- (a) the person to whom the order relates; or
- (b) the Public Advocate, on his or her own initiative, or at the request and on behalf of the person to whom the order relates; or
- (c) a medical practitioner; or
- (d) a guardian, relative or medical agent of the person; or
- (e) any other person who satisfies the Board that he or she has a proper interest in the welfare of the person.

Prescribed psychiatric treatment

22. (1) Subject to this section, but notwithstanding any other provision of this Act or any other Act or law, a person must not administer prescribed psychiatric treatment to a person who is a patient in any hospital or clinic (whether an approved treatment centre or not)-

- (a) unless, in the case of category A treatment-
 - (i) the treatment has been authorised by the person who is to administer it and by two psychiatrists (at least one of whom is a senior psychiatrist), each of whom has separately examined the patient; and
 - (ii) the patient is capable of giving effective consent and consents in writing to the treatment; or
- (b) unless, in the case of category B treatment-
 - (i) the treatment has been authorised or, in the case of treatment that is part of a course of treatment, the course of treatment has been authorised, by a psychiatrist who has examined the patient; and
 - (ii) the consent in writing to the treatment or course of treatment-
 - (A) where the patient is capable of giving effective consent-of the patient;
 - (B) where the patient is incapable of giving effective consent and is under 16 years of age-of a guardian of the patient;
 - (C) where the patient is incapable of giving effective consent and is of or over 16 years of age-
 - . if the patient (being of or over 18 years of age) has a medical agent who is reasonably available and is willing to make a decision as to consent-of

the medical agent;

. in any other case-of the Board,

has been obtained.

(2) Consent to a particular episode of category B treatment is not required if-

(a) the nature of the patient's mental illness is such that administration of that particular episode of treatment is urgently needed for the protection of the patient or other persons; and

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

(3) A person who contravenes subsection (1) is guilty of an offence.

Penalty: Division 4 fine or division 4 imprisonment.

(4) For the purposes of this section-

"**guardian**", in relation to consent to prescribed psychiatric treatment of a child, means-

(a) if a guardian, or guardians, has or have been appointed under any Act or law in respect of the child and the guardian, or one of them, is reasonably available and is willing to make a decision as to consent-that guardian;

(b) in any other case-a parent of the child.

Mental Health Act 1993

PART 5

**POWERS OF APPREHENSION, CONVEYANCE, ETC., OF PERSONS WHO HAVE
A MENTAL ILLNESS**

Powers of members of police force and ambulance officers

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

- (a) that a person has a mental illness; and
- (b) that the conduct of that person is or has recently been such as to cause danger to himself or herself or to others,

the member of the police force may apprehend that person, using only such force as is reasonably necessary for the purpose, and take him or her as soon as practicable to a medical practitioner for examination.

(2) Where a member of the police force, the director of an approved treatment centre or an employee in an approved treatment centre authorised by the director of the centre for the purpose has reasonable cause to believe that a person who has been detained in the centre is unlawfully at large, he or she may apprehend the person, using only such force as is reasonably necessary for the purpose, and return the person to the centre.

(3) A person on leave of absence from an approved treatment centre will, for the purposes of subsection (2), be taken to be unlawfully at large-

- (a) if he or she fails to return to the centre by the expiry of the leave; or
- (b) if the leave has been cancelled; or
- (c) if he or she fails to comply with a condition to which the leave was subject.

(4) Where a member of the police force has reasonable cause to believe-

- (a) that a person is the subject of a treatment order made under section 20; and
- (b) that the person has, without reasonable excuse, refused or failed to comply with the order,

the member of the police force may apprehend the person, using only such force as is reasonably necessary for the purpose, and take the person to the medical practitioner specified in the order, or to the person in charge of a medical clinic specified in the order, for treatment in accordance with the order.

(5) A member of the police force may, in exercising powers under this section, break into any premises, using only such force as is reasonably necessary for the purpose.

(6) An ambulance officer-

- (a) may, if summoned by a person exercising powers under this section in relation to a particular person, convey that person to such place as the person exercising the powers specifies; and
- (b) may use such force as is reasonably necessary for the purpose.

(7) Where a member of the police force or ambulance officer takes a person to a medical clinic or medical practitioner pursuant to this section-

- (a) he or she may, if requested, render such assistance to the medical practitioner carrying out the examination or treatment as may be necessary for the purpose; and
- (b) where the medical practitioner makes an order for the admission and

detention of the person in an approved treatment centre, he or she must, if the medical practitioner so requests, convey, or arrange for the conveyance of, the person to an approved treatment centre in accordance with the order.

(8) A member of the police force and an ambulance officer may assist each other in the exercise of powers under this section.

Mental Health Act 1993

**PART 6
REVIEWS AND APPEALS**

DIVISION 1-REVIEWS

Review of initial detention orders

24. (1) The Board-

- (a) must, as soon as practicable after the order is made, review the detention of a person pursuant to an order under section 12-
 - (i) if the detention commenced within seven days of the person being discharged from an approved treatment centre pursuant to the expiry or revocation of a previous order for detention under that section; or
 - (ii) if other prescribed circumstances apply; and
- (b) may review any other order for detention pursuant to that section as the Board thinks fit.

(2) The Board may conduct a review under this section in such manner as it thinks fit.

Decisions on reviews

25. On completion of a review, the Board must revoke, with immediate effect, the order for detention that is the subject of the review if the Board is not satisfied that there are proper grounds for it to remain in force.

DIVISION 2-APPEALS

Appeals against initial detention

26. (1) Any of the following persons who is dissatisfied with an order for the detention of a person pursuant to section 12 may appeal to the Board against the order:

- (a) the patient;
- (b) the Public Advocate, acting on his or her own initiative, or at the request and on behalf of the patient;
- (ba) a guardian, relative or medical agent of the patient;
- (c) any other person who satisfies the Board that he or she has a proper interest in the matter.

(2) An appeal under this section may be instituted at any time during the currency of the order the subject of the appeal.

(3) The Board may, on hearing an appeal under this section-

- (a) dismiss the appeal;
- (b) affirm, vary or quash the order appealed against.

Representation upon appeals to Board

27. (1) In every appeal to the Board under this Part, the person to whom the proceedings relate is entitled to be represented by counsel in accordance with this section.

(2) If a person chooses to be represented by counsel pursuant to this section, he or she is entitled to be represented by a legal practitioner provided pursuant to a scheme established by the Minister for the purposes of this section, being a legal practitioner-

- (a) chosen by the person himself or herself; or
- (b) in default of the person making a choice, chosen by such person or

authority as the scheme contemplates.

(3) A legal practitioner (not being an employee of the Crown or a statutory authority) who represents a person pursuant to this section is entitled to receive fees for his or her services from the Minister, in accordance with a prescribed scale, and cannot demand or receive from any other person any further fee for those services.

(4) Nothing in this section derogates from the right of the person to whom the proceedings relate to engage counsel at his or her own expense, or to appear personally or by the Public Advocate or other representative pursuant to the *Guardianship and Administration Act 1993*.

Appeals to District Court and Supreme Court

28. The *Guardianship and Administration Act 1993* provides certain rights of appeal to the Administrative and Disciplinary Division of the District Court and from that court to the Supreme Court in relation to decisions or orders of the Board made under this Act.

Mental Health Act 1993

**PART 7
MISCELLANEOUS**

Board must give statement of appeal rights

29. (1) On making any decision or order under this Act in relation to a person, the Board must cause the person to be given a written statement of-

- (a) the effect of the decision or order; and
- (b) his or her rights of appeal against the decision or order; and
- (c) the procedures for instituting any such appeal.

(2) Wherever possible, the statement must be in the language with which the person is the most familiar.

(3) If the person is illiterate, or too disturbed to read and comprehend the statement, the Board must cause such steps (if any) as may be practicable in the circumstances to be taken to have the information contained in the statement conveyed to the person.

Neglect or illtreatment

30. A person having the oversight, care or control of a person with a mental illness who illtreats or wilfully neglects that person is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

Offences in relation to authorisations and orders

31. (1) A medical practitioner who signs any authorisation or order for the purposes of this Act without having seen and personally examined the person to whom the authorisation or order relates is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

(2) A medical practitioner who wilfully certifies that a person has a mental illness, not believing the person to have a mental illness, or who wilfully makes any other false or misleading statement in an authorisation or order given or made under or for the purposes of this Act, is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

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

Penalty: Division 5 fine or division 5 imprisonment.

(4) Any person who by fraudulent means procures or attempts to procure any person who does not have a mental illness to be received into, or detained in, an approved treatment centre or to be treated pursuant to an order under this Act is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

Medical practitioner cannot act under this Act in respect of a relative

32. A medical practitioner cannot sign any authorisation, certificate or order under this Act in respect of a person to whom the practitioner is related by blood or marriage or who is the putative spouse of the practitioner.

Removing a patient from an approved treatment centre

33. A person who, without lawful excuse, removes a patient who is being detained in an approved treatment centre from that centre or aids any such patient to leave the centre is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment.

Duty to maintain confidentiality

34. (1) A person engaged in the administration of this Act who divulges any personal information relating to a person in respect of whom any proceedings or other action has been taken under this Act (being information obtained in the course of that administration) is guilty of an offence.

Penalty: Division 5 fine.

(2) Subsection (1) does not prevent a person from-

- (a) divulging information if authorised or required to do so by law or by his or her employer; or
- (b) divulging statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

Prohibition of publication of reports of proceedings

35. (1) Subject to subsection (2), a person must not publish a report of any proceedings under this Act.

Penalty: Division 5 fine.

(2) The Board may, on application by a person who the Board is satisfied has a proper interest in the matter, authorise the publication of a report of proceedings before the Board under this Act.

(3) A person who publishes a report pursuant to an authorisation given under subsection (2) must not disclose any information in the report that identifies, or could tend to identify, the person to whom the proceedings relate.

Penalty: Division 5 fine.

Protection from liability

36. (1) A person engaged in the administration of this Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, by the person or by a body of which he or she is a member, of a power, function or duty under this Act.

(2) A liability that would, but for subsection (1), lie against a person lies instead against the Crown.

Regulations

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

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

- (a) provide for the management and control of approved treatment centres; and
- (b) provide for the classification of patients; and
- (c) provide for the care of patients of the various classes; and
- (d) prescribe, and provide for the payment and recovery of, fees in respect of accommodation, treatment or other services provided at approved treatment centres; and
- (e) provide for the recovery of medical practitioners' fees on the medical examination of person apprehended by members of the police force; and
- (f) provide for the recovery of fees for ambulance services provided in the exercise of powers under this Act; and

Mental Health Act 1993

- (g) make provision in relation to the transfer between this State and any other State or Territory of the Commonwealth of persons who are, as a result of mental illness, subject to orders for detention or treatment or who have been apprehended on suspicion of being mentally ill; and
- (h) provide for the transport of patients from one place to another and for incidental matters; and
- (i) prescribe any matter relating to procedure to be adopted under this Act; and
- (j) prescribe any form to be used for the purposes of this Act; and
- (k) prescribe a penalty not exceeding a division 7 fine for breach of any regulation.

SCHEDULE

Division 1-Repeal

1. (1) The *Mental Health Act 1977* is repealed.
- (2) The *Mental Health Act 1977* is amended-
 - (a) by striking out the long title and substituting the following:

An Act to make provision for the licensing of psychiatric rehabilitation centres; and for other related purposes.
 - (b) by striking out sections 2 to 39;
 - (c) by striking out from section 40(1) and (2) "this Act" wherever it occurs and substituting, in each case, "the *Mental Health Act 1993*";
 - (d) by striking out from section 40(3) "hospital" (first occurring) and substituting "treatment centre under the *Mental Health Act 1993*";
 - (e) by striking out from section 41 "Director" wherever it occurs and substituting, in each case, "Minister";
 - (f) by striking out from section 42(2) "Tribunal" and substituting "Administrative Appeals Court (as constituted under the *Guardianship and Administration Act 1993* for the purposes of appeals under that Act)";
 - (g) by striking out from section 42(4) "Tribunal" wherever it occurs and substituting, in each case, "Administrative Appeals Court";
 - (h) by striking out sections 43 to 51;
 - (i) by striking out subsection (2) from section 52.

Division 2-Amendment of Acts

2. The *Adoption Act 1988* is amended by inserting before paragraph (a) in section 27(7) the following paragraph:

- (aa) may, if the adopted person or natural parent is mentally incapacitated within the meaning of the *Guardianship and Administration Act 1993*, be given on behalf of that person or parent by his or her guardian appointed under that Act;.

3. The *Aged and Infirm Persons' Property Act 1940* is amended by striking out section 30 and substituting the following section:

Relationship between this Act and the *Guardianship and Administration Act 1993*

30. (1) The court, on making or rescinding a protection order, must cause notice of the court's order to be forwarded to the Guardianship Board.

(2) If an administration order is in force in respect of the whole of a person's estate, a protection order cannot be made in respect of the estate while that other order remains in force.

(3) If an administration order is in force in respect of a part of a person's estate, a protection order can only be made in respect of the remainder of the estate while that other order remains in force.

(4) If an administration order is made in respect of the whole or a part of a protected person's estate-

- (a) the Guardianship Board must, on all rights of appeal against the order being exhausted, cause a notice of the order and of the date on which it took effect to be filed in the court; and
- (b) on the notice being so filed, the protection order will be taken to have been wholly rescinded or, if the administration order relates only to a part of the person's estate, rescinded to that extent, as from the day on which the administration

Mental Health Act 1993

order took effect.

(5) The court must notify the former manager of the protected estate of a rescission of or affecting the protection order pursuant to subsection (3).

(6) The former manager of the protected estate has the same obligations in relation to the filing of accounts, statements and affidavits as if the protection order had been rescinded by the court.

(7) In this section-

"**administration order**" means an administration order under the *Guardianship and Administration Act 1993*.

4. The *Administration and Probate Act 1919* is amended by striking out Part 4A.

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Division 3-Transitional Provisions

Interpretation

6. In this Division-

"**the former Board**" means the Guardianship Board established under the former Act;

"**the new Board**" means the Guardianship Board established under the *Guardianship and Administration Act 1993*;

"**the former Act**" means the *Mental Health Act 1977*.

Approved hospitals become approved treatment centres

7. On the commencement of this Act, an approved hospital under the former Act will be taken to be an approved treatment centre under this Act.

Guardianship orders under former Act

8. Where a guardianship order was in force under the former Act immediately prior to the commencement of this Act, the following provisions apply:

- (a) the guardianship order continues to have force as a guardianship order under the *Guardianship and Administration Act 1993*;
- (b) any order that was ancillary to the guardianship order continues to have force as a term of the guardianship order;
- (c) any reference to the board in the order will be taken to be a reference to the new Board;
- (d) the new Board must review the order within one year of the commencement of this Act;
- (e) on reviewing the order (whether pursuant to paragraph (d) or pursuant to the terms of the order), the Board-
 - (i) must revoke the order unless the Board is satisfied that there are proper grounds for it to remain in force; and
 - (ii) must, if the order is to remain in force, vary its terms so that it accords with the requirements of the *Guardianship and Administration Act 1993*, and may make such other variation to its terms as the Board thinks appropriate.

Administration orders under former Act

9. An order appointing an administrator that was in force under the former Act immediately prior to the commencement of this Act continues to have force as an administration order under the *Guardianship and Administration Act 1993*.

Certain delegations remain in force

10. Where a delegation of the former Board's power to consent to the carrying out of a medical or dental procedure on a particular person was in force under the former Act immediately prior to the commencement of this Act, the following provisions apply:

- (a) the delegation remains in force;
- (b) the delegated power will, for the purposes of the *Guardianship and Administration Act 1993*, be taken to be a power to consent to the giving of medical or dental treatment and the delegate will be taken to be the appropriate authority for the purposes of that Act;
- (c) the new Board may vary or revoke the delegation at any time;
- (d) the new Board may exercise the power to consent notwithstanding the delegation;
- (e) the new Board must, as soon as practicable after the commencement of this Act (but within three years of that commencement) review each such delegation and, on completion of a review-
 - (i) must revoke the delegation; and
 - (ii) may, subject to and in accordance with the *Guardianship and Administration Act 1993*, make a guardianship order limited to empowering the guardian to consent to the giving of medical or dental treatment to the person the subject of the order;
- (f) in making a limited guardianship order pursuant to paragraph (e), the new Board must deal with the matter as if an application for such an order had been made to the Board.

Detention orders remain in force

11. An order made under section 14(8) of the former Act for the detention of a person that was in force immediately prior to the commencement of this Act continues to have force as an order for detention made under section 13 of this Act for a period expiring 12 months after the commencement of this Act.

Part-heard proceedings under the former Act

12. (1) Where the former Board is continuing the hearing of proceedings that were instituted under the former Act but not completed before the commencement of this Act, this Act or the *Guardianship and Administration Act 1993*, as the case may require, applies to and in relation to those proceedings and any order to be made in the proceedings must accord with this Act or that other Act, as the case may be.

(2) Where the Mental Health Review Tribunal under the former Act is continuing the hearing of proceedings that were commenced under the former Act but not completed before the commencement of this Act, any order to be made in the proceedings must accord with this Act or the *Guardianship and Administration Act 1993*, as the case may require.

APPENDIX 1**LEGISLATIVE HISTORY**

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	definition of "medical agent" inserted by 26, 1995, Sched. 3 cl. 4(a)
Section 4:	substituted by 34, 2000, Sched. 1 cl. 12(a)
Section 5(1):	amended by 34, 2000, Sched. 1 cl. 12(b)
Section 5(2):	amended by 34, 2000, Sched. 1 cl. 12(c)
Section 7:	amended by 34, 2000, Sched. 1 cl. 12(d)
Section 8(1):	amended by 34, 2000, Sched. 1 cl. 12(e)
Section 10(1):	amended by 34, 2000, Sched. 1 cl. 12(f)
Section 13(4):	amended by 26, 1995, Sched. 3 cl. 4(b)
Section 20(2):	amended by 26, 1995, Sched. 3 cl. 4(c)
Section 21(2):	amended by 26, 1995, Sched. 3 cl. 4(d)
Section 22(1):	amended by 26, 1995, Sched. 3 cl. 4(e)
Section 26(1):	amended by 26, 1995, Sched. 3 cl. 4(f)
Section 27(3):	amended by 34, 2000, Sched. 1 cl. 12(g)
Section 28:	amended by 4, 2000, s. 9(1) (Sched. 1 cl. 25)
Schedule	
Clause 1:	redesignated as clause 1(1) by 10, 1994, s. 2(a)
Clause 1(2):	inserted by 10, 1994, s. 2(a)
Clause 5:	repealed by 26, 1995, Sched. 3 cl. 4(g)
Clause 6:	amended by 10, 1994, s. 2(b)
Clause 7:	amended by 10, 1994, s. 2(c), (d)
Clauses 8 - 12:	amended by 10, 1994, s. 2(d)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of assent to this Act divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	-
2	10 years	\$40 000	-
3	7 years	\$30 000	-
4	4 years	\$15 000	-
5	2 years	\$8 000	-
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.