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Mental Health Act 1986
Act No. 59/1986
Reprinted incorporating amendments as at 1 July 2002

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Appendix A-1
The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to reform the law relating to mental health.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

- "approved mental health service" means premises or a service proclaimed to be an approved mental health service under section 94, including the Victorian Institute of Forensic Mental Health;

- "authorized psychiatrist" means the person appointed as authorized psychiatrist under section 96;

- "Board" means the Mental Health Review Board established under section 21;
"chief psychiatrist" means the person appointed as chief psychiatrist under section 105;

"community treatment order" means an order requiring treatment for mental illness of a person who is at large in the community but does not apply to a person who is in a prison or a patient in an approved mental health service;

"community visitor" means a community visitor appointed under section 108;

"Correctional Services Commissioner" means the Commissioner referred to in section 8A of the Corrections Act 1986;

"Department" means the Department of Human Services;

"determination" in relation to the Board, includes order, direction, consent, advice and approval;

"executive officer" means the executive officer of the Board appointed under section 23;

"forensic patient” means—

(a) a person—

   (i) remanded in custody in an approved mental health service; or

   (ii) committed to custody in an approved mental health service by a supervision order—

under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; or
(ab) a person detained in an approved mental health service under section 30(2) or 30A(3) of the
Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; or

(ac) a person deemed to be a forensic patient by
section 73E(4) or 73K(8) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; or

(b) a person transferred from a prison to an
approved mental health service under section 17;

"informed consent", for the purposes of Part 5, has the
meaning given in section 53B;

"involuntary patient" means a person admitted to an
approved mental health service under—

(a) Division 2 of Part 3 (including a person
whose detention and treatment is continued
under section 12A(4) or 12C); or

(b) Part 5 (except section 93(1)(e)) of the
Sentencing Act 1991; or

(c) section 16(3)(a); or

(d) Part 5A—
or deemed to be an involuntary patient under section
13 or 14;

"licence" means a licence issued under section 75;

"mental disorder" includes mental illness;
"mental illness" has the meaning given in section 8;

"Panel" means Forensic Leave Panel established under section 59 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997;

"patient" means—
(a) a forensic patient; or
(b) an involuntary patient; or
(c) a security patient;

"prescribed" means prescribed by the regulations;

"President" means the President of the Board appointed under section 21;

"primary carer" means any person who is primarily responsible for providing support or care to a person other than wholly or substantially on a commercial basis;

"private hospital" has the same meaning as in the Health Services Act 1988;

"Psychosurgery Review Board" means the Psychosurgery Review Board established under section 56;

"Public Advocate" means the Public Advocate appointed under the Guardianship and Administration Act 1986;

"registered medical practitioner" means a registered medical practitioner within the meaning of the Medical Practice Act 1994;
"registered nurse" means a nurse whose name is included in division 1 or 3 of the register of nurses kept under Part 2 of the Nurses Act 1993;

* * * * *

"Secretary" means—

(a) in relation to any act to which section 6(3) of the Health Act 1958 applies, the body corporate established under section 6 of that Act;

(b) in any other case, the Secretary to the Department;

"security patient" means—

(a) a person detained in an approved mental health service under section 16(3)(b) of this Act or section 93(1)(e) of the Sentencing Act 1991;

* * * * *

"senior available next of kin" has the same meaning as in the Human Tissue Act 1982;

* * * * *

"senior officer", in relation to an approved mental health service, means the person appointed as the senior officer of that service under section 87A;

* * * * *

"treatment", in relation to a mental disorder, means things done in the course of the exercise of professional skills to—

(a) remedy the mental disorder; or

(b) lessen its ill effects or the pain and suffering which it causes;
"Tribunal" means Victorian Civil and Administrative Tribunal established by the Victorian Civil and Administrative Tribunal Act 1998;

(2) If under the Public Sector Management and Employment Act 1998 the name of the Department of Human Services is changed, the reference in the definition of "Department" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
PART 2—OBJECTS, OBJECTIVES, FUNCTIONS AND PRINCIPLES

4. Objects of Act

(1) The objects of this Act are—

(a) to provide for the care, treatment and protection of mentally ill people who do not or cannot consent to that care, treatment or protection; and

(ab) to facilitate the provision of treatment and care to people with a mental disorder; and

(ac) to protect the rights of people with a mental disorder; and

(b) to establish a Mental Health Review Board; and

(c) to establish a Psychosurgery Review Board; and

(d) to provide for the appointment and functions of community visitors; and

(da) to establish a Victorian Institute of Forensic Mental Health; and

(e) to ensure that people with a mental disorder are informed of and make use of the provisions of this Act.

(2) It is the intention of Parliament that the provisions of this Act are to be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that—

(a) people with a mental disorder are given the best possible care and treatment appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that care and treatment; and

Pt 2 (Heading) amended by No. 98/1995 s. 5.

S. 4(1)(a) substituted by No. 98/1995 s. 6(1)(a).

S. 4(1)(ab) inserted by No. 98/1995 s. 6(1)(a).

S. 4(1)(ac) inserted by No. 98/1995 s. 6(1)(a).

S. 4(1)(da) inserted by No. 77/1997 s. 4.

S. 4(1)(e) amended by No. 98/1995 s. 6(1)(b).

S. 4(2)(a) substituted by No. 98/1995 s. 6(2)(a).
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(b) in providing for the care and treatment of people with a mental disorder and the protection of members of the public any restriction upon the liberty of patients and other people with a mental disorder and any interference with their rights, privacy, dignity and self-respect are kept to the minimum necessary in the circumstances.

5. **Objectives of the Department**

The objectives of the Department under this Act are as follows—

(a) to establish, develop, promote, assist and encourage mental health services which—

(i) provide standards and conditions of care and treatment for people with a mental disorder which are in all possible respects at least equal to those provided for people suffering from other forms of illness; and

(ii) take into account the age-related, gender-related, religious, cultural, language and other special needs of people with a mental disorder; and

(iii) minimize the adverse effects of mental disorders on the individual and his or her family and community; and

(iv) are comprehensive and accessible; and

(v) are designed to promote the mental health of, and reduce the incidence of mental disorder in, the community; and

(vi) provide for intervention at an early stage of mental disorder; and

(vii) support people with a mental disorder in the community and co-ordinate with other community services; and

(viii) provide information on, and access to, complaint mechanisms about standards of treatment and care; and
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(ix) encourage patients and other people with a mental disorder to participate as far as possible in the development and operation of those services;

(b) to ensure that patients and other people with a mental disorder are informed of their legal rights and other entitlements under this Act and that the relevant provisions of this Act are explained to patients and other people with a mental disorder in the language, mode of communication or terms which they are most likely to understand;

(c) to ensure that appropriate facilities and services are available for the care and treatment of security patients and forensic patients.

6. Functions of the Secretary

The functions of the Secretary under this Act are as follows—

(a) to facilitate the provision of care, protection, treatment and rehabilitation of people (including children) with a mental disorder;

(b) to facilitate the planning, co-ordination and development of a comprehensive and accessible range of mental health services which are integrated within an identifiable mental health program and which are provided within the organisational arrangements for general health services;

(c) to promote the development of systems and services which improve continuity of treatment and care and which enhance access to general health, mental health and welfare services;

(d) to oversee and monitor standards of mental health services;

(e) to promote the establishment of community mental health services for the purpose of enabling the assessment, treatment, rehabilitation and support of people with a mental disorder and which are conducive to continued participation in community life wherever possible;

(f) to facilitate the provision of appropriate and comprehensive information and education to people receiving treatment for a mental disorder in an approved mental health service and other people with

S. 5(a)(ix) inserted by No. 98/1995 s. 7(a)(vii).

S. 5(b) amended by No. 98/1995 s. 7(b)(i)(ii).

S. 5(c) amended by No. 65/1997 s. 86(2).

S. 6 amended by Nos 74/1987 s. 11, 42/1993 s. 26(a)(b), substituted by No. 98/1995 s. 8.
a mental disorder about their mental disorder, its treatment and the services available to meet their needs;

(g) to facilitate education, assistance and consultation programs about mental disorders for primary health care workers in order to help them understand, manage and appropriately refer people with a mental disorder;

(h) to facilitate education about mental disorders to educators, police and other non-health professionals to enable them to recognise and refer people who may have a mental disorder;

(i) to promote, encourage and assist the development and maintenance of a high standard of training of people responsible for the care and treatment of people with a mental disorder;

(j) to support the development of services which assist carers and promote self-help and advocacy for people with a mental disorder;

(k) to facilitate the provision of information, education and support to carers and advocates;

(l) to assist in the identification of special needs groups and to encourage the development of mental health services which are responsive to the varying needs of those groups;

(m) to promote research into mental disorders;

(n) to make recommendations and reports to the Minister with respect to matters affecting the health, accommodation, maintenance, care, treatment and welfare of people with a mental disorder;

(o) to submit recommendations to the Minister concerning amendments to this Act or the regulations;

(p) to promote informed public opinion on matters of mental health by publishing reports and information and giving advice concerning mental disorders and to promote public understanding of, and involvement in, measures for the prevention, treatment and care of mental disorders and the care, protection and rehabilitation of people with a mental disorder;
(q) to carry out or arrange for the carrying out of any works necessary to provide services or facilities to give effect to this Act;

(r) to purchase, rent, lease, sell, renovate and maintain or otherwise deal with any land or buildings for the purposes of this Act in the name of the Secretary or any government agency;

(s) subject to the general direction and control of the Minister, to administer this Act;

(t) any other functions that may be necessary for the proper administration of this Act.

6A. Principles of treatment and care

It is the intention of Parliament that the following principles be given effect to with respect to the provision of treatment and care to people with a mental disorder—

(a) people with a mental disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards;

(b) wherever possible, people with a mental disorder should be treated in the community;

(c) the provision of treatment and care should be designed to assist people with a mental disorder to, wherever possible, live, work and participate in the community;

(d) the provision of treatment and care for people with a mental disorder should promote and assist self-reliance;

(e) people with a mental disorder should be provided with appropriate and comprehensive information about their mental disorder, proposed and alternative treatments, including medication, and services available to meet their needs;

(f) people with a mental disorder should be treated near their homes or the homes of relatives or friends wherever possible;

(g) when receiving treatment and care the age-related, gender-related, religious, cultural, language and other special needs of people with a mental disorder should be taken into consideration;
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(h) the prescription of medication should meet the best health needs of the person with a mental disorder and should be given only for therapeutic or diagnostic purposes and never as a punishment or for the convenience of others;

(i) treatment and care should be provided by appropriately qualified people and within a multi-disciplinary framework;

(j) every effort that is reasonably practicable should be made to involve a person with a mental disorder in the development of an ongoing treatment plan. Treatment and care of a person with a mental disorder should be based on this plan. The plan should be reviewed regularly and revised as necessary.
PART 3—ADMISSION OF PATIENTS

Division 2—Involuntary Patients

8. Criteria for admission and detention as an involuntary patient

(1) A person may be admitted to and detained in an approved mental health service as an involuntary patient in accordance with the procedures specified in this Act only if—

(a) the person appears to be mentally ill; and

(b) the person's mental illness requires immediate treatment and that treatment can be obtained by admission to and detention in an approved mental health service; and

(c) because of the person's mental illness, the person should be admitted and detained for treatment as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and

(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person's freedom of decision and action.

(1A) Subject to sub-section (2), a person is mentally ill if he or she has a mental illness, being a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.
(2) A person is not to be considered to be mentally ill by reason only of any one or more of the following—

(a) that the person expresses or refuses or fails to express a particular political opinion or belief;
(b) that the person expresses or refuses or fails to express a particular religious opinion or belief;
(c) that the person expresses or refuses or fails to express a particular philosophy;
(d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
(e) that the person engages in or refuses or fails to engage in a particular political activity;
(f) that the person engages in or refuses or fails to engage in a particular religious activity;
(g) that the person engages in sexual promiscuity;
(h) that the person engages in immoral conduct;
(i) that the person engages in illegal conduct;
(j) that the person is intellectually disabled;
(k) that the person takes drugs or alcohol;
(l) that the person has an antisocial personality;
(m) that the person has a particular economic or social status or is a member of a particular cultural or racial group.

(3) Sub-section (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drug or alcohol taking from being regarded as an indication that a person is mentally ill.

(4) Despite anything in the Guardianship and Administration Act 1986, the Medical Treatment Act 1988 or any other law, in considering, for the purposes of sub-section (1), whether a person—

(a) in respect of whom a guardian has been appointed under the Guardianship and Administration Act 1986 or in respect of whom a person responsible within the meaning of section 37 of that Act may make decisions relating to treatment; or
(b) in respect of whom an agent has been appointed under the Medical Treatment Act 1988—
has refused or is unable to consent to treatment, that person's personal refusal or consent only is relevant and not the refusal or consent of that person's guardian, the person responsible, the agent or the Tribunal.

9. Involuntary admission

(1) A person may be admitted to and detained in an approved mental health service as an involuntary patient upon production of—

(a) a request in the prescribed form and containing the prescribed particulars; and

(b) a recommendation in the prescribed form by a registered medical practitioner following a personal examination of the person made not more than three clear days before the admission of the person.

(2) A request may be signed before or after a recommendation is made.

(3) A registered medical practitioner must not make a recommendation under sub-section (1) unless the registered medical practitioner considers that—

(a) the criteria specified in section 8(1) apply to the person; and

(b) the person should be admitted to an approved mental health service for observation.

(4) A request and recommendation made in accordance with this section is sufficient authority for—

(a) the person making the request; or

(b) a member of the police force, an ambulance officer or any other person authorized by the person making the request—

to take the person to whom the recommendation relates to an appropriate approved mental health service or to arrange for an appropriate approved mental health service to admit the person.
(5) For the purpose of taking the person to whom the recommendation relates to an appropriate approved mental health service a prescribed person may with such assistance as is required and such force as may be reasonably necessary—

(a) enter any premises in which the prescribed person has reasonable grounds for believing that the person to whom the recommendation relates may be found; and

(b) if necessary to enable the person to be so taken safely, use such restraint as may be reasonably necessary.

(6) If in the opinion of a prescribed registered medical practitioner it is necessary to sedate the person to whom the recommendation relates so as to enable that person to be taken safely to an appropriate approved mental health service, the prescribed registered medical practitioner may administer or direct an authorised person to administer sedation to that person.

(7) Any person who uses restraint under sub-section (5) or administers sedation or directs an authorised person to administer sedation under sub-section (6) must specify the particulars required by the prescribed form and deal with the prescribed form in accordance with the regulations.

(7A) Despite anything to the contrary in this section, a person in respect of whom a request is made in accordance with sub-section (1)(a) may be taken to an approved mental health service without a recommendation being made under sub-section (1)(b) if—

(a) a registered medical practitioner is not available within a reasonable period to consider making a recommendation despite all reasonable steps having been taken to secure the attendance of one; and

(b) a mental health practitioner considers that—

(i) the criteria specified in section 8(1) apply to the person; and

(ii) the person should be admitted to an approved mental health service for examination by a registered medical practitioner for the purpose of making a recommendation; and
(c) the mental health practitioner completes an authority to transport in the prescribed form containing the prescribed particulars.

(7B) In the circumstances set out in sub-section (7A), sub-sections (4) and (5), and (7) to the extent that it relates to sub-section (5), apply as if a recommendation had been made in accordance with this section.

(7C) A person who has made a request under sub-section (1)(a) in respect of a person must not complete an authority to transport that person under sub-section (7A)(c).

(8) In this section—

"authorised person" means—

(a) a registered medical practitioner; or

(b) a registered nurse; or

(d) a person who is a member of a class of health service providers prescribed for the purposes of this section;

"mental health practitioner" means a person who is a member of a class of health service providers prescribed for the purposes of this definition;

"prescribed registered medical practitioner" means a registered medical practitioner of a class prescribed for the purposes of this section;

"prescribed person" means—

(a) a member of the police force; or

(b) an ambulance officer; or

(c) a person who is a member of a class prescribed for the purposes of this section.

10. Apprehension of mentally ill persons in certain circumstances
(1) A member of the police force may apprehend a person who appears to be mentally ill if the member of the police force has reasonable grounds for believing that—

(a) the person has recently attempted suicide or attempted to cause serious bodily harm to herself or himself or to some other person; or

(b) the person is likely by act or neglect to attempt suicide or to cause serious bodily harm to herself or himself or to some other person.

(1A) A member of the police force is not required for the purposes of sub-section (1) to exercise any clinical judgment as to whether a person is mentally ill but may exercise the powers conferred by this section if, having regard to the behaviour and appearance of the person, the person appears to the member of the police force to be mentally ill.

(2) For the purpose of apprehending a person under sub-section (1) a member of the police force may with such assistance as is required—

(a) enter any premises; and

(b) use such force as may be reasonably necessary.

(3) A member of the police force exercising the powers conferred by this section may be accompanied by a registered medical practitioner.

(4) A member of the police force must as soon as practicable after apprehending a person under sub-section (1) arrange an examination of the person by a registered medical practitioner.

(5) The registered medical practitioner may examine the person for the purposes of this Act.

11. Persons incapable of caring for themselves

(1) Where a member of the police force or any other person has reasonable grounds for believing that a person who appears to be mentally ill is because of mental illness incapable of caring for herself or himself the member of the police force or that other person may give the information upon oath to a magistrate.
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(2) A magistrate may upon that information authorize and direct a member of the police force accompanied by a registered medical practitioner to visit and examine that person.

(3) An authorization and direction under sub-section (2) is to be in the form of a special warrant in the prescribed form.

(4) A member of the police force acting under a special warrant may with such assistance as is required—

(a) enter any premises; and

(b) use such force as may be reasonably necessary to enable the registered medical practitioner to examine that person.

12. Admission and detention of involuntary patients

(1) Where a request and recommendation has been made under section 9—

(a) the person to whom the recommendation relates is to be admitted to the approved mental health service by a registered medical practitioner employed in or by the approved mental health service; and

(aa) if that registered medical practitioner considers—

(i) that the person requires any treatment immediately; and

(ii) that the person is not capable of consenting to that treatment; and

(iii) that the treatment required is of such a nature that it would not be in the best interests of the person to await the examination by the authorised psychiatrist required under paragraph (b)—

the registered medical practitioner may on behalf of the person consent to the treatment being carried out
until the authorised psychiatrist examines the person; and

(ab) if the registered medical practitioner does not consider that—

(i) the criteria specified in section 8(1) apply to the person; and

(ii) the person should be admitted to the approved mental health service—

he or she must notify the authorised psychiatrist as soon as practicable and await the examination by the authorised psychiatrist required under paragraph (b); and

(b) the authorised psychiatrist must examine that person—

(i) if paragraph (ab) applies, as soon as practicable after the person is admitted, but in any case within 24 hours after the person is admitted; or

(ii) if paragraph (ab) does not apply, within 24 hours after the person is admitted.

(2) Where having regard to the criteria specified in section 8, the authorized psychiatrist upon examining the person under sub-section (1)—

(a) is not satisfied that the continued detention of the person as an involuntary patient is justified, the authorized psychiatrist must discharge the person from being an involuntary patient; or

(b) is satisfied that the continued detention of the person as an involuntary patient is justified, the authorized psychiatrist must confirm the admission of the person as an involuntary patient.

(3) A registered medical practitioner who has made a recommendation under section 9 must not examine that person under sub-section (1)(b).

(4) Upon admission an involuntary patient is to be detained and given treatment for his or her mental illness.
(4A) A person admitted to an approved mental health service as an involuntary patient under this section is not required to be taken to the approved mental health service for the purpose of admission.

(5) If an involuntary patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental illness consent in writing may be given by the authorised psychiatrist.

(6) The authorised psychiatrist must ensure that any guardian of a person admitted to the approved mental health service as an involuntary patient is notified of the admission and of the grounds for it.

12A. Application to continue detention and treatment of involuntary patient

(1) This section applies to a person who is detained in an approved mental health service—

(a) having been admitted as an involuntary patient under section 12; and

(b) whose admission has been confirmed under section 12(2).

(2) If the authorised psychiatrist for the approved mental health service in which a person to whom this section applies is detained considers that—

(a) the person no longer satisfies the criteria in section 8(1); and

(b) the person appears to have a mental disorder; and

(c) having regard to the person's recent behaviour, the person, if not continued to be detained and treated, would cause serious physical harm to himself or herself; and

(d) treatment for the mental disorder can be obtained in the approved mental health service—

the authorised psychiatrist may apply in writing to the chief psychiatrist for approval of the continued detention and treatment of the person for a period not exceeding 3 months.
(3) Before making an application under this section the authorised psychiatrist—

(a) must consider the relevant characteristics of the person’s behaviour, including its nature, duration and frequency and its impact on the person; and

(b) may consult any person, including—

(i) any member of the family of the person or his or her primary carer or guardian;
(ii) any registered medical practitioner or other person who is or has been involved in the provision of treatment to the person.

(4) On the making of an application under this section the authorised psychiatrist may authorise the continued detention and treatment of the person until the application is determined.

(5) The chief psychiatrist must advise the Secretary as soon as practicable of the making of an application under this section.

12B. Determination of application

(1) The Secretary must convene a meeting of a committee constituted by the chief psychiatrist and two other qualified psychiatrists to determine an application made under section 12A.

(2) An authorised psychiatrist who makes an application must not be a member of the committee that determines the application.

(3) Each member of the committee must personally examine the person about whom the application was made.

(4) If, after considering the application and examining the person, the committee—

(a) is satisfied as to the matters specified in paragraphs (a), (b), (c) and (d) of section 12A(2), it may give its consent to the continued detention and treatment of the person for a period not exceeding 3 months specified by it; or

(b) is not satisfied as to those matters, it must refuse to give its consent.

(5) The members of the committee may determine an application by majority decision.
(6) Subject to this Act, the procedure of the committee is at its discretion.

12C. Continued detention and treatment

(1) If the committee gives its consent under section 12B(4)(a), the person about whom the application was made is to continue to be detained and treated in the approved mental health service for the period specified by the committee.

(2) If—

(a) the committee refuses to give its consent; or

(b) the committee has not determined the application within 7 days after the day the application was made—

the authorised psychiatrist must discharge the person as an involuntary patient.

(3) The continued detention and treatment of a person under this section may be renewed for a further period not exceeding 3 months on an application made and determined in accordance with sections 12A and 12B.

(4) There is no limit to the number of times the continued detention of a person may be renewed under sub-section (3).

(5) If the chief psychiatrist considers that the criteria specified in section 12A(2) no longer apply to a person whose detention has been continued under this section, the chief psychiatrist must order that the person be discharged as an involuntary patient.

12D. Chief psychiatrist may make application

(1) If, in relation to a person to whom section 12A applies—

(a) the chief psychiatrist is satisfied as to the matters specified in paragraphs (a), (b), (c) and (d) of section 12A(2); and

(b) no application under section 12A(2) is made by the authorised psychiatrist—

the chief psychiatrist may make an application to the Secretary for approval of the continued detention and treatment of the person.

(2) If the chief psychiatrist makes an application under sub-section (1), sections 12A (except sub-section (5)), 12B, 12C and 32 apply as if a reference in those sections to the
13. Admission to a general hospital or emergency department

(1) A person who—

(a) satisfies the criteria specified in section 8(1); and

(b) requires medical treatment which is life-sustaining or

to prevent serious physical deterioration and which

can only be appropriately provided in a general

hospital or emergency department of the general

city hospital—

may be admitted as an involuntary patient to the general

city hospital or emergency department of the general hospital for

the purposes of receiving the medical treatment.

(1A) Sections 9 and 12 apply in relation to the admission of a

person to a general hospital or emergency department under

sub-section (1) as if a reference in those sections to an

approved mental health service were a reference to the

general hospital or emergency department of the general

hospital.

(2) A person admitted to a general hospital or emergency

department of the general hospital is deemed to be an

involuntary patient detained under section 12 and on leave

from the appropriate approved mental health service and the

provisions of this Act other than section 42 apply

accordingly.

14. Community treatment orders

(1) If a person satisfies the criteria specified in sub-section (1A)

and the authorized psychiatrist considers that a community

treatment order is appropriate, the authorized psychiatrist

may make a community treatment order instead of

confirming the admission of the person to an approved

mental health service as an involuntary patient or continuing

to detain the person in an approved mental health service.
(1A) For the purposes of sub-sections (1) and (6), the criteria are that—

(a) the person appears to be mentally ill; and

(b) the person’s mental illness requires immediate treatment and that treatment can be obtained by making the person subject to a community treatment order; and

(c) because of the person’s mental illness, the person should be made subject to a community treatment order for his or her health or safety (whether to prevent a deterioration in the person’s physical or mental condition or otherwise) or for the protection of members of the public; and

(d) the person has refused or is unable to consent to the necessary treatment for the mental illness; and

(e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person’s freedom of decision and action.

(1B) Despite anything in the Guardianship and Administration Act 1986, the Medical Treatment Act 1988 or any other law, in considering, for the purposes of sub-section (1A), whether a person—

(a) in respect of whom a guardian has been appointed under the Guardianship and Administration Act 1986 or in respect of whom a person responsible within the meaning of section 37 of that Act may make decisions relating to treatment; or

(b) in respect of whom an agent has been appointed under the Medical Treatment Act 1988—

has refused or is unable to consent to treatment, that person’s personal refusal or consent only is relevant and not the refusal or consent of that person’s guardian, the person responsible, the agent or the Tribunal.

(2) A community treatment order must specify—
(a) the authorised psychiatrist or delegate of the authorised psychiatrist who is to monitor the treatment of the patient; and

(b) the registered medical practitioner who is to supervise the treatment of the patient; and

(b) where the patient is to receive the treatment; and

(c) the intervals at which the registered medical practitioner must submit a written report concerning the treatment of the patient to the monitoring psychiatrist; and

(d) the duration of the community treatment order which must not exceed 12 months.

(2A) A community treatment order may specify where the patient must live, if this is necessary for the treatment of the patient's illness.

(3) A person who is subject to a community treatment order—

(a) is deemed to be an involuntary patient detained under section 12; and

(c) the provisions of this Act, other than sections 37, 40, 41, 42 and 43 apply accordingly.

(4) The authorised psychiatrist—

(a) may vary a community treatment order; or

(b) if satisfied on reasonable grounds that a person who is subject to a community treatment order—

(i) has failed to comply with the order; or
(ii) satisfies the criteria specified in section 8(1) but no longer satisfies the criteria specified in sub-section (1A) of this section—

may revoke the order; or

(c) if satisfied that a person who is subject to a community treatment order does not satisfy the criteria specified in section 8(1) or in sub-section (1A) of this section, must discharge the person as an involuntary patient.

(4A) If the authorised psychiatrist revokes a community treatment order to which a person is subject—

(a) the person is deemed to be an involuntary patient who is absent from an approved mental health service without leave; and

(b) the authorised psychiatrist may authorise any of the persons referred to in section 43(1) to apprehend the person for the purpose of returning the person to an approved mental health service.

(4B) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under sub-section (4A) as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

(5) If a community treatment order is revoked the authorised psychiatrist must make reasonable efforts to inform the person—

(a) that the order has been revoked; and

(b) that the person must return to an approved mental health service as an in-patient.

(6) If, after examining a person who is the subject of a community treatment order, the authorised psychiatrist considers that—

(a) the person still satisfies the criteria in sub-section (1A); and

(b) a community treatment order is still appropriate—

S. 14(4A) inserted by No. 42/1988 s. 5(4).
S. 14(4A)(a) amended by No. 98/1995 s. 17(6)(a).
S. 14(4B) inserted by No. 98/1995 s. 17(7).
S. 14(5) substituted by No. 42/1988 s. 5(4).
S. 14(5)(b) amended by No. 98/1995 s. 17(6)(a).
S. 14(6) inserted by No. 33/1989 s. 9(b).
S. 14(6)(a) amended by No. 98/1995 s. 17(6)(b).
the authorised psychiatrist may extend a community treatment order for a period which must not exceed 12 months.

(7) There is no limit to the number of times a community treatment order may be extended under sub-section (6).

(8) For the purposes of review under section 30(1)(a), the extending of a community treatment order is deemed to be the admitting of the person who is the subject of the order to an approved mental health service.

Division 3—Persons Convicted of Criminal Offences or in a Prison

15. Discharge of involuntary patients

(1) If a person to whom an assessment order under section 90 of the Sentencing Act 1991 or a diagnosis, assessment and treatment order under section 91 of that Act is discharged in accordance with section 36(2) or 37(2) of this Act, the Board or the chief psychiatrist (as the case requires) must immediately notify the court.

(2) The person is discharged on being returned to the court to be dealt with under section 92 of the Sentencing Act 1991.

15A. Restricted community treatment orders

(1) A person may be made subject to a restricted community treatment order in accordance with the procedures specified in this section only if—

(a) the person appears to be mentally ill and to require treatment for the illness; and

(b) the treatment can be obtained by making the person the subject of a restricted community treatment order; and

(c) because of the person's mental illness, the person should be made subject to the restricted community treatment order for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.
(2) If a person to whom a hospital order under section 93(1)(d) of the **Sentencing Act 1991** applies—

(a) satisfies the criteria specified in sub-section (1); and

(b) is in the opinion of the authorised psychiatrist suitable for treatment subject to a restricted community treatment order—

the authorised psychiatrist may apply to the chief psychiatrist for the making of a restricted community treatment order in respect of that person.

(3) Upon receiving an application the chief psychiatrist may make a restricted community treatment order if he or she is satisfied that the person to whom the application relates is suitable for treatment subject to a restricted community treatment order.

(4) A restricted community treatment order must specify—

(a) the psychiatrist who is to supervise the treatment of the patient; and

(b) where the patient is to receive the treatment; and

(c) the intervals at which the patient must attend the psychiatrist for treatment; and

(d) the intervals at which the psychiatrist must submit a written report concerning the treatment of the patient to the chief psychiatrist; and

(f) the duration of the restricted community treatment order; and

(g) any other conditions that the chief psychiatrist considers appropriate.

(5) A person who is subject to a restricted community treatment order is deemed to be an involuntary patient detained under section 93(1)(d) of the **Sentencing Act 1991**.

(6) The chief psychiatrist must send a copy of a restricted community treatment order to the Board for review under section 30.
Mental Health Act 1986

Act No. 59/1986

(9) A restricted community treatment order does not take effect, except for the purposes of an appeal or review, unless and until it has been approved by the Board under section 36(2A)(c).

15B. **Discharge and variation of restricted community treatment orders**

(1) If the chief psychiatrist is satisfied that a person who is subject to a restricted community treatment order does not satisfy the criteria specified in section 93(1)(b) of the **Sentencing Act 1991** or the criteria specified in section 15A(1) of this Act, the chief psychiatrist must discharge the person as an involuntary patient.

(2) A person who is subject to a restricted community treatment order may apply to the Board to—

(a) have the restricted community treatment order revoked; or

(b) be discharged under section 36.

(4) Sections 29 to 35 apply to an application under sub-section (2) as if the application were an appeal under section 29.

(5) The chief psychiatrist may vary a restricted community treatment order.

(6) The chief psychiatrist may revoke a restricted community treatment order if he or she is satisfied on reasonable grounds that the person who is subject to a restricted community treatment order—

(a) has failed to comply with the order; or
Mental Health Act 1986

15C. Extension of restricted community treatment orders

(1) If, after examining a person who is the subject of a restricted community treatment order, the chief psychiatrist considers that—

(a) the person still satisfies the criteria in section 15A(1); and

(b) a restricted community treatment order is still appropriate—

the chief psychiatrist may extend a restricted community treatment order for a period which must not exceed 12 months.

(2) There is no limit to the number of times a restricted community treatment order may be extended.

(3) For the purposes of review under section 30(1)(a), the extending of a restricted community treatment order is deemed to be the admitting of the person who is the subject of the order to an approved mental health service.
16. Transfer of mentally ill prisoners

(1) The Secretary to the Department of Justice may by a hospital order transfer a person who—

(a) is lawfully imprisoned or detained in a prison or other place of confinement; and

(b) appears to be mentally ill—

to an approved mental health service.

(1A) Sub-section (1) does not apply to a person who is detained in a prison under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (whether on remand or under a supervision order made under that Act).

(2) The Secretary to the Department of Justice cannot make a hospital order unless—

(a) the Secretary has received a certificate by a psychiatrist and is satisfied that—

(i) the person appears to be mentally ill and to require immediate treatment for that illness; and

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

(iii) because of the person's mental illness, the person should be admitted and detained for treatment for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and

(b) the Secretary has received a report from the authorized psychiatrist of the approved mental health service to which it is proposed to admit the person which recommends that the transfer be made.
(3) The Secretary to the Department of Justice may make either of the following hospital orders—

(a) a hospital order under which the person is admitted to and detained in an approved mental health service as an involuntary patient;

(b) a restricted hospital order under which the person is admitted to and detained in an approved mental health service as a security patient.

(4) In determining whether to make a hospital order or a restricted hospital order the Secretary to the Department of Justice must have regard to the public interest and all the circumstances of the case including the person's criminal record and psychiatric history.

(5) Upon admission a security patient is to be detained and treated for his or her mental illness.

(6) If a security patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental illness consent in writing may be given by the authorised psychiatrist.

(7) In this section—

(a) a reference to the Secretary to the Department of Justice includes a reference to—

(i) the Secretary in relation to a person detained in a remand centre, youth residential centre or youth training centre within the meaning of the Children and Young Persons Act 1989; and

(ii) the Chief Commissioner of Police in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the Corrections Act 1986 or being held in police custody on the order of a court; and

(b) a reference to a prison or other place of confinement includes a reference to—

(i) a remand centre, youth residential centre or youth training centre within the meaning of
section 249 of the Children and Young Persons Act 1989; and
(ii) a police gaol within the meaning of the Corrections Act 1986.

Division 4—Forensic Patients

17. Transfer of persons detained in prison under Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

(1) The Secretary to the Department of Justice may by order transfer a person who—

(a) is detained in a prison under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (whether on remand or under a supervision order made under that Act); and

(b) appears to be mentally ill—

to an approved mental health service as a forensic patient.

(2) The Secretary to the Department of Justice cannot transfer a person under sub-section (1) unless—

(a) the Secretary to the Department of Justice has received a certificate by a psychiatrist and is satisfied that—

(i) the person appears to be mentally ill and to require treatment for that illness; and

(ii) the treatment can be obtained by admission to and detention in an approved mental health service; and

(iii) because of that person's mental illness, the person should be admitted and detained for treatment for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or
Mental Health Act 1986

17A. Status of forensic patients

(1) Upon admission to an approved mental health service (whether under section 17 or otherwise), a forensic patient is to be detained and treated for his or her condition.

(2) If a forensic patient refuses to consent to necessary treatment or is not capable of consenting to treatment for his or her mental disorder, consent in writing may be given by the authorised psychiatrist.

17B. Security conditions

(1) A forensic patient detained in an approved mental health service or absent on leave from an approved mental health service is subject to such security conditions as the authorised psychiatrist considers necessary.

(2) A forensic patient may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

Division 5—Patient's Rights

18. Statement of patient's rights

(1) Every patient must upon admission to an approved mental health service be given the appropriate prescribed printed statement—

(a) advising the patient as to the legal rights and other entitlements of patients under this Act including the right to obtain legal representation and to have a second psychiatric opinion; and

(b) containing any other information relating to the hospitalization of the patient that the Department considers relevant.
(2) The statement may be printed in different languages so that wherever possible a patient can be given a copy of the statement printed in a language with which the patient is familiar.

(3) In addition to the statement, the patient must be given an oral explanation of the information contained in the statement and, if he or she appears not to have understood, or to be incapable of understanding, the information contained in the statement, arrangements must be made to convey the information to the patient in the language, mode of communication or terms which he or she is most likely to understand.

(4) It is the duty of the authorized psychiatrist to ensure that this section is complied with in the approved mental health service.

19. Information to be provided

There must be kept at a place readily accessible to all patients—

(a) copies of this Act and the Guardianship and Administration Act 1986 and any publications prepared by the Department for the purpose of explaining the provisions of the Acts; and

(b) copies of the statement under section 18(1); and

(c) the address to which the patient may write to and the business telephone number of the following—

(i) the Board;

(ii) the Public Advocate;

(iii) the chief psychiatrist;

(iv) the community visitors;

(v) Victoria Legal Aid;

(vi) the Ombudsman;

(vii) the Health Services Commissioner.

20. Correspondence
(1) A letter written to or by an involuntary patient must be forwarded without being opened to the person to whom it is addressed.

(2) A letter written to or by a security patient must subject to any security conditions imposed under section 47 be forwarded without being opened to the person to whom it is addressed.

(3) A letter written to or by a forensic patient must, subject to any security conditions imposed under section 17B, be forwarded without being opened to the person to whom it is addressed.

S. 20(1) amended by No. 43/1998 s. 41(1).

S. 20(3) inserted by No. 43/1998 s. 41(2).
PART 4—REVIEW, DISCHARGE, LEAVE AND TRANSFER OF PATIENTS

Division 1—Establishment, Constitution and Procedure of the Board

21. The Mental Health Review Board

(1) There is established a Board to be known as the Mental Health Review Board.

(2) The Board is to be constituted by—
   (a) a President; and
   (b) such other members as are necessary from time to time for the proper functioning of the Board.

(3) Schedule 1 has effect with respect to members of the Board.

22. Functions of the Board

(1) The functions of the Board are as follows—
   (a) to hear appeals against the detention of involuntary patients and security patients;
   (b) to periodically review the continued detention of each involuntary patient and security patient;
   (c) to hear appeals against the refusal of the chief psychiatrist to grant special leave to security patients;
   (ca) to hear appeals against the transfer of involuntary patients and security patients;
   (d) to review orders for the transfer of involuntary patients to interstate mental health facilities;

(2) The Board must in determining any review or appeal have regard primarily to the patient's current mental condition and consider the patient's medical and psychiatric history and social circumstances.

23. Staff of the Board
(1) An executive officer and any employees that are necessary for the proper functioning of the Board are to be employed under Part 3 of the Public Sector Management and Employment Act 1998.

(2) The executive officer is, subject to the general control and direction of the President, to perform such functions and exercise such powers as are conferred on the executive officer.

24. Procedure of the Board

(1) The Board—

(a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and

(b) is bound by the rules of natural justice; and

(c) is not required to conduct any proceedings in a formal manner.

(2) Schedule 2 has effect with respect to the procedure of the Board.

(3) The Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.

(4) Evidence before the Board—

(a) may be given orally or in writing or partly orally and partly in writing; and

(b) may be given—

(i) on oath or affirmation; or

(ii) by declaration instead of an oath where permitted by law.

(5) A member of the Board may administer an oath or take an affirmation or declaration for the purposes of this Act.

(6) Evidence given before the Board cannot be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.

(7) The Board may of its own motion or on the application of any party to the proceedings before it direct the executive officer to serve upon any person a summons to appear
before the Board to give evidence or to produce such documents as are specified in the summons.

(8) The Board may make an order for the manner of service, including substituted service, of a summons under sub-section (7).

(9) A person who without lawful excuse disobeys a summons of the Board is guilty of an offence.

Penalty: 5 penalty units.

25. Appointment of persons to assist the Board

The Board may appoint a duly qualified legal practitioner, an interpreter approved by the Secretary, a registered medical practitioner or any other person with appropriate expertise to assist the Board in any proceedings before the Board.

26. Appearance and representation at any hearing of the Board

(1) At any hearing of the Board the patient in respect of whom the hearing is conducted has unless sub-section (6) applies the right to appear before the Board in person.

(2) If a patient decides not to appear before the Board the Board must satisfy itself that the patient has made the decision of his or her own free will.

(3) The patient may be represented before the Board by any person authorized to that effect by the patient.

(4) At any hearing of the Board—

(a) any person other than the patient who is given notice of the hearing may appear before the Board in person and be heard or, where that person is unable to be present at the hearing and the Board so allows, may be represented before the Board by any person authorized to that effect by the first-mentioned person; and

(b) any other person who wishes to be heard and whom the Board agrees to hear may appear before the Board in person and be heard.

(5) Where in any proceedings the patient is not represented before the Board, the Board may appoint a person to represent the patient in those proceedings.

(6) If the Board is satisfied that the appearance of the patient before the Board would be detrimental to the patient's
health, the Board may order that the patient not appear at the hearing in person.

(7) Unless the Board makes an order under sub-section (8), the patient or a person representing the patient is entitled to inspect or otherwise have access to any documents to be given to the Board in connection with the hearing at least 24 hours before the commencement of the hearing.

(8) On an application made by or on behalf of the authorised psychiatrist, the Board may order that the patient is not entitled personally to inspect or otherwise have access to all of the documents referred to in sub-section (7), or to any specified document or part of a document included in those documents, if the Board is satisfied that such inspection or access by the patient would—

(a) cause serious harm to the patient's health or the health or safety of another person; or

(b) involve the unreasonable disclosure of information relating to the personal affairs of any person; or

(c) breach a confidentiality provision imposed by a person who supplied information that is contained in the documents or document.

(9) The Board may permit a person representing the patient before the Board to inspect or otherwise have access to any document to which an order made under sub-section (8) applies.

27. Statement of reasons

(1) A party to the proceedings may, by notice in writing given to the Board within 28 days after the making of a determination, request the Board to give to that person a statement in writing of reasons for the determination.

(2) The Board must as soon as practicable but in any case within 14 days after receiving a request under sub-section (1) prepare and give a statement of reasons to that person.

28. Register

The executive officer must keep a register containing particulars of—

(a) applications lodged with the executive officer; and

(b) all determinations of the Board; and

(c) the reasons for each determination.
Division 2—Appeals and Reviews

29. Appeals

(1) An appeal may be made to the Board at any time against the detention of a person as an involuntary patient or a security patient by—

(a) the person admitted as an involuntary patient or security patient; or

(b) a community visitor or any other person who satisfies the Board of a genuine concern for the person admitted as an involuntary patient or security patient.

(2) An involuntary patient or security patient may initiate the appeal by writing to—

(a) the executive officer; or

(b) the chief psychiatrist; or

(c) an authorized psychiatrist; or

(d) a community visitor; or

(e) the Ombudsman; or

(f) the Health Services Commissioner.

(3) If the chief psychiatrist, an authorized psychiatrist, a community visitor, the Ombudsman or the Health Services Commissioner receives an application for an appeal he or she must immediately forward it to the executive officer.

(4) The Board must commence the hearing of an appeal without delay.

30. Reviews

(1) Subject to sub-section (2), the Board must review the continued detention of a patient, other than a forensic patient—

(a) within 8 weeks after the patient is admitted or, in the case of a person who is subject to a restricted community treatment order, as soon as practicable
after receiving a copy of the order under section 15A(6); and

(b) thereafter at intervals not exceeding 12 months.

(2) In the case of a patient whose detention has been continued under section 12C, the Board must review the continued detention of the patient within 14 days after the day on which the committee consented under section 12B to the continued detention.

31. Appeal and review may be held at the same time

The Board may conduct an appeal and a review in respect of a person at the same time.

32. Notice of appeal or review

(1) The executive officer must at least 7 days before the day on which the appeal or review is to be held cause notice of the hearing to be given to—

(a) the involuntary patient or security patient; and

(b) in the case of an appeal by a person other than the involuntary patient or security patient, the person making the appeal; and

(c) the authorized psychiatrist; and

(d) if the involuntary patient or security patient is a prisoner, the Secretary to the Department of Justice; and

(e) any other person having regard to the wishes of the involuntary patient or security patient that the Board directs be given notice.

(2) A notice of the hearing must contain information with respect to—

(a) the time and place of the hearing; and

(b) the nature of the proceedings; and

(c) the basis on which detention is continued; and

(d) in the case of a notice given under sub-section (1)(a), (1)(b) or (1)(d) the right to be represented before the Board.
(3) Where the Board considers it appropriate to do so, the Board may—

(a) reduce the time limit specified in sub-section (1); or

(b) dispense with the requirement that notice in writing be given to one or more of the persons specified in sub-section (1).

(4) In the case of a review under section 30(2), in addition to the requirements of sub-section (1), the executive officer must cause a notice of the review which complies with sub-section (2) to be given to the Public Advocate at least 7 days before the day on which the review is to be held.

33. Proceedings to be closed to the public

(1) Unless sub-section (2) applies, proceedings before the Board are closed to members of the public.

(2) The Board may direct that particular proceedings or any part of the proceedings are to be open to members of the public if the Board is satisfied that it would be in the best interests of the patient or in the public interest.

34. Reports of proceedings

(1) Unless the Board otherwise determines in a particular case a person must not publish or broadcast or cause to be published or broadcast any report of the proceedings of the Board.

(2) Where the Board considers it would be in the public interest to do so the Board may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Board provided that—

(a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and

(b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

35. Secrecy provision

(1) Unless sub-section (2) or section 34 applies, a person who—
(a) is or has at any time been a member of the Board; or

(b) is or has been present at any proceedings of the Board—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Sub-section (1) does not preclude a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or

(c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

Division 3—Involuntary Patients

36. Power of Board on appeal or review

(1) Subject to sub-section (4), if, having regard to the criteria specified in section 8, the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained or deemed to be detained under section 12 is necessary, the Board must order that the person be discharged as an involuntary patient.

S. 36(1) amended by No. 98/1995 s. 24(1).

(1A) If, having regard to the criteria specified in section 12A(2), the Board upon hearing an appeal or a review is not satisfied that the continued detention of a person

S. 36(1A) inserted by No. 19/1996 s. 4.
whose detention has been continued under section 12A(4) or 12C is necessary, the Board must order that the person be discharged as an involuntary patient.

(2) Subject to sub-section (2A), where having regard to the criteria specified in section 90(b), 91(b) or 93(1)(b) (as the case requires) of the Sentencing Act 1991, the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained or deemed to be detained under Part 5 of that Act is necessary, the Board must order that the person be discharged as an involuntary patient.

(2A) On hearing an appeal or review in relation to a person who is subject to a restricted community treatment order, the Board, having regard to the criteria specified in section 93(1)(b) of the Sentencing Act 1991 and section 15A(1) of this Act—

(a) if satisfied that the person—

(i) has failed to comply with the order; or

(ii) satisfies the criteria specified in section 93(1)(b) of the Sentencing Act 1991 but does not satisfy the criteria specified in section 15A(1) of this Act—

may revoke the order; or

(b) if satisfied that the person does not satisfy the criteria specified in section 93(1)(b) of the Sentencing Act 1991 or the criteria specified in section 15A(1) of this Act, must discharge the person as an involuntary patient; or

(c) in the case of the first review of the order under section 30(1)(a), if satisfied that the person does not satisfy the criteria specified in section 93(1)(b) of the Sentencing Act 1991 but satisfies the criteria specified in section 15A(1) of this Act, may approve the order.

(2B) If the Board revoked a restricted community treatment order—

(a) the Board must make reasonable efforts to inform the person who was subject to the order—

(i) that the order has been revoked; and

(ii) that the person must return to an approved mental health service as an in-patient; and
(b) the person who was subject to the order is deemed to be an involuntary patient who is absent from an approved mental health service without leave; and

(c) the Board may authorise any of the persons referred to in section 43(1) to apprehend the person for the purposes of returning the person to an approved mental health service.

(3) Where having regard to the criteria specified in section 16(2)(a) and 16(4), the Board upon hearing an appeal or review is not satisfied that the continued detention of a person detained as an involuntary patient under section 16 is necessary, the Board must order that the person be discharged as an involuntary patient and returned to a prison.

(4) On hearing an appeal or review in relation to a person who is subject to a community treatment order under section 14, the Board, having regard to the criteria specified in sections 8(1) and 14(1A)—

(a) may vary the community treatment order; or

(b) if satisfied on reasonable grounds that the person—

(i) has failed to comply with the order; or

(ii) satisfies the criteria specified in section 8(1) but no longer satisfies the criteria specified in section 14(1A)— may revoke the order; or

(c) if satisfied that the person does not satisfy the criteria specified in section 8(1) or in section 14(1A), must discharge the person as an involuntary patient.

(5) If the Board revokes a community treatment order—

(a) the person who was subject to the order is deemed to be an involuntary patient who is absent without leave from an approved mental health service; and

(b) the authorised psychiatrist may authorise any of the persons referred to in section 43(1) to apprehend the person for the purpose of returning him or her to an approved mental health service.
Mental Health Act 1986

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(6) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under sub-section (2B) or (5) as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

37. **Discharge of involuntary patient**

   (1) Where having regard to the criteria specified in section 8, the authorized psychiatrist is satisfied that the continued detention of a person detained under section 12 is not necessary, the authorized psychiatrist must discharge that person as an involuntary patient.

   (2) Where having regard to the criteria specified in section 90(b), 91(b) or 93(1)(b) (as the case requires) of the **Sentencing Act 1991**, the chief psychiatrist is satisfied that the continued detention of a person detained under Part 5 of that Act is not necessary, the chief psychiatrist must order that the person be discharged as an involuntary patient.

   (3) Where having regard to the criteria specified in section 16(2)(a) and 16(4), the chief psychiatrist is satisfied that the continued detention of a person detained as an involuntary patient under section 16 is not necessary, the chief psychiatrist must after advising the Secretary to the Department of Justice order that the person be discharged as an involuntary patient and returned to a prison.

38. **When discharge of involuntary patient under section 16 takes effect**

   If—

   (a) the Board exercises its power under section 36(3); or

   (b) the chief psychiatrist exercises his or her power under section 37(3)—

   to discharge a person as an involuntary patient, the Board or the chief psychiatrist, as the case may be, must immediately notify the Secretary to the Department of Justice and the person is discharged as an involuntary patient upon entering the legal custody of the Secretary to the Department of Justice under the **Corrections Act 1986**.

39. **Transfer of involuntary patient to another approved mental health service**
(1) The authorized psychiatrist may by order direct the transfer of an involuntary patient to another approved mental health service if—

(a) the authorized psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment; and

(b) the authorized psychiatrist for the approved mental health service to which it is proposed to transfer the involuntary patient approves of the transfer;

* * * * *

(2) The chief psychiatrist may by order direct the transfer of an involuntary patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment.

(3) Where an involuntary patient is transferred to another approved mental health service any documents relevant to the admission and future treatment of the patient are to be forwarded at the same time to that approved mental health service.

(4) Where a person detained as an involuntary patient under section 16 is transferred to another approved mental health service the authorized psychiatrist must notify the Secretary to the Department of Justice of the transfer.

(5) An involuntary patient subject to a transfer order under sub-section (1) or (2) may appeal to the Board against the transfer.

(6) On an appeal under sub-section (5), the Board must consider whether the transfer—

(a) will be of benefit to the patient; or
(b) is necessary for the patient's treatment.

(7) On an appeal under sub-section (5), the Board may—

(a) confirm the decision of the authorised psychiatrist or chief psychiatrist to transfer the patient; or

(b) direct that the patient—

(i) continue to be detained in the same approved mental health service; or

(ii) if the patient has already been transferred, be returned to the approved mental health service from which the patient was transferred.

40. Leave of absence

(1) The authorized psychiatrist may allow an involuntary patient to be absent from the approved mental health service in which the involuntary patient is detained—

(a) for such period; and

(b) subject to any conditions—

that the authorized psychiatrist considers appropriate.

(2) The authorized psychiatrist may from time to time extend the period of absence allowed under sub-section (1).

(3) The authorized psychiatrist may revoke the leave of absence allowed to an involuntary patient and require the involuntary patient to return to the approved mental health service.

41. Absence of involuntary patient with permission

The authorized psychiatrist may allow an involuntary patient to be absent from the approved mental health service for the purpose of receiving medical treatment—

(a) for the period; and

(b) subject to any conditions—

that the authorized psychiatrist considers appropriate.

42. Discharge after absence
(1) An involuntary patient who remains absent from an approved mental health service for a continuous period of twelve months without leave of absence is automatically discharged as an involuntary patient.

(2) Unless sub-section (3) applies, an involuntary patient who has been on leave of absence for a continuous period of twelve months is automatically discharged as an involuntary patient.

(3) Where the chief psychiatrist or the authorized psychiatrist considers that an involuntary patient should not be automatically discharged the chief psychiatrist or the authorized psychiatrist may apply to the Board for an order that the involuntary patient is not to be discharged.

(4) Sections 32 and 36 apply in respect of an application under sub-section (3) as if it were an appeal or review.

43. **Apprehension of involuntary patient absent without leave**

(1) Except where section 42 applies, an involuntary patient who is absent from an approved mental health service without leave or permission may be apprehended at any time by—

   (a) a prescribed person within the meaning of section 9; or

   (b) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or

   (c) an officer or employee of the Department authorized by the chief psychiatrist—

   for the purpose of being returned to the approved mental health service.

(1A) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

(2) Section 42 and this section do not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

**Division 4—Security Patients**
43A. Clinical guidelines for discharge of security patients

(1) The chief psychiatrist may, from time to time, issue, vary and revoke clinical guidelines relating to the discharge of security patients.

(2) Before issuing, varying or revoking any guidelines under this section, the chief psychiatrist must consult the Correctional Services Commissioner and the Board.

44. Board may order discharge

On hearing an appeal or review, the Board may order that a person be discharged as a security patient and returned to a prison if the Board is not satisfied that the continued detention of the person as a security patient is necessary, having regard to—

(a) the criteria specified in section 16(2)(a) and (4); and

(b) the clinical guidelines (if any) under section 43A.

45. Chief psychiatrist may order discharge

(1) The chief psychiatrist may order that a person be discharged as a security patient and returned to a prison if the chief psychiatrist is satisfied that the continued detention of the person as a security patient is not necessary, having regard to—

(a) the criteria specified in section 16(2)(a) and (4); and

(b) the clinical guidelines (if any) under section 43A.

(2) In exercising his or her power to discharge a person as a security patient, the chief psychiatrist must have regard primarily to the person's current mental condition and consider the patient's medical and psychiatric history and social circumstances.

46. Notification and discharge

If—

(a) the Board exercises its power under section 44; or

(b) the chief psychiatrist exercises his or her power under section 45—

to discharge a person as a security patient, the Board or the chief psychiatrist, as the case may be, must immediately notify the Secretary to the Department of Justice and the person is discharged as a security patient upon entering the legal custody of the Secretary to the Department of Justice under the Corrections Act 1986.
47. Security conditions

(1) A security patient detained in an approved mental health service or absent from an approved mental health service under section 51 or 52 is subject to such security conditions as the authorized psychiatrist considers necessary.

(2) A security patient may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

(3) A security patient is in the custody of the authorized psychiatrist until discharged as a security patient.

(4) If a security patient dies during detention the authorized psychiatrist must advise the Secretary to the Department of Justice as to the circumstances in which the death occurred.

49. Transfer of security patient to another approved mental health service

(1) The chief psychiatrist may by order direct the transfer of a security patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient’s treatment.

(2) Where a security patient is transferred to another approved mental health service any documents relevant to the detention and future treatment of the patient must be forwarded at the same time to that approved mental health service.

(3) The chief psychiatrist must notify the Secretary to the Department of Justice that a security patient has been transferred to another approved mental health service under sub-section (1).

(4) A security patient subject to a transfer order under sub-section (1) may appeal to the Board against the transfer.

(5) On an appeal under sub-section (4), the Board must consider whether the transfer—

S. 47(1) amended by No. 98/1995 s. 29.

S. 47(4) amended by No. 45/1996 s. 18(Sch. 2 item 10.11).

S. 48 repealed by No. 42/1988 s. 14(1).


S. 49(2) amended by No. 98/1995 s. 30(1)(3).

S. 49(3) amended by Nos 98/1995 s. 30(1), 45/1996 s. 18(Sch. 2 item 10.12).

S. 49(4) inserted by No. 42/1988 s. 14(3).
(a) will be of benefit to the patient; or

(b) is necessary for the patient's treatment.

(6) On an appeal under sub-section (4), the Board may—

(a) confirm the decision of the chief psychiatrist to transfer the patient; or

(b) direct that the patient—

(i) continue to be detained in the same approved mental health service; or

(ii) if the patient has already been transferred, be returned to the approved mental health service from which the patient was transferred.

50. Automatic discharge as a security patient at expiration of sentence

(1) A person detained in an approved mental health service under section 16 ceases to be a security patient immediately upon—

(a) the person being granted bail; or

(b) the person being released from custody by a court; or

(c) the expiry of the person's sentence of imprisonment or detention in a youth residential centre or youth training centre.

(2) The Secretary to the Department of Justice must notify the chief psychiatrist when the sentence of imprisonment or detention in a youth residential centre or youth training centre of a patient is to expire.
51. Leave of absence for security patients

(1) An application for leave of absence for a security patient may be made to the Secretary to the Department of Justice by—

(a) the security patient; or

(b) the authorised psychiatrist for the approved mental health service in which he or she is detained.

(2) The Secretary to the Department of Justice may grant an application for leave of absence—

(a) for the period, not exceeding 6 months; and

(b) subject to any conditions—

that the Secretary to the Department of Justice considers appropriate.

(3) The Secretary to the Department of Justice must not grant an application for leave of absence unless—

(a) he or she is satisfied on the evidence available that the safety of the security patient or members of the public will not be seriously endangered as a result of the security patient being allowed leave of absence; and

(b) the chief psychiatrist has been consulted; and

(c) the Secretary has been consulted in the case of an application for leave of absence for a security patient who, before his or her transfer under section 16, was detained in a remand centre, youth residential centre or youth training centre within the meaning of the Children and Young Persons Act 1989; and

(d) the Chief Commissioner of Police has been consulted in the case of an application for leave of absence for a security patient who, before his or her transfer under section 16, was serving a sentence of imprisonment in a police gaol within the meaning of the Corrections Act 1986 or being held in police custody on the order of a court.

(4) The Secretary to the Department of Justice may—

(a) from time to time extend the period of leave of absence allowed under sub-section (2) for a period not exceeding 6 months; or
(b) revoke the leave of absence and require the security patient to return to the approved mental health service.

52. Special leave for security patient

(1) A security patient, or a person on their behalf, may apply to the chief psychiatrist for special leave of absence specifying the special circumstances for which the special leave is required.

(2) The chief psychiatrist must grant an application for special leave of absence if the chief psychiatrist is satisfied that—

(a) there are special circumstances; and

(b) the safety of members of the public will not be seriously endangered.

(3) Before granting an application the chief psychiatrist must advise the Secretary to the Department of Justice.

(4) Where the chief psychiatrist refuses to grant special leave of absence to a security patient, the security patient may appeal to the Board.

(5) The Board must give notice of an appeal under sub-section (4) to the Secretary to the Department of Justice.

(6) On an appeal under sub-section (4) the Board may—

(a) confirm the decision of the chief psychiatrist; or

(b) direct that the security patient be allowed special leave of absence.

(7) Special leave of absence—

(a) cannot exceed 24 hours; and

(b) may be subject to such conditions as the chief psychiatrist or the Board may specify.

53. Apprehension of security patient absent without leave

(1) A security patient who is absent from an approved mental health service without leave of absence or special leave of absence may be apprehended at any time by—

(a) a prescribed person within the meaning of section 9; or
(b) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or
(c) an employee of the Department authorized by the chief psychiatrist—

for the purpose of being returned to the approved mental health service.

(1A) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.

(2) This section does not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

53AA. Warrant to arrest security patient absent without leave who leaves Victoria

(1) If at any time it appears to an appropriate person that a security patient—

(a) is absent from an approved mental health service without leave of absence or special leave of absence; and

(b) is no longer in Victoria—

the appropriate person may apply to the Supreme Court, the County Court or the Magistrates' Court for a warrant to arrest the security patient.

(2) If the court to which the application is made is satisfied by evidence on oath, whether orally or by affidavit, of the matters specified in paragraphs (a) and (b) of sub-section (1), the court may order that a warrant to arrest be issued against the security patient.

Note: Under the Service and Execution of Process Act 1992 of the Commonwealth, a person who is apprehended interstate under a warrant issued in Victoria is to be taken before a magistrate in the place where the person is apprehended. That Act provides for the magistrate to specify the place in Victoria to which the person is then to be taken.

(3) In this section—

"appropriate person" means—
(a) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or
(b) the Secretary; or
(c) the Secretary to the Department of Justice; or
(d) the chief psychiatrist or any person authorized by the chief psychiatrist.

53A. Application of Divisions 3 and 4

In this Division and Division 3 (except in section 51)—

(a) a reference to the Secretary to the Department of Justice includes a reference to—

(i) the Secretary to the Department of Human Services in relation to a person detained in a remand centre, youth residential centre or youth training centre within the meaning of the Children and Young Persons Act 1989; and
(ii) the Chief Commissioner of Police in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the Corrections Act 1986 or being held in police custody on the order of a court; and

(b) a reference to the Department of Justice includes a reference to—

(i) the Department of Human Services in relation to a person detained in a remand centre, youth residential centre or youth training centre within the meaning of the Children and Young Persons Act 1989; and
(ii) the police force in relation to a person serving a sentence of imprisonment in a police gaol within the meaning of the Corrections Act 1986 or being held in police custody on the order of a court; and

(c) a reference to a prison or other place of confinement includes a reference to—
Division 5—Forensic Patients

53AB. Transfer of forensic patient to another approved mental health service

(1) The chief psychiatrist may by order direct the transfer of a forensic patient to another approved mental health service if the chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient’s treatment.

(2) Where a forensic patient is transferred to another approved mental health service any documents relevant to the detention and future treatment of the patient must be forwarded at the same time to that approved mental health service.

(3) A forensic patient subject to a transfer order under subsection (1) may appeal to the Panel against the transfer.

(4) On an appeal under sub-section (3), the Panel must consider whether the transfer—

(a) will be of benefit to the patient; or

(b) is necessary for the patient’s treatment.

(5) On an appeal under sub-section (3), the Panel may—

(a) confirm the decision of the chief psychiatrist to transfer the patient; or

(b) direct that the patient—

(i) continue to be detained in the same approved mental health service; or
(ii) if the patient has already been transferred, be returned to the approved mental health service from which the patient was transferred.

(6) Division 3 of Part 7 of, and Schedule 2 to, the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 apply to an appeal under sub-section (3) as if references in that Division and Schedule to the applicant for leave were references to the forensic patient subject to the transfer order.

53AC. Leave of absence for forensic patient

A forensic patient who is subject to a supervision order under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 may apply for and be granted leave of absence in accordance with Part 7 of that Act.

53AD. Apprehension of forensic patient absent without leave

(1) A forensic patient who is absent from an approved mental health service without leave of absence may be apprehended at any time by—

(a) a prescribed person within the meaning of section 9; or

(b) the authorised psychiatrist or any person authorised by the authorised psychiatrist; or

(c) an employee of the Department authorised by the chief psychiatrist—

for the purpose of being returned to the approved mental health service.

(2) Sub-sections (5), (6) and (7) of section 9 apply to a person being returned to an approved mental health service under this section as if that person were a person to whom a recommendation relates being taken to an appropriate approved mental health service.
PART 5—CARE AND TREATMENT OF PEOPLE WITH A MENTAL DISORDER

Division 1AA—Informed consent

53B. Requirements for obtaining informed consent

(1) For the purposes of this Part (other than section 83(2)), a person is to be taken to have given informed consent to the performance on him or her of treatment only if the person gives written consent to that treatment after—

(a) the person has been given a clear explanation containing sufficient information to enable him or her to make a balanced judgement; and

(b) the person has been given an adequate description of benefits, discomforts and risks without exaggeration or concealment; and

(c) the person has been advised of any beneficial alternative treatments; and

(d) any relevant questions asked by the person have been answered and the answers have been understood by the person; and

(e) a full disclosure has been made of any financial relationship between the person seeking informed consent or the registered medical practitioner who proposes to perform the treatment, or both, and the service, hospital or clinic in which it is proposed to perform the treatment; and

(f) sub-sections (2) and (3) have been complied with.

(2) The person on whom the treatment is to be performed must be given the appropriate prescribed printed statement—

(a) advising the person as to his or her legal rights and other entitlements including—

   (i) the right to obtain legal and medical advice (including a second psychiatric opinion) and to be represented before giving consent; and
(ii) the right to refuse or withdraw his or her consent and to discontinue all or any part of the treatment at any time; and

(b) containing any other information relating to the treatment that the Department considers relevant.

(3) In addition to the statement, the person must be given an oral explanation of the information contained in the statement and, if he or she appears not to have understood, or to be incapable of understanding, the information contained in the statement, arrangements must be made to convey the information to the person in the language, mode of communication or terms which he or she is most likely to understand.

(4) The statement may be printed in different languages so that, whenever possible, a person can be given a copy of the statement in a language with which he or she is familiar.

(5) It is the duty of the authorised psychiatrist to ensure that this section is complied with in the approved mental health service.

Division 1—Psychosurgery

54. Definitions

(1) In this Division, "psychosurgery" means—

(a) any surgical technique or procedure by which one or more lesions are created in a person's brain on the same or on separate occasions primarily for the purpose of altering the thoughts, emotions or behaviour of that person; or

(b) the use of intracerebral electrodes to create one or more lesions in a person's brain on the same or on separate occasions primarily for the purpose of altering the thoughts, emotions or behaviour of that person; or

(c) the use of intracerebral electrodes to cause stimulation through the electrodes on the same or on separate occasions without creating a lesion in the person's brain for the purpose of influencing or altering the thoughts, emotions or behaviour of that person.

(2) For the purposes of sub-section (1), "behaviour" of a person—
(a) does not include—

(i) behaviour manifested as part of generalized convulsive or non-convulsive epilepsy; or

(ii) behaviour manifested as part of simple or complex partial epilepsy; or

(iii) behaviour considered to be secondary to a paroxysmal cerebral dysrhythmia; or

(iv) behaviour manifested as a result of a disorder of the basal ganglia; and

(b) does include behaviour not considered to be secondary to cerebral dysrhythmia.

* * * * *

56. **Psychosurgery Review Board**

(1) There is established a Board to be known as the Psychosurgery Review Board.

(2) Schedule 3 has effect with respect to the constitution, members and procedures of the Psychosurgery Review Board.

57. **Consent required**

(1) A person who—

(a) causes to be performed; or

(b) permits the performance of—

psychosurgery on any person who has not given informed consent in accordance with Division IAA to the performance on him or her of that psychosurgery is guilty of an offence against this Act.

(2) A registered medical practitioner who performs psychosurgery on any person who has not given informed consent in accordance with Division IAA to the performance on him or her of that psychosurgery is guilty of professional misconduct.
(3) Psychosurgery must not be performed on any person who has not given informed consent in accordance with Division IAA to the performance on him or her of that psychosurgery.

58. Application to Psychosurgery Review Board

(1) A psychiatrist who seeks to arrange for a neurosurgeon to perform psychosurgery on a person must apply to the Psychosurgery Review Board for consent to the performance of the proposed psychosurgery.

(2) An application under sub-section (1) must specify—

(a) the exact nature of the psychosurgery proposed to be performed and the name and qualifications of the person whom it is proposed will perform the psychosurgery; and

(b) the clinical indications for the psychosurgery; and

(c) the service, hospital or clinic in which it is proposed that the psychosurgery be performed; and

(d) whether in the applicant's opinion the person on whom the psychosurgery is proposed to be performed is capable of giving informed consent in accordance with Division IAA to the performance on him or her of that psychosurgery; and

(e) whether the applicant is of the opinion that the person on whom the psychosurgery is proposed to be performed has given informed consent in accordance with Division IAA to the performance on him or her of that psychosurgery or that there is doubt as to whether informed consent has been given.

59. Hearing of application

(1) The chairperson of the Psychosurgery Review Board must within 10 days of an application under section 58 being received arrange a meeting of the Psychosurgery Review Board to hear the application within a further 21 days.

(2) The chairperson of the Psychosurgery Review Board must at least 10 days before the day on which an application is to be heard cause notice of the hearing to be given to—

(a) the applicant; and

(b) the person in respect of whom the application is made; and
(c) any person nominated as advocate by the person in respect of whom the application is made; and
(d) the primary carer.

(3) A notice under sub-section (2) is to contain information with respect to—
(a) the time and place of the hearing; and
(b) the nature of the proceedings; and
(c) in the case of a notice given under sub-section (2)(b), the entitlement of that person to representation before the Psychosurgery Review Board.

(4) A person to whom notice of the hearing is given under sub-section (2) is entitled to attend and be heard in person at the hearing.

(5) The person in respect of whom an application is made may also be represented before the Psychosurgery Review Board by—

(a) a duly qualified legal practitioner; or
(b) any other person authorized to that effect by that person.

60. Procedure of Psychosurgery Review Board

(1) The Psychosurgery Review Board—
(a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and
(b) is bound by the rules of natural justice; and
(c) is not required to conduct any proceedings in a formal manner.

(2) The Psychosurgery Review Board is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.

(3) Evidence before the Psychosurgery Review Board—
(a) may be given orally or in writing or partly orally and partly in writing; and
(b) may be given—
(i) on oath or affirmation; or
(ii) by declaration instead of an oath where permitted by law.

(4) A member of the Psychosurgery Review Board may administer an oath or take an affirmation or declaration for the purposes of this Division.

(5) Evidence given before the Psychosurgery Review Board is not to be used in any civil or criminal proceedings other than proceedings for an offence against this Act or for perjury.

(6) The Psychosurgery Review Board may of its own motion or on the application of any party to the application before it cause to be served upon any person a summons to appear before the Psychosurgery Review Board to give evidence or to produce such documents as are specified in the summons.

(7) The Psychosurgery Review Board may make an order for the manner of service, including substituted service, of a summons under sub-section (6).

(8) A person who without lawful excuse disobeys a summons of the Psychosurgery Review Board is guilty of an offence.

Penalty: 5 penalty units.

61. Proceedings to be closed to the public

(1) Unless sub-section (2) applies, proceedings before the Psychosurgery Review Board are closed to members of the public.

(2) The Psychosurgery Review Board may direct that particular proceedings or any part of the proceedings are to be open to members of the public if the Psychosurgery Review Board is satisfied that it would be in the best interests of the patient or in the public interest.

62. Reports of proceedings

(1) Unless the Psychosurgery Review Board otherwise determines in a particular case a person must not publish or broadcast any report of the proceedings of the Psychosurgery Review Board.

(2) Where the Psychosurgery Review Board considers it would be in the public interest to do so the Psychosurgery Review Board may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Psychosurgery Review Board provided that—
(a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and

(b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

63. Secrecy provision

(1) Unless sub-section (2) or section 62 applies, a person who—

(a) is or has at any time been a member of the Psychosurgery Review Board; or

(b) is or has been present at any proceedings of the Psychosurgery Review Board—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Sub-section (1) does not preclude a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or

(c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates
to the personal affairs of another person, that other person has given consent in writing.

64. **Powers of Psychosurgery Review Board**

(1) If after hearing the application and making any inquiries and examinations it considers appropriate, the Psychosurgery Review Board—

(a) is satisfied as to the matters specified in section 65, the Psychosurgery Review Board must give its consent in accordance with section 66; or

(b) is not satisfied as to the matters specified in section 65, the Psychosurgery Review Board must refuse to give its consent.

65. **Matters as to which Psychosurgery Review Board is to be satisfied**

The matters as to which the Psychosurgery Review Board is to be satisfied on a hearing of an application are as follows—

(a) the person in respect of whom the application is made has the capacity to give informed consent in accordance with Division 1AA to the performance on him or her of the proposed psychosurgery;

(b) the person in respect of whom the application is made has in fact given informed consent in accordance with Division 1AA to the performance on him or her of the proposed psychosurgery;

(c) the proposed psychosurgery has clinical merit and is appropriate;

(d) any person proposing to perform the psychosurgery is properly qualified;

(e) the service, hospital or clinic in which it is proposed to perform the psychosurgery is an appropriate place;

(f) all other reasonable treatments have already been adequately and skilfully administered without sufficient and lasting benefit;

(g) notice of the hearing has been given in accordance with section 59(2).
66. Matters to be specified in consent

(1) The consent of the Psychosurgery Review Board under section 64(a) must specify the following—

(a) the name of the registered medical practitioner or registered medical practitioners authorized to perform the psychosurgery;

(b) the nature of the psychosurgery to be performed;

(c) the service, hospital or clinic in which the psychosurgery is to be performed;

(d) the period within which the psychosurgery is to be performed.

(2) A consent of the Psychosurgery Review Board expires on the day specified in the consent unless before that expiry the Psychosurgery Review Board grants an application for an extension.

(3) The Psychosurgery Review Board must cause notice of the consent to be given to—

(a) the applicant; and

(b) the person in respect of whom the application is made; and

(c) the legal representative and advocate if any of the person in respect of whom the application is made.

67. Notice of refusal of consent

(1) Where the Psychosurgery Review Board refuses to give its consent under section 64(1)(b) the Psychosurgery Review Board must give its reasons in writing for refusing to give its consent.

(2) The Psychosurgery Review Board must cause notice of its refusal of consent to be given to—

(a) the applicant; and

(b) the person in respect of whom the application is made; and

(c) the legal representative and advocate if any of the person in respect of whom the application is made.

* * * * * * * * *

s. 66(1)(a) amended by No. 23/1994 s. 118(Sch. 1 item 38.11(a) (b)).
S. 66(1)(c) amended by No. 98/1995 s. 37(4).

s. 67(1) amended by No. 32/1990 s. 33(e).

Ss 68, 69 repealed.
70. **Report of performance of psychosurgery**

(1) A neurosurgeon who performs psychosurgery on a person must make a written report to the Psychosurgery Review Board as to the performance of the operation within three months after the completion of the psychosurgery.

(1A) A psychiatrist who has arranged for a neurosurgeon to perform psychosurgery on a person must make a written report to the Psychosurgery Review Board on the results of the operation—

(a) within three months after the completion of the psychosurgery; and

(b) after three months and within 12 months after the completion of the psychosurgery.

(2) The Psychosurgery Review Board may require any person who has submitted a report to provide any further information relating to the performance of the operation or its results as the Psychosurgery Review Board may request.

71. **Review of psychosurgery**

(1) The Psychosurgery Review Board must ensure that at regular intervals there is a review of the case of any person on whom psychosurgery has been performed.

(2) For the purposes of sub-section (1) the Psychosurgery Review Board may—

(a) make or cause to be made observations of any person on whom psychosurgery has been performed; and

(b) make such arrangements for the gathering and recording of information as it considers appropriate.

(3) The Psychosurgery Review Board cannot review the case of a person who has objected to being reviewed.

**Division 2—Electroconvulsive Therapy**

72. **Electroconvulsive therapy**
(2) For the purposes of this Division, a reference to "electroconvulsive therapy" includes a reference to a course of electroconvulsive therapy consisting of not more than 6 treatments given over a period with not more than 7 days elapsing between any 2 treatments.

(3) A person who gives informed consent in accordance with Division 1AA to having electroconvulsive therapy performed on him or her is to be taken to have consented to the administration of an anaesthetic to enable the electroconvulsive therapy to be performed.

73. Informed consent required

(1) Unless sub-section (3) or (4) applies a person who—

(a) causes to be performed; or

(b) permits the performance of—

electroconvulsive therapy on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that electroconvulsive therapy is guilty of an offence against this Act.

(2) Unless sub-section (3) or (4) applies a registered medical practitioner who performs electroconvulsive therapy on any person who has not given informed consent in accordance with Division 1AA to the performance on him or her of that electroconvulsive therapy is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for not obtaining that consent.

(3) If a person who is a patient is incapable of giving informed consent the electroconvulsive therapy may be performed if—

(a) the authorized psychiatrist has authorized the electroconvulsive therapy proposed to be performed after being satisfied that—
(i) the electroconvulsive therapy has clinical merit and is appropriate; and
(ii) having regard to any benefits, discomforts or risks the electroconvulsive therapy should be performed; and
(iii) any beneficial alternative treatments have been considered; and
(iv) unless the electroconvulsive therapy is performed, the patient is likely to suffer a significant deterioration in his or her physical or mental condition; and
(b) all reasonable efforts have been made to notify the patient’s guardian or primary carer of the proposed performance of the electroconvulsive therapy.

(4) Informed consent is not necessary if the nature of the mental disorder that a person has is such that the performance of the electroconvulsive therapy is urgently needed.

74. Premises on which electroconvulsive therapy may be performed

(1) Electroconvulsive therapy may only be performed on a person at premises licensed under section 75.

(2) A person who—

(a) causes to be performed; or

(b) permits the performance of—

electroconvulsive therapy on a person in contravention of sub-section (1) is guilty of an offence against this Act.

(3) A registered medical practitioner who performs electroconvulsive therapy on a person in contravention of sub-section (1) is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for that contravention.
(4) Premises which immediately before the commencement of this sub-section were a psychiatric in-patient service (within the meaning of this Act as in force immediately before the commencement of section 4 of the Mental Health (Amendment) Act 1995) or an approved mental health service are deemed to be licensed under section 75 in respect of all forms of electroconvulsive therapy for 12 months from the commencement of this sub-section and that licence may be amended or revoked accordingly.

75. Licensing of premises

(1) In this section "occupier" in relation to any premises includes a person, partnership or unincorporated association that is in occupation or control of the premises whether or not that person, partnership or unincorporated association is the owner of the premises.

(2) The occupier of any premises may apply to the Secretary for a licence to permit the performance of electroconvulsive therapy on those premises.

(3) An application for a licence is to—

* * * * * *

(b) specify the prescribed particulars; and

(c) be forwarded with the prescribed fee.

(4) The Secretary must consider the application and may—

(a) issue a licence subject to such conditions, limitations and restrictions as the Secretary considers appropriate; or

(b) refuse to issue a licence.

(5) In considering an application the Secretary must consider—

(a) the suitability of the applicant to hold a licence; and

(b) the suitability of the premises; and

(c) the suitability of the equipment to be used in the performance of electroconvulsive therapy; and

(d) the qualifications of any person to be permitted to perform electroconvulsive therapy on the premises.
76. **Provisions applying to a licence**

(1) A licence—

(a) is subject to such terms and conditions as are determined by the Secretary; and

(b) must specify the prescribed particulars; and

(c) is valid only in respect of the electroconvulsive therapy specified in the licence; and

(d) continues in force for the period not exceeding 5 years specified in the licence unless cancelled under sub-section (2).

(2) The Secretary may by notice in writing to the holder of a licence cancel the licence where—

(a) there has been a breach of any terms or conditions of the licence; or

(b) an offence under section 73 has been committed on the premises; or

(c) the premises are no longer suitable; or

(d) the equipment on the premises is no longer suitable; or

(e) an unqualified or insufficiently qualified person has been performing electroconvulsive therapy on the premises.

77. **Renewal of licence**

(1) The holder of a licence may apply to the Secretary for the renewal of the licence.

(2) An application for the renewal of a licence is to—

(b) specify the prescribed particulars; and

(c) be forwarded with the prescribed fee.
(3) The Secretary must grant an application for the renewal of the licence unless he or she is satisfied that any of the grounds for cancellation specified in section 76(2) are applicable.

78. Amendment of licence

(1) The Secretary may by notice in writing to the holder of a licence amend the licence by—

(a) revoking or varying any condition, limitation or restriction to which the licence is subject; or

(b) inserting a new condition, limitation or restriction.

(2) The holder of a licence may apply to the Secretary for the licence to be amended as specified in the application.

(3) An application under sub-section (2) must specify the prescribed particulars.

79. Review of certain decisions by Tribunal

(1) A person whose interests are affected by a decision of the Secretary—

(a) refusing to issue; or

(b) refusing to renew; or

(c) refusing to amend; or

(d) cancelling; or

(e) amending—

a licence may apply to the Tribunal for review of the decision.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the decision is made;

(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the
person is informed under section 46(5) of that Act that a statement of reasons will not be given.

80. Monthly return

A holder of a licence must as soon as practicable after the end of each month submit a return to the Department specifying the prescribed details in respect of electroconvulsive therapy performed during that month on any premises to which the licence relates.

Division 3—Restraint and Seclusion

81. Mechanical restraint

(1) Mechanical restraint of a person receiving treatment for a mental disorder in an approved mental health service can only be applied—

(a) if that restraint is necessary—

(i) for the purpose of the medical treatment of the person; or

(ii) to prevent the person from causing injury to himself or herself or any other person; or

(iii) to prevent the person from persistently destroying property; and

(b) if the use and form of restraint has been—

(i) approved by the authorized psychiatrist; or

(ii) in the case of an emergency, authorized by the senior registered nurse on duty and notified to a registered medical practitioner without delay; and

(c) for the period of time specified in the approval or authorization under paragraph (b).

(1A) In this section "mechanical restraint", in relation to a person, means the application of devices (including belts, harnesses, manacles, sheets and straps) on the person's body to restrict his or her movement, but does not include the use of furniture (including beds with cot sides and chairs with tables fitted on their arms) that restricts the person's capacity to get off the furniture.
(1B) In the circumstances referred to in sub-section (1)(b)(ii) the senior registered nurse must notify the authorised psychiatrist of the application of mechanical restraint as soon as practicable.

(1C) It is not necessary to obtain a person’s consent to the application of mechanical restraint to him or her.

(1D) If mechanical restraint is applied to a person, he or she must—

(a) be under continuous observation by a registered nurse or registered medical practitioner; and

(b) be reviewed as clinically appropriate to his or her condition at intervals of not more than 15 minutes by a registered nurse; and

(c) subject to sub-section (1E), be examined at intervals of not more than 4 hours by a registered medical practitioner; and

(d) be supplied with bedding and clothing which is appropriate in the circumstances; and

(e) be provided with food and drink at the appropriate times; and

(f) be provided with adequate toilet arrangements.

(1E) The authorised psychiatrist may vary the interval at which a person to whom mechanical restraint is applied is medically examined under sub-section (1D)(c), if the authorised psychiatrist thinks it appropriate to do so.

(1F) If a registered medical practitioner or the senior registered nurse on duty or the authorised psychiatrist is satisfied, having regard to the criteria specified in sub-section (1), that the continued application of mechanical restraint to a person is not necessary, he or she must without delay release the person from the restraint.

(2) Any person who applies mechanical restraint to a person receiving treatment for a mental disorder in an approved mental health service in contravention of sub-section (1) is guilty of an offence against this Act.
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(3) The authorized psychiatrist must at the end of each month prepare and send to the chief psychiatrist a report of the use of mechanical restraint specifying in each case—.

(a) the form of mechanical restraint used; and

(b) the reasons why that restraint was used; and

(c) the name of the person who approved or authorized the use of that restraint; and

(d) the name of the person who applied that restraint; and

(e) the period of time for which the person was kept restrained; and

(f) if the authorised psychiatrist varied the interval at which the person was medically examined, the reason for that variation—

during that month.

82. Seclusion of person receiving treatment

(1) In this section, "seclusion" means the sole confinement of a person at any hour of the day or night in a room of which the doors and windows are locked from the outside.

(2) A person receiving treatment for a mental disorder in an approved mental health service may be kept in seclusion only—

(a) if it is necessary to protect the person or any other person from an immediate or imminent risk to his or her health or safety or to prevent the person from absconding; and

(b) if the use of seclusion has been—

(i) approved by the authorized psychiatrist; or

(ii) in the case of an emergency, authorized by the senior registered nurse on duty and notified to a registered medical practitioner without delay; and

(c) for the period of time specified in the approval or authorization under paragraph (b).
(2A) In the circumstances referred to in sub-section (2)(b)(ii) the senior registered nurse must notify the authorised psychiatrist of the use of seclusion as soon as practicable.

(2B) It is not necessary to obtain a person's consent to keep him or her in seclusion.

(3) A person who is kept in seclusion must—

(a) be reviewed as clinically appropriate to his or her condition at intervals of not more than 15 minutes by a registered nurse; and

(b) subject to sub-section (3A), be examined at intervals of not more than 4 hours by a registered medical practitioner; and

(c) be supplied with bedding and clothing which is appropriate in the circumstances; and

(d) be provided with food and drink at the appropriate times; and

(e) be provided with adequate toilet arrangements.

(3A) The authorised psychiatrist may vary the interval at which a person who is kept in seclusion is medically examined under sub-section (3)(b), if the authorised psychiatrist thinks it appropriate to do so.

(3B) If a registered medical practitioner or the senior registered nurse on duty or the authorised psychiatrist is satisfied, having regard to the criteria specified in sub-section (2), that the continued seclusion of a person is not necessary, he or she must without delay end the keeping of the person in seclusion.

(4) Any person who keeps a person in seclusion in contravention of this section is guilty of an offence against this Act.

(5) The authorized psychiatrist must at the end of each month prepare and send to the chief psychiatrist a report specifying in each case—

(a) the reasons why seclusion was used; and

(b) the name of the person who approved or authorized the use of seclusion; and
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(c) the name of the person who kept the person in seclusion; and

(d) the period of time for which the person was kept in seclusion; and

(e) if the authorised psychiatrist varied the interval at which the person was medically examined, the reason for that variation—

during that month.

Division 4—Non-psychiatric Treatment

83. Definitions

(1) In this Division, "non-psychiatric treatment" means—

(a) any surgical operation or procedure or series of related surgical operations or procedures; or

(b) the administration of an anaesthetic for the purpose of medical investigation; or

(c) the administration of any course of treatment or course of medication requiring a prescription or medical supervision—

the primary purpose of which is not the treatment of any mental disorder or the effects of mental disorder.

(1A) In this Division "major non-psychiatric treatment" means non-psychiatric treatment of a class specified as major non-psychiatric treatment in written guidelines issued by the chief psychiatrist for the purposes of this Division.

(2) For the purpose of this Division, a patient upon whom a non-psychiatric treatment that is not major non-psychiatric treatment is to be performed gives informed consent if that person gives free and voluntary consent in writing after—

(a) the person has been given a clear explanation of the proposed non-psychiatric treatment; and

(b) the person has been advised as to the reason why the non-psychiatric treatment is necessary.

84. Informed consent or consent of guardian or authorized psychiatrist required
(1) A person who—
   (a) causes to be performed; or
   (b) permits the performance of; or
   (c) performs—
   non-psychiatric treatment on any patient without obtaining—
   (d) in the case of major non-psychiatric treatment, informed consent in accordance with Division 1AA to the performance of that treatment; or
   (da) in the case of non-psychiatric treatment that is not major non-psychiatric treatment, informed consent in accordance with section 83(2); or
   (e) if section 12(1) applies, the consent of the registered medical practitioner; or
   (f) if section 85 applies, consent in accordance with that section—
   is guilty of an offence against this Act.

(2) A registered medical practitioner who performs a non-psychiatric treatment on any patient without obtaining informed consent as specified in sub-section (1) or where section 85 applies consent in accordance with that section is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for not obtaining that consent.

(3) This section does not apply in respect of any non-psychiatric treatment performed on any patient in an emergency where the non-psychiatric treatment is necessary to save the life of that patient.

85. Consent to non-psychiatric treatment by guardian or authorized psychiatrist

(1) Except where section 86 applies, if a patient is incapable of giving informed consent as specified in section 84(1) to the performance of any non-psychiatric treatment, the non-psychiatric treatment may be performed—
(a) where there is in force an order appointing a plenary guardian or an order appointing a limited guardian with the power to consent to any health care that is in the best interests of that person under the Guardianship and Administration Act 1986, with the consent of the guardian; or

(b) in any other case, with the consent of the authorized psychiatrist.

(2) Each approved mental health service in which major non-psychiatric treatment is performed must keep a register of that treatment.

(3) It is the duty of the authorised psychiatrist to ensure that the prescribed details in relation to a major non-psychiatric treatment are entered in the register as soon as practicable after the treatment is performed.

86. Prohibition of special procedures unless compliance with this section

(1) In this section—

"special procedure" means any procedure specified in the definition of "special procedure" in section 3 of the Guardianship and Administration Act 1986 or prescribed by the regulations made under that Act to be a special procedure for the purposes of that Act.

(2) This section does not apply in respect of any special procedure performed on any patient in an emergency where that procedure is necessary to save the life of that patient.

(3) A special procedure cannot be performed on a patient unless—

(a) the patient has given informed consent in accordance with Division 1AA to the performance of that procedure; or
(b) if the patient is a person to whom Part 4A of the **Guardianship and Administration Act 1986** applies, the consent of the Tribunal as required by that Part of that Act is obtained.

(4) The purpose of this section is to protect the best interests of patients by ensuring that they are not subjected unnecessarily to certain medical procedures.

**Division 5—Annual Examination**

**87. Annual examination of patients**

(1) Every patient must at least once every year be examined as to the patient's mental and general health.

(2) The authorized psychiatrist must submit a report of the examination made under sub-section (1) to the chief psychiatrist.

**Division 6—Patient's money**

**87A. Appointment or employment of senior officer**

(1) For the purposes of this Division, a senior officer is to be appointed or employed for each approved mental health service.

(2) The senior officer is to be appointed or employed—

(a) by the Secretary in respect of an approved mental health service operated by the State; or

(b) in any other case, by the governing body of the approved mental health service.

(3) An approved mental health service that is not operated by the State must notify the Secretary of the appointment or employment of the senior officer within 5 days after that appointment or employment.
88. Patients Trust Account

(1) The senior officer of an approved mental health service must maintain an account to be known as the Patients Trust Account with—

(a) an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth; or

(b) another financial institution approved by the Secretary.

(2) There must be paid into the Patients Trust Account of an approved mental health service—

(a) money held or received by the senior officer of the approved mental health service from or on behalf of a patient of the service; and

(b) money held or received by the senior officer from a person to be held for the benefit, use or enjoyment of a specified patient of the approved mental health service; and

(d) interest and capital gains earned from the investment of money in the account;

(3) There may be paid out of the Patients Trust Account of an approved mental health service—

(a) amounts payable to or on behalf of patients of the approved mental health service in accordance with section 91; and
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* * * * *

(c) any expenses necessarily incurred in making or as a result of any investment, and any loss incurred on the realisation of any investment of money in the Account.

* * * * *

89. Investment

Money standing to the credit of the Patients Trust Account of an approved mental health service that is not immediately required for use by patients of the approved mental health service may be invested in any manner in which trust funds may be invested under the Trustee Act 1958.

90. Financial management information system

The senior officer of an approved mental health service must maintain the following accounts relating to money in the Patients Trust Account—

(a) an account for each patient of the approved mental health service for whom or on whose behalf any money is held in the Patients Trust Account;

* * * * *

(c) an interest account;

(d) any other accounts that the senior officer considers desirable.

91. Patient's money

(1) Any money held in the Patients Trust Account of an approved mental health service for or on behalf of a patient of the approved mental health service—

(a) may be withdrawn and paid to the patient if the patient so requests for any purpose the patient determines;

S. 88(3)(b) repealed by No. 98/1995 s. 48(1)(d).

S. 88(4) repealed by No. 98/1995 s. 48(1)(e).

S. 89 substituted by No. 42/1988 s. 16, amended by Nos 98/1995 s. 48(2)(a)(i)(ii), 104/1995 s. 6(Sch. 1 item 18).

S. 90 substituted by No. 42/1988 s. 16, amended by No. 98/1995 s. 48(2)(b)(i),

S. 90(a) amended by No. 98/1995 s. 48(2)(b)(ii).

S. 90(b) repealed by No. 98/1995 s. 48(2)(b)(iii).

S. 91 substituted by No. 42/1988 s. 16.

S. 91(1) amended by No. 98/1995 s. 48(2)(c)(i)(ii).
(b) may be withdrawn on behalf of the patient if—

(i) the senior officer of the service believes on reasonable grounds that the withdrawal of the money is necessary for the benefit, use or enjoyment of the patient; and

(ii) the senior officer or a person employed in or by the approved mental health service and designated for that purpose by the senior officer has discussed the proposal to withdraw the money with the patient and the patient does not object.

(2) If the amount held in a Patients Trust Account for or on behalf of a patient exceeds the amount prescribed for the purposes of this section, the senior officer of the approved mental health service must withdraw the amount of the excess and pay it to the patient or the patient's representative for use or investment as the patient or patient's representative determines.

(3) A patient of an approved mental health service is entitled to interest on any money held by or through a psychiatric hospital, mental hospital or repatriation mental hospital under the Mental Health Act 1959 on the patient's behalf at any time during the period beginning on 1 July 1986 and ending on 30 September 1987.

(4) A patient of an approved mental health service is entitled to interest payable annually on money held for or on behalf of the patient in the Patients Trust Account at any time on or after 1 October 1987.

93. Interest

Money received from the investment of any part of a Patients Trust Account must be applied in the following order—

(a) in payment of expenses and losses of investment referred to in section 88(3)(c);
(b) as interest on patient's money in accordance with section 91(3);

c) as interest on patient's money in accordance with section 91(4);

* S. 93(d) repealed by No. 98/1995 s. 48(2)(e).
PART 5A—INTERSTATE APPLICATION OF MENTAL HEALTH PROVISIONS

Division 1—Introductory

93A. Definitions

In this Part—

"corresponding law" means a law that, under an Order in force under section 93B, is declared to be a corresponding law for the purposes of this Part;

"corresponding order" means an order that, under an Order in force under section 93B, is declared to be a corresponding order for the purposes of this Part;

"interstate mental health facility" means a hospital or other facility to which a person in a participating State may be involuntarily admitted under a corresponding law in that State;

"interstate authority", for an interstate mental health facility, means a person performing a similar or corresponding function to an authorised psychiatrist in relation to that facility;

"participating State" means a State—

(a) in which a corresponding law is in force; and

(b) a Minister of which has made an agreement with the Minister under section 93C;

"prescribed person" has the meaning given in section 9(8);

"State" includes Territory.

93B. Corresponding laws and orders

(1) The Governor in Council on the recommendation of the Minister, by Order published in the Government Gazette, may declare that a law of a State (other than this State) is a corresponding law for the purposes of this Part.

(2) An Order under sub-section (1) in respect of a law of another State may include a declaration that an order under that law that is substantially similar to a community
treatment order is a corresponding order for the purposes of this Part.

93C. Ministerial agreements

The Minister may make an agreement with a Minister responsible for administering a corresponding law about any matter in connection with the administration of this Part or a corresponding law.

93D. Victorian officers may exercise powers under corresponding laws

Subject to the provisions of any agreement under section 93C, an authorised psychiatrist, the chief psychiatrist or a person who is authorised under this Act to apprehend a person or take a person to an approved mental health service may exercise any power conferred on him or her by or under a corresponding law or an agreement under section 93C.

Division 2—Interstate transfer of persons and patients

93E. Transfer of persons from this State

(1) A person who may be taken to, admitted to and detained in an approved mental health service as an involuntary patient under Division 2 of Part 3 may instead be taken to an interstate mental health facility, if this is permitted by or under a corresponding law.

(2) For the purposes of this section, a request and recommendation under section 9 may be addressed or directed to the interstate authority for the interstate mental health facility.

(3) A person may be taken to an interstate mental health facility under sub-section (1) by—

(a) a person who could take the person to an approved mental health service under section 9; or

(b) a person who, under the corresponding law, is authorised to take the person to the interstate mental health facility.

(4) Sub-sections (5), (6) and (7) of section 9 apply to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a
recommendation relates being taken to an appropriate approved mental health service.

93F. Admission of persons from interstate

(1) A person who may be taken to, admitted to and detained in an interstate mental health facility under a corresponding law may instead be taken to, admitted to and detained in an approved mental health service.

(2) A person may be taken to an approved mental health service under sub-section (1) by—

   (a) a prescribed person; or

   (b) a person who, under the corresponding law, is authorised to take the person to an interstate mental health facility.

(3) Division 2 of Part 3 applies to a person referred to in sub-section (1) and, for that purpose—

   (a) any document that authorises the admission and detention of the person under the corresponding law is taken to be a request and recommendation under section 9; and

   (b) if there is no such document, the person may be detained in the approved mental health service for the minimum time reasonably necessary to allow a request and recommendation to be completed in respect of the person under section 9; and

   (c) section 12(4A) has effect despite anything to the contrary in sub-section (1) of this section.

93G. Transfer of patients from this State

(1) An authorised psychiatrist or the chief psychiatrist may, by order, transfer an involuntary patient to an interstate mental health facility if—

   (a) the patient could continue to be detained in an approved mental health service; and

   (b) the authorised psychiatrist or chief psychiatrist is satisfied that the transfer will be of benefit to the patient or is necessary for the patient's treatment; and

   (c) the transfer is permitted by or under a corresponding law; and
(d) the interstate authority for the interstate mental health facility agrees to the transfer.

(2) The authorised psychiatrist or chief psychiatrist must send a copy of a transfer order to the Board for review under this section.

(3) The Board must review a transfer order without delay, and—

(a) if the Board considers that the transfer—

(i) would be of benefit to the patient; or

(ii) is necessary for the patient's treatment—

it may confirm the transfer order; or

(b) otherwise, it may direct that the patient continue to be detained in the approved mental health service.

(4) For the purposes of a review under this section, sections 31 to 35 apply as if the review were a review under section 30.

(5) A transfer order does not take effect unless and until it has been confirmed by the Board.

(6) A person who is transferred under this section ceases to be an involuntary patient on admission to the interstate mental health facility.

(7) A person who is transferred under this section may be taken to the interstate mental health facility by—

(a) a prescribed person within the meaning of section 9; or

(b) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or

(c) an employee of the Department authorized by the chief psychiatrist; or

(d) a person who, under the corresponding law, is authorized to take the person to the interstate mental health facility.

(8) Sub-sections (5), (6) and (7) of section 9 apply to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a
93H. Transfer of patients from interstate

(1) A person who is involuntarily detained in an interstate mental health facility under a corresponding law may be transferred, in accordance with that law, to an approved mental health service.

(2) A person may be taken to an approved mental health service under sub-section (1) by—

(a) a prescribed person within the meaning of section 9; or

(b) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or

(c) an employee of the Department authorized by the chief psychiatrist; or

(d) a person who, under the corresponding law, is authorized to take the person to the approved mental health service.

(3) Division 2 of Part 3 applies to a person referred to in sub-section (1) and, for that purpose—

(a) any document that authorises the transfer under the corresponding law is taken to be a request and recommendation under section 9; and

(b) if there is no such document, the person may be detained in the approved mental health service for the minimum time reasonably necessary to allow a request and recommendation to be completed in respect of the person under section 9; and

(c) section 12(4A) has effect despite anything to the contrary in sub-section (1) of this section.

Division 3—Community Treatment Orders

93I. Extra-territoriality

A community treatment order—

(a) may be made under section 14 even though the person to whom it relates does not reside in this State; and
(b) may provide for the person to live in a participating State and to receive treatment in that State.

93J. Interstate officers may perform functions under an interstate CTO

A person who is authorised to perform functions or exercise powers under a corresponding order may perform those functions or exercise those powers in this State.

Division 4—Apprehension of persons absent without leave

93K. Apprehension of persons absent from interstate facilities

(1) A person who is absent without leave or other lawful authority from an interstate mental health facility in a participating State and who may be apprehended under a corresponding law in that State may be apprehended in this State by—

(a) a person who is authorised to apprehend the person under the corresponding law; or

(b) a prescribed person within the meaning of section 9; or

(c) an authorized psychiatrist or any person authorized by an authorized psychiatrist; or

(d) an employee of the Department authorized by the chief psychiatrist.

(2) For the purpose of sub-section (1), a warrant or other document that, under the corresponding law, authorises the apprehension of the person in the participating State authorises their apprehension in this State.

(3) A person who is apprehended under sub-section (1) must be taken to an interstate mental health facility in the participating State.

(4) Sub-sections (5), (6) and (7) of section 9 apply to a person being taken to an interstate mental health facility under this section as if that person were a person to whom a
recommendation relates being taken to an appropriate approved mental health service.

(5) Despite sub-section (3), a person who is apprehended under sub-section (1) may be admitted to and detained in an approved mental health service under Division 2 of Part 3 pending his or her return to the participating State.

(6) For the purposes of this section, a person is taken to be absent without lawful authority from an interstate mental health facility if the person did not return to the facility when required to do so under a corresponding law.

93L. Escort of Victorian patients apprehended interstate

A patient absent without leave from an approved mental health service who is apprehended in a participating State may be taken back to the approved mental health service by—

(a) a person who, under a corresponding law in that State, is authorised to take the person to an interstate mental health facility in that State; or

(b) a prescribed person within the meaning of section 9; or

(c) the authorized psychiatrist or any person authorized by the authorized psychiatrist; or

(d) an employee of the Department authorized by the chief psychiatrist.
PART 5B—INTERSTATE SECURITY PATIENTS
ABSCONDING TO VICTORIA

93M. Definitions

In this Part—

"interstate security patient" means a person who—

(a) has been convicted of an offence in another State that would be an offence if committed in Victoria; and

(b) is serving a sentence of imprisonment in any State (other than Victoria) for that offence (whether in a prison or otherwise); and

(c) is required to take involuntary treatment for mental illness in the State in which they are serving their sentence;

"mental health facility" means a facility for the detention and treatment of persons who are mentally ill;

"relevant State", in relation to an interstate security patient, means the State in which they are serving their sentence of imprisonment;

"State" includes Territory.

93N. Warrant to arrest interstate security patient who absconds to Victoria

(1) The Secretary may apply to the Magistrates' Court for a warrant to arrest a person if the Secretary reasonably believes that—

(a) the person is an interstate security patient; and

(b) the person is in Victoria; and

(c) the person could be apprehended in the relevant State, if the person were still in that State, because he or she is absent without leave or other lawful authority from a mental health facility in the relevant State; and
(d) one of the following applies—

(i) the person cannot be lawfully apprehended in Victoria because a warrant to apprehend or arrest the person has not been or cannot be issued in the relevant State, or such a warrant cannot be executed in Victoria; or

(ii) the person cannot be lawfully apprehended in Victoria under section 93K of the Mental Health Act 1986; or

(iii) although the person could be lawfully apprehended in Victoria, the person would not be able to be returned to the relevant State following the apprehension.

(2) For the purposes of sub-section (1)(c), a person is taken to be absent without lawful authority from a mental health facility in a relevant State if the person did not return to the facility when required to do so under a law of that State.

(3) If the Magistrates' Court is satisfied by evidence on oath, whether orally or by affidavit, of the matters specified in paragraphs (a) to (d) of sub-section (1), the court may order that a warrant to arrest be issued against the person who is the subject of the application.

(4) Despite section 64(2)(a) of the Magistrates' Court Act 1989, a person arrested under a warrant issued under this section must be brought before the Magistrates' Court on the day of his or her arrest or on the next sitting day of the court.

93O. Orders Magistrates’ Court may make in respect of interstate security patients

(1) When a person arrested under a warrant issued under section 93N is brought before the Magistrates' Court, the court must make—

(a) an order granting the person bail; or

(b) an order remanding the person in custody in a prison—

unless the court is satisfied that the matters specified in paragraphs (a) to (d) of section 93N(1) are not made out.

(2) If the court is satisfied that any of the matters specified in paragraphs (a) to (c) of section 93N(1) is not made out, the court must discharge the person.
(3) If the court is satisfied that the matters specified in paragraphs (a) to (c) of section 93N(1) are made out, but that the person can be returned to the relevant State, the court must order the person to be released into the custody of a person who is authorised to escort the person to the relevant State.

93P. Translated sentence for interstate security patient

(1) Within 7 days after an interstate security patient is granted bail or remanded in custody in a prison under section 93O(1), the Secretary must apply to the Supreme Court for a translated sentence to be imposed on the interstate security patient.

(2) The Supreme Court may deal with the application itself or refer it to the County Court.

(3) On an application under sub-section (1), the court must, by order, impose a translated sentence on the interstate security patient and determine the period of that sentence already served, unless the court is satisfied that the interstate security patient can be returned to the relevant State.

(4) If the court is satisfied that the interstate security patient can be returned to the relevant State, the court must order them to be released into the custody of a person who is authorised to escort them to the relevant State.

(5) The translated sentence must be a sentence of the same duration as that imposed on the interstate security patient in the relevant State in respect of the offence that resulted in them becoming an interstate security patient.

(6) In determining the period of the translated sentence already served, the court must take into account—

(a) the period of the sentence already served in the relevant State; and

(b) the period since the interstate security patient was first arrested in Victoria under a warrant issued under section 93N.

93Q. Provisions relating to translated sentences

(1) Subject to this section, a translated sentence imposed on an interstate security patient under section 93P has the
same effect as if it had been imposed on the interstate security patient under the **Sentencing Act 1991** on conviction for an offence in Victoria.

(2) If, under the law of the relevant State, a court has fixed a non-parole period in respect of a sentence imposed on the interstate security patient, that non-parole period is taken to have been fixed by the court in Victoria in respect of the translated sentence.

(3) If the sentence imposed on an interstate security patient, or any non-parole period in respect of that sentence—

(a) is varied or quashed on a review by or appeal to a court in the relevant State, the translated sentence or non-parole period is taken to have been varied to the same extent, or to have been quashed, by a corresponding court in Victoria; or

(b) otherwise is varied or ceases to have effect as a result of action taken by any person or authority in the relevant State, the translated sentence is taken to have been varied to the same extent, or to have ceased to have effect, as a result of action taken by an appropriate person or authority in Victoria.
PART 6—ADMINISTRATION

Division 1—Proclamation of Psychiatric Hospitals and Units

94. Approved mental health services

(1) The Governor in Council may, by a proclamation published in the Government Gazette, proclaim—

(a) any premises (including part of any building or place) at which treatment is to be provided to patients; or

(b) any service through which treatment is to be provided to patients—

to be an approved mental health service.

(2) Any premises that immediately before the commencement of section 50 of the Mental Health (Amendment) Act 1995 were, or were deemed to be, an approved psychiatric hospital or an approved psychiatric unit must be taken (during the period of 2 years from that commencement) to have been proclaimed under sub-section (1) to be an approved mental health service.

(3) A proclamation under sub-section (1) may include directions in respect of the Patients Trust Account of the approved mental health service to which the proclamation relates for the purpose of ensuring the equitable management of funds in that account for the benefit of patients.

Division 2—Staff

95. Appointment of registered medical practitioners

(1) There is to be employed by the Secretary as employees in the Department as many registered medical practitioners as are necessary for the purposes of this Act.
96. **Authorized psychiatrist**

(1) A qualified psychiatrist is to be appointed to be the authorised psychiatrist for an approved mental health service.

(1A) The authorised psychiatrist is to be appointed—

(a) by the Secretary in respect of an approved mental health service operated by the State; or

(b) in any other case, by the governing body of the approved mental health service.

(1B) An approved mental health service must notify the Board and, in the case of an approved mental health service that is not operated by the State, the Secretary of the appointment within 5 days after the appointment is made.

(2) The authorized psychiatrist has such powers, duties, functions and immunities as are conferred or imposed upon the authorized psychiatrist by or under this or any other Act.

(2A) The authorised psychiatrist of an approved mental health service operated by the State is subject to the general direction and control of the Secretary.

(3) The authorized psychiatrist may be appointed as the senior officer for the purposes of this Act.

(4) The authorized psychiatrist may by instrument of delegation delegate to a qualified psychiatrist any power, duty or function of the authorized psychiatrist other than this power of delegation or the duty to provide the Forensic Leave Panel with an applicant profile under section 54A of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** and a leave plan or statement under section 54B of that Act.
(5) The authorised psychiatrist may, by instrument, delegate to a registered medical practitioner, a power, duty or function of the authorised psychiatrist under section 12.

(6) A delegation under sub-section (5)—

(a) must only be made for a period of not more than 96 hours but may be renewed; and

(b) must be made subject to a condition that the exercise or performance of the power, duty or function must be reviewed by the authorised psychiatrist as soon as practicable after the delegation has expired.

97. **Provision of staff services**

(1) The Secretary may having regard to the objectives and functions of the Department under this Act, make available to a person, association or organization providing mental health services the services of any person or class of persons employed in the Department under the Public Sector Management and Employment Act 1998.

(2) A person or class of persons whose services are made available under sub-section (1) to a person, association or organization remains subject to the Public Sector Management and Employment Act 1998 but may be subject to the direction and control of the person, association or organization for the purposes of duty in the assigned role to the extent and subject to any conditions determined and agreed to by the Secretary which cannot be less favourable than under the Public Sector Management and Employment Act 1998.
Division 3—Community Support Services

98. Definitions

In this Division—

"agency" has the same meaning as in Division 1 of Part 3 of the Health Services Act 1988;

"community support services" means services funded by the Secretary to provide care or support designed to assist people with a mental disorder, wherever possible, to live, work and participate in the community and includes psychiatric disability support services.

99. Principles for community support services

It is the intention of Parliament that an agency providing community support services operate in accordance with the following principles—

(a) people receiving the services should be given the best possible care and treatment appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that care and treatment; and

(b) provision should be made for people who are receiving the services to participate in the planning, operation and evaluation of the services; and

(c) restrictions on and interference with the rights, privacy, dignity and self-respect of people receiving the services should be kept to the minimum necessary in the circumstances; and

(d) there should be adequate mechanisms for the assessment and review of people receiving the services; and
(e) the services provided should be accessible and flexible to meet the needs of people with a mental disorder.

100. Appointment of administrator

(1) If the Minister is satisfied that an agency providing community support services—

(a) is inefficiently or incompetently managed; or

(b) has failed to provide effective services in accordance with the principles specified in section 99; or

(c) has breached or failed to comply with any provision of any funding agreement with the Secretary—

the Minister may recommend to the Governor in Council that an administrator of the agency be appointed.

(2) If the Minister proposes that an agency should be administered by an administrator, the Minister—

(a) must give notice in writing to the agency of his or her proposal; and

(b) must consider any submissions, whether oral or in writing, made to the Minister by the agency within 7 days after the giving of the notice; and

(c) may consider any other submissions and any other matters the Minister considers appropriate—

before deciding whether or not to recommend the appointment of an administrator.

(3) If the Minister decides to recommend the appointment of an administrator, the Governor in Council, on the recommendation of the Minister, may appoint an administrator of the agency for such period and subject to such terms and conditions as are specified in the appointment.

(4) An administrator of an agency appointed under this section has and may exercise all the powers and is subject to all the duties of the board or other governing body of the agency.

(5) On the appointment of an administrator, the members of the board or other governing body of the agency cease to hold office.

(6) If the Minister recommends to the Governor in Council that the appointment of an administrator of an agency should be
revoked, the Governor in Council may by notice published in the Government Gazette declare that the appointment will be revoked on the date specified in the notice, being a date not less than 28 days after the publication of the notice.

(7) If a notice is published under sub-section (6) in relation to an agency—

(a) members of the board or other governing body of the agency are to be elected or appointed in accordance with the rules or other constituting document of the agency; and

(b) on the date specified in the notice—

(i) the appointment of the administrator is revoked; and

(ii) the board or other governing body of the agency is re-established.

(8) The salary of an administrator appointed under this section and any expenses of the administrator necessarily incurred in the administration are to be paid by the Department.

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**Division 4—The Chief Psychiatrist**

105. *The chief psychiatrist*

(1) There is to be appointed by the Secretary as chief psychiatrist a qualified psychiatrist appointed under section 95.

(2) Subject to the general direction and control of the Secretary the chief psychiatrist—

(a) is responsible for the medical care and welfare of persons receiving treatment or care for a mental illness; and
(b) has such powers, duties, functions and immunities as are conferred or imposed upon the chief psychiatrist by or under this or any other Act.

(3) The chief psychiatrist may by instrument of delegation delegate to a qualified psychiatrist appointed under section 95 any power, duty or function of the chief psychiatrist other than this power of delegation.

(4) A person is not empowered to exercise a power, duty or function delegated under sub-section (3) while that person is exercising any power, duty or function as or delegated by the authorized psychiatrist.

(5) Any employees that are necessary to assist the chief psychiatrist in the performance of his or her powers, duties and functions under this Act are to be employed under Part 3 of the Public Sector Management and Employment Act 1998.

106. Special powers of chief psychiatrist and authorised officers

(1) In this Division—

"authorised officer" means a person who is authorised in writing by the chief psychiatrist to exercise powers under this section;

"psychiatric service" means—

(a) an approved mental health service;
(b) a child and adolescent psychiatry service;
(d) any premises licensed under section 75;
(e) a hospital admitting or caring for people with a mental disorder;
(f) a mental health service of a community health centre;
(g) a psychiatric out-patient clinic;
(h) a community mental health service;
Mental Health Act 1986

Act No. 59/1986

(i) an agency providing community support services;

"quality assurance committee" means the committee established by section 106AC.

(2) The chief psychiatrist must issue an identity card to each authorised officer.

(3) An authorised officer, in the course of exercising powers under this section, must produce his or her identity card to any person who requests its production.

(4) The chief psychiatrist or an authorised officer may visit a psychiatric service—

(a) if the chief psychiatrist has reason to believe—

   (i) that a person with a mental disorder is not being provided, or was not provided, with proper medical care by the service; or

   (ii) that the welfare of a person with a mental disorder is being, or has been, endangered by the service; or

(b) if the chief psychiatrist considers it necessary to do so in the course of the duty of the chief psychiatrist or authorised officer as a member of the quality assurance committee.

(5) Subject to sub-section (6), the chief psychiatrist or an authorised officer has the power—

(a) when visiting a psychiatric service under sub-section (4)—

   (i) to inspect any part of the premises of that service;

   (ii) to see any person who is receiving treatment or care for a mental disorder in that service;

   (iii) to inspect and make copies of, or take extracts from, any document kept at the premises of that service relating to any person who is receiving or has received treatment or care for a mental disorder in that service, or any record required to be kept under this Act;
Mental Health Act 1986

(b) to make enquiries relating to the admission, detention, care, treatment and control of people with a mental disorder in or from a psychiatric service;

(c) by written notice, to require the production of any document kept by a psychiatric service relating to any person who is receiving or has received treatment or care for a mental disorder in that service or any record required to be kept under this Act;

(d) to make copies of, or take extracts from, any document or record referred to in paragraph (c).

(6) A person, other than a patient in an approved mental health service, has the right to refuse—

(a) to be seen by the chief psychiatrist or an authorised officer; 

(7) The chief psychiatrist, by written order directed to the person in charge of a psychiatric service, may direct that the person specified in the order be allowed to see a person specified in the order subject to compliance with any conditions specified in the order.

(8) If the chief psychiatrist or an authorised officer wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the person in charge and every member of the staff or management of a psychiatric service must provide the chief psychiatrist or authorised officer with any reasonable assistance that the chief psychiatrist or authorised officer requires to perform or exercise that power, duty or function effectively.

(9) A person in charge or member of the staff or management of a psychiatric service must not—

(a) unreasonably refuse or neglect to render assistance when required to do so under sub-section (8); or

(b) refuse or fail to give full and true answers to the best of that person's knowledge to any questions asked by the chief psychiatrist or an authorised officer in the performance or exercise of any power, duty or function under this Act; or
(c) assault, obstruct, hinder, threaten, intimidate or attempt to obstruct or intimidate the chief psychiatrist or an authorised officer while visiting the premises.

Penalty: 25 penalty units.

106AA. Chief psychiatrist may give directions to psychiatric services

(1) The chief psychiatrist, by written notice, may direct a psychiatric service—

(a) to discontinue, or alter as specified in the notice, a practice, procedure or treatment observed or carried out by the service;

(b) to observe or carry out a practice, procedure or treatment specified in the notice;

(c) to provide treatment, or a particular treatment specified in the notice, to a person with a mental disorder who is specified in the notice.

(2) The chief psychiatrist may give a direction to a psychiatric service under sub-section (1)(a) or (b) only if he or she is satisfied, following an investigation by the chief psychiatrist or an authorised officer, that the direction is necessary for the medical care or welfare of a person or people who is, are or will be receiving treatment or care for a mental disorder at that service.

(3) The chief psychiatrist may give a direction to a psychiatric service under sub-section (1)(c) only if—

(a) he or she is satisfied, following an investigation by the chief psychiatrist or an authorised officer, that the direction is necessary for the medical care or welfare of the person specified in the notice; and

(b) the person specified in the notice consents to be treated by the psychiatric service.

(4) Nothing in this section affects or takes away from any requirement under this Act or any other law in relation to the obtaining of a person's consent to medical treatment.
106AB. Chief psychiatrist may direct admission of involuntary patient

(1) Despite anything to the contrary in section 9 or 12, the chief psychiatrist, by written notice, may direct that a person be admitted to an approved mental health service under section 12 for treatment.

(2) The chief psychiatrist may give a direction under sub-section (1) only if, following an investigation by the chief psychiatrist or an authorised officer, the chief psychiatrist—

(a) is satisfied that the person in respect of whom the direction is given satisfies the criteria specified in section 8(1); and

(b) has taken into account—

(i) the availability of adequate facilities and appropriately qualified staff for the treatment of the person in the approved mental health service; and

(ii) any adverse effects the admission of the person may have on other patients in the approved mental health service.

(3) Section 12 applies to a person in respect of whom a direction is given under sub-section (1) as if a request and recommendation had been made under section 9 in respect of that person.

106AC. Quality assurance committee

(1) A quality assurance committee is established.

(2) The committee consists of the chief psychiatrist and each authorised officer within the meaning of section 106(1).

(3) The function of the committee is to oversee and monitor standards of mental health services.

106A. Reportable deaths

The authorised psychiatrist of each approved mental health service and the person in charge of any other "psychiatric service" within the meaning of section 106 must report to the chief psychiatrist the death of any person receiving treatment or care for a mental disorder which is a "reportable death" within the meaning of...
Division 5—Community Visitors

107. Definitions

In this Division—

"mental health service" means that part (if any) of—

(a) an approved mental health service; or

(b) an agency providing community support services—

* * * * *

that provides residential services and 24 hour nursing care for people with a mental disorder;

"region" has the same meaning as in the Health Services Act 1988.

108. Community visitors

(1) The Governor in Council may on the recommendation of the Minister appoint community visitors for each region.

(2) Schedule 5 has effect with respect to community visitors.

109. Functions of a community visitor

The functions of a community visitor are to visit any mental health service in the region for which the community visitor is appointed and to inquire into—

(a) the adequacy of services for the assessment and treatment of people with a mental disorder; and

(b) the appropriateness and standard of facilities for the accommodation, physical well-being and welfare of persons receiving treatment or care for a mental disorder; and

(c) the adequacy of opportunities and facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for a mental disorder; and
(d) the extent to which people receiving treatment or care for a mental disorder are being given the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care; and

(e) any failure to comply with the provisions of this Act; and

(f) any other matter that an official visitor considers appropriate having regard to the objectives specified in section 5; and

(g) any complaint made to a community visitor by a person receiving treatment or care for a mental disorder.

110. Certain persons deemed to be community visitors

(1) Any person who is appointed by the Minister or the Department for the purpose of any investigation in connection with the administration of this Act is by virtue of that office or appointment deemed to be a community visitor for every region and has and may exercise all the powers conferred on a community visitor by this Act.

(2) Sub-section (1) does not require a person deemed to be a community visitor to perform any of the functions or duties of a community visitor.

111. Visiting of mental health services

(1) A community visitor or a panel of community visitors may visit a mental health service with or without any previous notice at such times and for such periods as the community visitor or panel thinks fit.

(2) Each mental health service that is an approved mental health service must be visited at least once every month by a panel of community visitors for the region in which the approved mental health service is located.

(4) The Minister may direct a community visitor or a panel of community visitors to visit a mental health service at such times as the Minister directs.
112. **Powers of inspection**

(1) A community visitor is entitled when visiting a mental health service to—

(a) inspect any part of the premises; and

(b) see any person who is receiving treatment or care for a mental disorder unless that person has asked not to be seen; and

(c) make enquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for a mental disorder; and

(d) inspect any document or medical record relating to any person receiving treatment or care for a mental disorder if he or she has given consent in writing and any records required to be kept by or under this Act.

(2) Where a community visitor wishes to perform or exercise or is performing or exercising any power, duty or function under this Act, the person in charge and every member of the staff or management of the mental health service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.

(3) Any person in charge or member of the staff or management of a mental health service who—

(a) unreasonably refuses or neglects to render assistance when required to do so under sub-section (2); or

(b) does not give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act; or

(c) assaults, obstructs, hinders, threatens, intimidates or attempts to obstruct or intimidate a community visitor visiting a mental health service—

is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

113. **Request to see a panel of community visitors**
Mental Health Act 1986

Act No. 59/1986

(1) A person who is receiving treatment or care from a mental health service, or a person on behalf of such a person, may request the person in charge of the mental health service to arrange for the person receiving treatment or care to be seen by a community visitor.

(2) The person in charge of a mental health service must within 7 days of receiving a request under sub-section (1) advise one of the community visitors for the region that a request has been made.

Penalty: 2 penalty units.

(3) After seeing a person who has requested to be seen, the community visitor may submit a report to the chief psychiatrist and the Public Advocate containing such recommendations as he or she considers appropriate.

114. Record of visits

The person in charge of a mental health service must keep a record specifying the prescribed particulars of visits by community visitors.

Penalty: 2 penalty units.

115. Reports by community visitors

(1) The Minister may require a panel of community visitors to report to the Minister on any matter specified by the Minister at the times and in the manner directed by the Minister.

(1A) The community visitors for a region must at least twice a year submit a joint report to the Public Advocate on visits made by them to mental health services since the last report under this section.

(2) A community visitor, panel of community visitors or the community visitors for a region may at any time submit a report to the Minister if the community visitor or community visitors consider that any matter should be considered personally by the Minister.

116. Community (Psychiatric Services) Visitors Board

(1) There is established a Board to be known as the Community (Psychiatric Services) Visitors Board.

(2) The Community (Psychiatric Services) Visitors Board consists of—

(a) the Public Advocate; and
(b) two community visitors elected by community visitors in accordance with the regulations.

(3) The functions of the Community (Psychiatric Services) Visitors Board are—

(a) to represent community visitors; and

(b) to prepare and circulate publications explaining the role of community visitors; and

(c) to supervise the training of community visitors; and

(d) to prepare an annual report.

116A. Annual report of visitors

(1) The Community (Psychiatric Services) Visitors Board must as soon as practicable after the end of each financial year and not later than the following 31 October submit to the Minister a report on the activities of community visitors during the financial year.

(2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.

117. Secrecy provision

(1) Unless sub-section (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly—

(a) make a record of; or

(b) divulge or communicate to any person; or

(c) make use of—

any information, that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—

(d) to perform any official duties; or

(e) to perform or exercise any function or power under this Act.

Penalty: 50 penalty units.

(2) Sub-section (1) does not preclude a person from—
Mental Health Act 1986

s. 117AA

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or

(c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

117AA. Transitional provision—Community Visitors Legislation (Miscellaneous Amendments) Act 2001

The substitution of the definition of "region" by section 12 of the Community Visitors Legislation (Miscellaneous Amendments) Act 2001 does not affect anything done under this Division before the commencement of that section for the purposes of a region.
PART 6A—VICTORIAN INSTITUTE OF FORENSIC MENTAL HEALTH

117A. Definitions

In this Part—

"Council" means Victorian Institute of Forensic Mental Health Council established by section 117E;

"Institute" means Victorian Institute of Forensic Mental Health established by section 117B.

117B. Establishment of Institute

(1) The Victorian Institute of Forensic Mental Health is established.

(2) The Institute—

(a) is a body corporate with perpetual succession;

(b) has an official seal;

(c) may sue and be sued;

(d) may acquire, hold and dispose of real and personal property;

(e) may do and suffer all acts and things that a body corporate may by law do and suffer.

(3) All courts must take judicial notice of the seal of the Institute affixed to a document and, until the contrary is proved, must presume that it was duly affixed.

(4) The seal of the Institute must be kept in such custody as the Council directs and must not be used except as authorised by the Council.

117C. Functions and powers of the Institute

(1) The functions of the Institute are—

(a) to provide, promote and assist in the provision and planning of forensic mental health and related services in Victoria and, as far as practicable, oversee and co-ordinate those services;

(b) to provide clinical assessment services to courts, the Adult Parole Board and other relevant government agencies;
(c) to provide inpatient and outpatient services and specialist treatment programs to patients and other people with a mental disorder;

(d) to provide clinical forensic mental health services, service development advice and planning services to government and non-government bodies in accordance with agreements for services between those bodies and the Institute;

(e) to provide specialist treatment and support services to victims of criminal offences;

(f) to provide community education in relation to the services provided by the Institute and forensic mental health generally;

(g) to provide, promote and assist in the under-graduate and post-graduate instruction and training of professionals in the field of forensic psychiatry;

(h) to provide, promote and assist in the teaching of and training in clinical forensic mental health within medical, legal, general health and other education programs;

(i) to conduct research in the fields of forensic mental health, forensic health, clinical forensic medicine and associated fields;

(j) any other functions conferred on the Institute by or under this or any other Act.

(2) The Institute has power to do all things necessary or convenient to be done for, or in connection with, or as incidental to, the performance of its functions.

(3) Without limiting sub-section (2), the Institute has power—

(a) to enter into agreements for services provided by the Institute;

(b) to impose fees and charges for the provision of services;

(c) to seek and accept funds from any person for the purposes of performing its functions.

117D. Institute is an approved mental health service

The Institute is deemed to have been proclaimed to be an approved mental health service under section 94.
117E. Establishment of Council

(1) The Victorian Institute of Forensic Mental Health Council is established.

(2) The Council—

(a) is responsible for the management of the affairs of the Institute; and

(b) may exercise the powers of the Institute.

117F. Constitution of Council

(1) The Council consists of—

(a) the Clinical Director of the Institute;

(b) the chief executive officer of the Institute;

(c) a nominee of the Attorney-General;

(d) a nominee of the Minister administering the Corrections Act 1986;

(e) 6 other members, of whom—

(i) at least one is a fellow of the Royal Australian and New Zealand College of Psychiatrists;

(ii) at least one is a person who has knowledge of, or experience in, accountancy or financial management;

(iii) at least one is appointed to represent the interests of patients.

(2) The members of the Council, other than the Clinical Director and the chief executive officer, are to be appointed by the Minister on the terms and conditions determined by the Minister and specified in the instrument of appointment.

(3) A member, other than the Clinical Director or the chief executive officer, holds office for the term, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment.

(4) A member is not subject to the Public Sector Management and Employment Act 1998 (except in accordance with Part 7 of that Act) in respect of the office of member.

(5) The Minister must appoint one of the members as chairperson of the Council.
117G. Resignation and removal

(1) A member of the Council, other than the Clinical Director or the chief executive officer, may resign by writing signed by that person and delivered to the Minister.

(2) The Minister may remove a member of the Council, other than the Clinical Director or the chief executive officer, from office if satisfied that—

(a) the member is physically or mentally unable to fulfil the role of member; or

(b) the member has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the member unsuitable to be a member of the Council; or

(c) the member has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or

(d) the member is an insolvent under administration within the meaning of the Corporations Act.

117H. Clinical Director

(1) The Minister may appoint as Clinical Director of the Institute—

(a) the person who holds the Chair in Forensic Psychiatry at Monash University; or

(b) a person who holds a similar chair at another Victorian university; or

(c) a qualified psychiatrist with experience in forensic psychiatry.

(2) The Clinical Director—

(a) holds office for the term, not exceeding 5 years, specified in the instrument of appointment;

(b) holds office on the terms and conditions determined by the Minister and specified in the instrument of appointment;
(c) is eligible for re-appointment.

(3) The Clinical Director may resign by writing signed by him or her and delivered to the Minister.

(4) The Minister may remove the Clinical Director from office if satisfied that—

(a) the Clinical Director is physically or mentally unable to perform the functions of Clinical Director; or

(b) the Clinical Director has been convicted of an offence, the commission of which, in the opinion of the Minister, makes the Clinical Director unsuitable to hold office; or

(c) the Clinical Director has been absent, without leave of the Council, from all meetings of the Council held during a period of 6 months; or

(d) the Clinical Director is an insolvent under administration within the meaning of the Corporations Act.

(5) The functions of the Clinical Director are—

(a) to provide clinical care and services;

(b) to promote and maintain the quality of clinical care and services provided by the Institute;

(c) to develop and maintain the research functions of the Institute and co-ordinate service evaluation in the Institute;

(d) to promote the role of the Institute in professional training and community education;

(e) any other functions specified by the Minister.

117I. Chief executive officer

(1) The Council may appoint a person as the chief executive officer of the Institute.

(2) The chief executive officer holds office on the terms and conditions determined by the Council and specified in the instrument of appointment.

(3) The chief executive officer is responsible to the Council for the following functions—

(a) developing the corporate plans for the Institute;
Mental Health Act 1986

117J. Other staff

(1) The Council may employ any other staff necessary for the performance of the functions of the Institute.

(2) The terms and conditions of employment of staff of the Institute are as determined by the Council.

(3) An employee of the Institute who, immediately before that employment, was an employee in the public service employed exclusively in connection with the functions of the forensic psychiatry service in the Department of Human Services continues to be an employee in the public service while an employee of the Institute for the purposes of long service leave.

(4) An employee of the Institute who, immediately before employment, was an officer within the meaning of the State Superannuation Act 1988 continues, subject to that Act, to be such an officer while an employee of the Institute.

117K. Procedure of Council

(1) The chairperson of the Council or, in his or her absence, a member appointed by the members present, must preside at a meeting of the Council.

(2) The quorum of the Council is 6 members.

(3) A question arising at a meeting is determined by a majority of votes and the person presiding has a deliberative vote and, in the case of an equality of votes, a second or casting vote.

(4) The Council must ensure that accurate minutes are kept of its meetings.

(5) Subject to this Act, the Council may regulate its own procedure.

117L. Validity of acts or decisions

An act or decision of the Council is not invalid only because—

(a) of a defect or irregularity in, or in connection with, the appointment of a member; or
(b) of a vacancy in the office of a member.

**117M. Immunity**

(1) A member of the Council is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the performance of a function or duty under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or performance of a function or duty under this Act.

(2) Any liability resulting from an act or omission that would, but for sub-section (1), attach to a member of the Council attaches instead to the Institute.

**117N. Directions**

(1) The Minister may give to the Institute any written direction that he or she thinks fit.

(2) As soon as possible after a direction is given, the Minister must cause a copy of it to be published in the Government Gazette.

(3) The Institute must comply with a direction given under this section, but an act or decision of the Institute or the Council is not invalid only because of a failure to comply with such a direction.

**117O. Corporate plan**

(1) The Council must prepare a corporate plan for the Institute for each financial year.

(2) The Council must give a copy of the proposed plan to the Minister on or before 31 May in each year.

(3) The proposed corporate plan must be in or to the effect of a form approved by the Minister and must include—

(a) a statement of corporate intent in accordance with section 117P;

(b) a business plan containing such information as the Minister requires;

(c) financial statements containing such information as the Minister requires.
(4) The Council must consider any comments on the proposed plan that are made to it by the Minister within 2 months after the plan was submitted to the Minister.

(5) The Council must consult in good faith with the Minister following communication to it of the comments, must make such changes to the plan as are agreed between the Minister and the Council and must deliver the completed plan to the Minister within 2 months after the commencement of the financial year.

(6) The plan, or any part of the plan, must not be published or made available except for the purposes of this Part without the prior approval of the Council and the Minister.

(7) The plan may be modified at any time by the Council with the agreement of the Minister.

(8) If the Council, by written notice to the Minister, proposes a modification of the plan, the Council may, within 14 days, make the modification unless the Minister, by written notice to the Council, directs the Council not to make it.

(9) The Minister may, from time to time, by written notice to the Council, direct the Council to include in, or omit from, a statement of corporate intent, a business plan or a financial statement of a specified kind, any specified matters.

(10) Before giving a direction under this section, the Minister must consult with the Council as to the matters to be referred to in the notice.

(11) The Council must comply with a direction under this section.

(12) At any particular time, the statement of corporate intent, the business plan or the financial statements for the Institute are the statements and plan last completed, with any modifications or deletions made in accordance with this Part.

117P. **Statement of corporate intent: contents**

Each statement of corporate intent must specify for the Institute, in respect of the financial year to which it relates and each of the 2 following financial years, the following information—

(a) the business objectives of the Institute;

(b) the main undertakings of the Institute;
(c) the nature and scope of the activities to be undertaken by the Institute;

(d) the accounting policies to be applied in the accounts;

(e) the performance targets and other measures by which the performance of the Institute may be judged in relation to the stated business objectives;

(f) the kind of information to be provided to the Minister by the Institute during the course of those financial years;

(g) such other matters as may be agreed on by the Minister and the Council from time to time.

117Q. Corporate plan to be followed

The Institute must act only in accordance with its corporate plan, as existing from time to time, unless it has first obtained the written approval of the Minister to do otherwise.

117R. Nothing void merely because of non-compliance

Nothing done by the Institute or the Council is void or unenforceable merely because the Institute or the Council has failed to comply with section 117O, 117P or 117Q.

117S. Council to give notice of significant events

If the Council forms the opinion that matters have arisen—

(a) that may prevent, or significantly affect, achievement of the business objectives of the Institute under the corporate plan; or

(b) that may prevent, or significantly affect achievement of the targets under the plan—

the Council must immediately notify the Minister of its opinion and the reasons for the opinion.

117T. Reports to Minister

The Minister may, in writing, require the Institute to give the Minister any information that he or she requires.

117U. Annual report

In its annual report for a financial year under Part 7 of the Financial Management Act 1994, the Institute must include—
Mental Health Act 1986

Act No. 59/1986

(a) a copy of each direction given to it during that year under section 117N together with a statement of its response to the direction; and

(b) a copy of the statement of corporate intent last completed.
PART 7—GENERAL

Division 1—Miscellaneous

118. Board may state special case for the opinion of the Supreme Court

(1) Where a question of law arises in proceedings before the Board, the Board, of its own motion or on the application of any person who is a party to the proceedings, may reserve the question in the form of a special case stated for the opinion of the Supreme Court.

(2) Where a question of law has been reserved for the opinion of the Supreme Court under sub-section (1), the Board cannot—

(a) determine the matter until the opinion of the Supreme Court has been given; or

(b) proceed in a manner or make a determination that is inconsistent with the opinion of the Supreme Court on the question of law.

120. Review of certain decisions by Tribunal

(1) A person whose interests are affected by a determination of the Board may apply to the Tribunal for review of the determination.

(2) An application for review must be made within 28 days after the later of—

(a) the day on which the determination is made;

(b) if, under the Victorian Civil and Administrative Tribunal Act 1998, the person requests a statement of reasons for the determination, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

120A. Confidentiality

(1) In this section—
"person to whom this section applies" means the following—

(a) a relevant psychiatric service;
(b) a person who is or has been a member of the board of a relevant psychiatric service;
(c) a person who is or has been a proprietor of a relevant psychiatric service;
(d) a person who is or has been engaged or employed in a relevant psychiatric service;

"relevant psychiatric service" means the following—

(a) an approved mental health service;
(b) a child and adolescent psychiatry service;
(c) an agency providing community support services;

(e) any premises licensed under section 75;
(f) a hospital admitting or caring for people with a mental disorder;

(g) any mental health service of a community health service;
(h) a psychiatric out-patient clinic;
(i) a community mental health service.

(2) A person to whom this section applies must not, except to the extent necessary—

(a) to carry out functions under this or any other Act; or
(b) to exercise powers under this or any other Act in relation to a relevant psychiatric service; or
(c) to give any information he or she is expressly authorised or permitted to give under this or any other Act—

give to any other person, whether directly or indirectly, any information acquired by reason of being a person to whom this section applies, if a person who is or has been a patient in, or has received psychiatric services from, a relevant psychiatric service;
psychiatric service could be identified from that information.

Penalty: 50 penalty units.

(2A) For the purposes of sub-section (2)(c), "any other Act" does not include the Health Privacy Principles in the Health Records Act 2001 or Part 3 or Part 5 of that Act.

(3) Sub-section (2) does not apply—

(a) to the giving of information with the prior consent of the person to whom it relates or, if that person has died, with the consent of the senior available next of kin of that person; or

(b) to the giving of information to a court in the course of criminal proceedings; or

(c) to the giving of information concerning the condition of a person who is a patient in, or is receiving psychiatric services from, a relevant psychiatric service if the information—

(i) is communicated in general terms; or

(d) to the giving of information to the Australian Red Cross Society for the purpose of tracing blood, or blood products derived from blood, infected with any disease or the donor or recipient of any such blood; or

(c) to the giving of information relating to a person who is, or has been, receiving services from a relevant psychiatric service by a member of the medical staff, or a member of a prescribed class of staff, of that psychiatric service to a guardian, family member or primary carer of the person to whom the information relates if—

(i) the information is reasonably required for the on-going care of the person to whom it relates; and

(ii) the guardian, family member or primary carer will be involved in providing that care; or

(d) to the giving of information to the Australian Red Cross Society for the purpose of tracing blood, or blood products derived from blood, infected with any disease or the donor or recipient of any such blood; or
Mental Health Act 1986

s. 120A

Act No. 59/1986

S. 120A(3)(e) amended by No. 98/1995 s. 57(4), substituted by No. 2/2001 s. 111(2)(a).

S. 120A(3)(ea) inserted by No. 2/2001 s. 111(2)(a).

S. 120A(3)(g)(ii) amended by No. 2/2001 s. 111(2)(b)(i).

S. 120A(3)(g)(iii) inserted by No. 2/2001 s. 111(2)(b)(ii).


(c) to the giving of information—

(i) required in connection with the further treatment of a person with a mental disorder; or

(ii) subject to the regulations (if any), by a person engaged or employed by or on behalf of an approved mental health service by means of an electronic records system established for the purpose of enabling the sharing of information in or between approved mental health services for the treatment of persons with a mental disorder at any time; or

(ea) to the giving of information as described in HPP 2.2(f), 2.2(h) or 2.5 of the Health Privacy Principles in the Health Records Act 2001; or

(f) to the giving of information to the Australian Statistician; or

(g) to the giving of information acquired by an agency concerning a person’s psychiatric condition or treatment for the purposes of medical or social research if—

(i) the use to which the information will be put and the research methodology have been approved by an ethics committee of the relevant psychiatric service; and

(ii) the giving of information does not conflict with any prescribed requirements; and

(iii) the giving of information is in accordance with HPP 2.2(g) of the Health Privacy Principles in the Health Records Act 2001;

or

(ga) the giving of information to or by a person, or a person in a class of persons, designated under section 141(5) of the Health Services Act 1988 in the course of carrying out support functions designated under that provision; or
(h) to the giving of any information required in connection with any proceedings before the Board or the Tribunal; or

(ha) to the giving of any information required in connection with proceedings before the Panel; or

(i) to the giving of information to a person to whom in the opinion of the Minister it is in the public interest that the information be given; or

(j) to the giving of information to the Secretary; or

(k) to the giving of information to the Minister; or

(l) to the giving of information of a class specified by the Minister by a person who is a member of a class of persons specified by the Minister in circumstances specified by the Minister.

(3A) The Minister may authorise the giving of information under sub-section (3)(l) only if he or she considers it necessary to do so in the public interest.

(3B) A person must not use or collect, or attempt to use or collect, information about a person from an electronic records system referred to in sub-section (3)(e)(ii) if that second-mentioned person could be identified from that information unless—

(a) the use or collection is—

(i) by a person engaged or employed by or on behalf of an approved mental health service; and

(ii) to enable the treatment of that second-mentioned person at or by that approved mental health service; and

(iii) in accordance with the regulations (if any); or

(b) in the case of the Chief Psychiatrist, the Board or the Panel, the use or collection is—

(i) necessary for the performance of the duties, powers or functions of the Chief Psychiatrist, the Board or the Panel, as the case requires; and

(ii) in accordance with the regulations (if any).
121. **Amendment of documents**

(1) If upon the admission of an involuntary patient to an approved mental health service it appears that any document relating to the admission is in any respect incorrect or defective the document may be amended by the person who signed the document within 21 days of the admission.

(2) Where the chief psychiatrist considers that any document relating to the admission of an involuntary patient is in any respect incorrect or defective and the document is not amended to the chief psychiatrist's satisfaction within 21 days of a direction in writing by the chief psychiatrist requiring the amendment of the document the chief psychiatrist may order that the involuntary patient be discharged.

(3) If in any proceedings before the Board or the Supreme Court it appears that any document on which an involuntary patient has been admitted to an approved mental health service is in any respect incorrect or defective the Board or the Supreme Court may if it thinks fit amend the document and the document becomes as valid and effectual as it would have been if it had been made as amended.

122. **Immunity from suit**

No civil or criminal proceedings lies against any person for anything done in good faith and with reasonable care in
reliance on any authority or document apparently given or made in accordance with the requirements of this Act.

123. **Registered medical practitioner to specify facts**

(1) A registered medical practitioner who signs any recommendation or certificate in connection with the admission of any person to an approved mental health service must—

(a) specify the facts upon which the opinion that the person to whom the recommendation or certificate relates is mentally ill is based; and

(b) distinguish the facts personally observed from—

(i) facts not personally observed; and

(ii) facts communicated to the registered medical practitioner by any other person.

(2) A person may be admitted to an approved mental health service on a recommendation or certificate which relies upon facts not personally observed by the registered medical practitioner if the registered medical practitioner—

(a) has reasonable grounds for relying on those facts; and

(b) has—

(i) personally observed some fact which supports the recommendation or certificate; or

(ii) relied upon facts personally observed by another registered medical practitioner within 28 days of the recommendation or certificate and communicated directly by that registered medical practitioner to the registered medical practitioner signing the recommendation or certificate.

(3) If the registered medical practitioner signing the recommendation or certificate has relied upon the facts of the kind specified in sub-section (2)(b)(ii) the recommendation or certificate must specify the name and address of the other registered medical practitioner.
124. Recommendation or certificate not to be signed without examination

(1) A registered medical practitioner who signs a recommendation or certificate in connection with the admission of any person to an approved mental health service without complying with section 123 is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.

(2) A registered medical practitioner who wilfully and falsely states in writing that any person is mentally ill is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.

125. Persons prohibited from signing recommendation or certificate

A recommendation or certificate in connection with the admission of any person to an approved mental health service is not valid if it is signed by a registered medical practitioner who is—

(a) a relative or guardian of that person; or

(b) the person by whom the request is made.

126. Offences in relation to recommendations or certificates

(1) A registered medical practitioner who wilfully and falsely states or certifies anything in a recommendation or certificate in connection with the admission of any person to an approved mental health service is guilty of professional misconduct unless the registered medical practitioner satisfies the Medical Practitioners Board of Victoria that there were valid reasons for doing so.

(2) Any person not being a registered medical practitioner who signs a recommendation or certificate in connection with the admission of any person to an approved mental health service is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.
127. Payment for recommendation

Where a registered medical practitioner makes a recommendation under section 9 and is not entitled to receive payment for making the recommendation other than under this section, the registered medical practitioner may apply to the Secretary for payment of the prescribed recommendation fee.

128. Special payments and grants

(1) Where the Secretary is satisfied that it would be beneficial to the treatment of a person with a mental disorder for the person to be provided with specified services outside an approved mental health service the Secretary may make such payments as he or she considers appropriate to enable the provision of those services.

(2) The Secretary may having regard to the Department's objectives and functions under this Act make grants to self-help organizations out of money available for the purpose.

129. Provisions relating to private patients

Where a person is admitted to an approved mental health service as a private patient the following provisions apply—

(a) a private psychiatrist approved by the authorized psychiatrist may treat the patient and charge the patient for the services provided by the private psychiatrist;

(b) the private psychiatrist may use only treatment approved by the Department and which is in accordance with the treatment policies of the approved mental health service;

(c) the private psychiatrist must attend the patient at such times as may be specified by the authorized psychiatrist;

(d) the approved mental health service may charge the private psychiatrist for the cost of services provided by the approved mental health service to the patient.

130. Contempt of Board or Psychosurgery Review Board

A person must not—

(a) insult a member of the Board or the Psychosurgery Review Board in or in relation to the exercise of the powers or functions as a member; or
(b) repeatedly interrupt the proceedings of the Board or the Psychosurgery Review Board; or
(c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Board or the Psychosurgery Review Board is sitting; or
(d) do any other act or thing that would, if the Board or the Psychosurgery Review Board were a Court of Record, constitute a contempt of that Court.

Penalty: 10 penalty units.

130A. Protection of members, persons and witnesses

(1) A member of the Board or the Psychosurgery Review Board has in the performance of duties as a member the same protection and immunity as a Judge of the Supreme Court.

(2) A legal practitioner or other person appearing before the Board or the Psychosurgery Review Board on behalf of another person has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Board or the Psychosurgery Review Board as a witness has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the Supreme Court.

131. Costs

(1) Where the Board or the Psychosurgery Review Board is of the opinion in a particular case that there are circumstances which are contemptuous or vexatious and which justify the Board or the Psychosurgery Review Board in doing so, the Board or the Psychosurgery Review Board may make such orders as to costs as the Board or the Psychosurgery Review Board thinks just.
(2) The person to whom payment is to be made under an order as to costs may enforce the order by filing free of charge in the Magistrates' Court—

(a) a copy of the order certified to be a true copy by the executive officer of the Board or the Psychosurgery Review Board; and

(b) his or her affidavit as the person to whom payment is to be made under the order as to the amount not paid under the order.

(3) As from the filing of the order the order is deemed to be an order duly made by the Magistrates' Court requiring the payment of money and may be enforced accordingly.

132. Giving of notice

(1) The notice required to be given to the person specified in section 32(1)(a) or 59(2)(b) must be given personally to that person in accordance with this section unless—

(a) the person is absent from an approved mental health service in accordance with section 14, 40 or 41; or

(b) the Board has dispensed with the requirement to give notice under section 32(3)(b).

(2) The contents of any notice referred to in sub-section (1) must be explained by the person serving the notice to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand.

(3) An explanation given under sub-section (2) must where possible be given both orally and in writing.

(4) Where a notice is required to be given to a person other than a person to whom sub-section (1) applies the notice may be given to that person by sending the notice by pre-paid post to that person at the person's usual or last known place of residence or business.

(5) Unless the contrary is proved, a notice sent by pre-paid post is deemed to have been given to that person at the time at which the notice would be delivered in the ordinary course of post.

(6) Where except for this sub-section notice would be required to be given to a person in more than one capacity it is
sufficient compliance with this Act if notice is given to that person in one of those capacities.

133. **Hearing not to be invalidated by failure to give notice**

A hearing or determination of the Board or the Psychosurgery Review Board is not invalidated or affected by reason only of a failure to give notice to a person other than the person specified in section 32(1)(a) or 59(2)(b) as required by section 132.

134. **Judicial notice**

All courts and persons acting judicially must take judicial notice of—

(a) the signature of any person who is or has been the President or executive officer or a member of the Board and of the fact that that person is or was the President, executive officer or a member (as the case may be); and

(b) the signature of any person who is or has been the chairperson or a member of the Psychosurgery Review Board and of the fact that that person is or was the chairperson or a member (as the case may be).

140. **General penalty**

A person who contravenes any provision of this Act is guilty of an offence against this Act and liable if no penalty is expressly provided to a penalty of not more than 20 penalty units.

141. **Offences by bodies corporate**

(1) Where a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with a like offence.

(2) Where a body corporate is convicted of an offence against this Act a person charged under this section with the like offence may also be convicted of that offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.
142. Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) prescribing forms to be used for the purposes of this Act; and

(b) prescribing fees for the purposes of this Act; and

(c) prescribing scales of fees or charges for the accommodation or care of or for services rendered to any person by a psychiatric service within the meaning of section 106 which is operated by the Secretary; and

(d) the design, construction, equipping, furnishing, maintenance, administration and staffing of and the provision of facilities and services by approved mental health services; and

(e) the functions, responsibilities, obligations and liabilities of authorized psychiatrists; and

(f) the procedure to be followed by the Board; and

(g) the procedure to be followed by the Psychosurgery Review Board; and

(h) standards of care for persons receiving services from a psychiatric service within the meaning of section 106; and

(i) matters relating to the rights and privileges of patients including the visiting of patients; and

(j) prescribing the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act; and

(ja) requirements or conditions relating to the giving or the use or collection of information for the purposes of section 120A(3)(e)(ii) or 120A(3B) including, but not limited to, prescribing a class or classes of person who may give, collect or use that information;

(k) any matter or thing authorized or required to be prescribed or necessary to be prescribed for carrying this Act into effect.

(2) Regulations made under this Act—
(a) may be of general or of specially limited application; and
(b) may differ according to differences in time, place or circumstance; and
(c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council or public authority or by any officer thereof; and
(d) may confer powers or impose duties in connection with the regulations on any government department, municipal council or public authority or any officer thereof; and
(e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and
(f) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and
(g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.

(3) The Secretary may in a particular case waive any fees or charges that would otherwise be payable under sub-section (1)(c).

Division 3—Repeals, Amendments and Transitional

143. Transitional

(3) Except as in this Act expressly or by necessary implication provided—

(a) all persons, things and circumstances appointed or created by or under the Mental Health Act 1959 or
existing or continuing under that Act immediately before the commencement of this section continue under and subject to this Act and the *Intellectually Disabled Persons' Services Act 1986* to have the same status, operation and effect as they respectively would have had if that Act had not been so repealed; and

(b) in particular and without affecting the generality of the foregoing paragraph, such repeal does not disturb the continuity of, status, operation or effect of any proclamation, regulation, rule, order, application, determination, declaration, petition, certificate, approval, consent, recommendation, appointment, commission, enquiry, warrant, condition, notice, admission, detention, request, discharge, authority, information, examination, complaint, proceedings, transfer, trial leave, parole, fee, liability or rights made, effected, issued, granted, given, presented, passed, fixed, accrued, incurred or acquired or existing or continuing by or under that Act before the commencement of this section.

144. **Review of existing patients**

(1) In this section—

"Mental Health Act 1959" means the Mental Health Act 1959 as in force immediately before the commencement of section 143;

"prescribed period" means the period ending 3 months after the commencement of section 143 or ending at a subsequent day as may be determined by the Minister and specified in a notice published in the Government Gazette.

(2) A person admitted and detained as at the commencement of section 143 as—

(a) a recommended patient under the Mental Health Act 1959 is deemed to be an involuntary patient admitted under this Act; and

(b) a repatriation patient under the Mental Health Act 1959 is deemed to be a repatriation patient admitted under this Act; and

(c) a security patient under the Mental Health Act 1959 is deemed to be a security patient admitted under this Act—
for the prescribed period or until the person is reviewed under sub-section (5) or (6).

(3) A person admitted and detained as at the commencement of section 143 as a voluntary patient under the Mental Health Act 1959 is deemed to be a voluntary patient admitted under this Act.

(4) Section 30(a) does not apply to an involuntary patient or security patient referred to in this section.

(5) Within the prescribed period, the authorised psychiatrist at each psychiatric in-patient service must review the admission of each involuntary patient or repatriation patient admitted as an involuntary patient to which sub-section (2) applies and cause the person to be—
   (a) admitted as a patient in accordance with this Act; or
   (b) discharged.

(6) Within the prescribed period, the chief psychiatrist must review the admission of each security patient to which sub-section (2) applies in accordance with section 45.

(7) If after a review under sub-section (6)—
   (a) the chief psychiatrist does not make a recommendation under section 45; or
   (b) the Minister does not do all such things as are necessary to give effect to the recommendation under section 46—

the person is deemed to have been admitted as a patient in accordance with this Act.

145. Protection against breach of trust

(1) A cause of action does not lie in respect of any breach of trust or fiduciary duty by reason of any failure to pay to, or credit to the account of, a patient in a relevant hospital any money earned on the investment of money held in trust by that relevant hospital for that patient.

(2) In sub-section (1), "relevant hospital" means any psychiatric hospital or mental hospital under the Mental Health Act 1959 or any similar institution under any corresponding previous enactment.

146. Transitional provisions—Health Records Act 2001

(1) Section 120A(3)(g) as amended by the Health Records Act 2001 does not apply to the giving of information for
the purposes of medical or social research if the use to which the information will be put and the research methodology has been approved by an ethics committee under that section before the commencement of that amendment even if the giving of the information occurs after that commencement.

(2) Section 120A(4) as amended by the Health Records Act 2001 does not apply to the giving of information, the giving of which has been approved as required by that section before the commencement of that amendment, even if the giving of the information occurs after that commencement.


(1) Sub-sections (4), (5) and (6) of section 51, as in force immediately before the commencement of section 41 of the Forensic Health Legislation (Amendment) Act 2002, continue to apply in respect of a refusal to grant or extend leave or a revocation of leave that occurred before that commencement.

(2) Any appeal under section 51(4), as in force immediately before the commencement of section 41 of the Forensic Health Legislation (Amendment) Act 2002, that had not been determined before that commencement is to be determined as if that section 41 had not come into operation.
SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERS OF THE BOARD

1. The President

The President—

(a) is to be appointed by the Governor in Council; and

(b) holds office for a period of five years; and

(c) is eligible for re-appointment at the end of the term of office; and

(d) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(e) is not in respect of the office of President subject to the provisions of the Public Sector Management and Employment Act 1998.

2. Ordinary members

(1) Each member of the Board other than the President—

(a) is to be appointed by the Governor in Council on the nomination of the Minister; and

(b) holds office for the term specified in his or her instrument of appointment, which must be no longer than 4 years and no shorter than 3 years; and

(c) is eligible for re-appointment at the end of the term of office; and

(d) is entitled to be paid—
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(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(e) is not in respect of the office of member subject to the provisions of the Public Sector Management and Employment Act 1998.

(2) In nominating persons for appointment to the Board, the Minister must have regard to—

(a) the matters which the Board has jurisdiction to hear and determine; and

(b) the need for the Board to be comprised of both males and females so qualified by knowledge and experience that the Board is capable of exercising the jurisdiction and performing the functions conferred on it;

3. **Acting members**

(1) Where a member is unable, whether on account of illness or otherwise, to perform the duties of office, the Governor in Council may appoint an eligible person to act as that member during the period of inability.

(2) Where a person has been appointed to act as a member during the period of inability of a member and that member ceases to hold office without having resumed the performance of the duties of office, the period of appointment of the person so appointed is deemed to continue until the appointment is terminated by the Governor in Council or until the expiration of the period of
twelve months after the date on which the member ceases to hold office, whichever first occurs.

(3) A person appointed to act as a member while so acting—

(a) has all the powers and may perform all the duties of the member for whom that person is acting; and

(b) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council.

(4) Where a person has been appointed to act as a member and the appointment to act as such expires (whether by reason of the effluxion of time or of the fact that the member for whom that person is acting has resumed the performance of the duties of the office or the relevant vacancy has been filled) at a time when the acting member is engaged in the hearing of any matter by the Board, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Board.

4. Removal of President from office

(1) The Governor in Council may suspend or remove the President from office.

(2) If the President engages in Victoria or elsewhere in paid employment outside the duties of the office of President without the approval of the Governor in Council the office of President becomes vacant.

5. General provisions as to members

(1) The Governor in Council may in the instrument of appointment of a person as a member specify terms and conditions of appointment.

(2) The Governor in Council may, on the recommendation of the Minister made after consultation with the President remove or suspend any member other than the President from office.

(3) A member may resign from the office of member by writing signed by the member and delivered to the Governor in Council.
(5) If any member—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of a member; or

(d) is removed from office or resigns; or

(f) dies—

the office held by that member becomes vacant.

(6) If the appointment of any member expires at a time when that member is engaged in the hearing of any matter by the Board, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Board.
SCHEDULE 2

PROVISIONS WITH RESPECT TO THE PROCEDURE OF THE BOARD

1. Board to sit in divisions

(1) The jurisdiction, powers and duties conferred or imposed upon the Board may be exercised by divisions of the Board.

(1A) A division consists of—

(a) in the case of—

(i) a review under section 93G(3) (interstate transfer); or

(ii) a review under section 30(1)(b) (yearly review); or

(iii) a review under section 30(1)(a) of the extending of a community treatment order under section 14(6)—

either 1 member or 3 members selected by the President; or

(b) in any other case, 3 members selected by the President.

(1B) The size of a division in the case of a review referred to in sub-clause (1A)(a) is to be determined by the President.

(2) In the case of a division consisting of 3 members—

(a) one member who is to be the chairperson of the division must be a barrister and solicitor of the Supreme Court of not less than eight years' standing; and
(b) one member must be a registered medical practitioner who is a psychiatrist but not the authorized psychiatrist of any approved mental health service where the division is to sit; and

(c) one member must be a person appointed to the Board to represent the views and opinions of members of the community.

(2A) A division of 1 member must consist of a person having any 1 or more of the qualifications set out in sub-clause (2)(a), (b) and (c).

(3) In selecting the members of a division of 3 members the President must have regard to—

(a) the desirability of constituting divisions of both males and females and of different age groups; and

(b) the nature of the matter to be considered by that division; and

(c) the need for the members of that division to have appropriate knowledge and experience.

(4) The President may act as a member of a division, and, if the President fulfils the requirements of sub-clause (2)(a) may act as the chairperson of a division.

2. Procedure of divisions

(1) Unless clause 3 applies, a matter arising for determination by a division is to be determined by a majority of votes of the members of the division.

(2) An act or decision of a division is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the selection of that person as a member of a division or, in the case of a person appointed to act as a member under clause 3 of Schedule 1, on the ground that the occasion for so acting had not arisen or had ceased.

(3) Subject to this Act and the regulations, the procedure of a division is in its discretion.

3. Determination of questions of law by divisions

(1) Where a question of law arises in proceedings before a division of 3 members the chairperson of that division must determine the question.
(2) Where a question of law arises in proceedings before a division of 1 member who is not eligible to act as a chairperson of a 3 member division, the member must refer the question to a member who is eligible to act as a chairperson of a 3 member division for determination.

4. Directions as to arrangement of business and procedure

(1) The President after consultation with the other members of the Board may give directions as to—

(a) the arrangement of the business of the Board; and

(b) the procedure of the Board.

(2) The President may by instrument of delegation delegate to a member any power or function of the President under this Act other than this power of delegation.

5. Sittings of the Board

(1) The Board is to sit—

(a) at such times as the President determines; and

(b) at the approved mental health service where the patient is detained unless the President determines otherwise.

(2) The President may determine that there is to be a special sitting of the Board in the case of an emergency.

5A. Powers of the Board

The Board has power to—

(a) order that any person who in the opinion of the Board ought to be a party in any proceedings be added as a party or substituted for a party; and

(b) order that any person who in the opinion of the Board is not a proper or a necessary party in any proceedings cease to be a party; and

(c) adjourn the hearing of any proceedings—

(i) to any time and place; and

(ii) for any purpose; and

(iii) on any terms as to costs or otherwise—

Sch. 2 cl. 3(2) inserted by No. 42/1993 s. 32(2)(c).

Sch. 2 cl. 4 amended by No. 32/1990 s. 31(a).

Sch. 2 cl. 4(2) inserted by No. 32/1990 s. 31(b).

Sch. 2 cl. 5(1)(b) amended by No. 98/1995 s. 61(b).

Sch. 2 cl. 5A inserted by No. 32/1990 s. 31(c).
as the Board considers necessary or just in the circumstances; and

(d) reserve its decision in any proceedings to a date to be advised by the Board; and

(e) make an order that operates at a date after the making of the order as is specified in the order.

6. Determination of the Board

(1) A determination of the Board must be in writing and signed by the member or members of the Board who constituted the division that made the determination.

(2) Where one or more of the members who constituted a division of 3 members is or are unavailable for the purpose of signing a determination made by that division, any other member or members of that division may sign the determination and that determination has the same force and effect as if it had been signed by all the members who constituted the division that made the determination.

(3) The production in any proceedings of a document purporting to be a copy of a determination made by the Board and purporting to be signed by a member or members of the Board is conclusive evidence of the due making and existence of the determination.

7. Power to amend determination

The Board may at any time of its own motion or on the application of any person, make a determination correcting a determination made by the Board where there is in the determination—

(a) a clerical mistake or an error arising from any accidental slip or omission; or

(b) any evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the determination.
SCHEDULE 3

PROVISIONS WITH RESPECT TO THE CONSTITUTION,
MEMBERS AND PROCEDURES OF THE PSYCHOSURGERY
REVIEW BOARD

1. Constitution of Psychosurgery Review Board

(1) The Psychosurgery Review Board is to consist of
5 members appointed by the Governor in Council on the
recommendation of the Minister.

(2) The Governor in Council is to appoint one of the members
as chairperson and another as deputy chairperson.

2. Nomination of members

(1) The membership of the Psychosurgery Review Board is to
be made up of both males and females and consist of—

(a) a person who is, or is eligible to be, admitted as a
barrister and solicitor of the Supreme Court; and

(b) a person who is a neurosurgeon nominated by the
Royal Australasian College of Surgeons; and

(c) a person who is a psychiatrist nominated by the
Minister; and

(d) a person who is a psychiatrist nominated by the Royal
Australian and New Zealand College of Psychiatrists;

(e) a person who is a member of the public nominated by
the Victorian Council for Civil Liberties Inc.

(2) The Minister is to recommend the members to be appointed
under sub-clause (1)(b), (1)(d) and (1)(e) after the Minister
has considered panels of names of persons each containing
five names submitted by the appropriate body or
organization to the Minister at the invitation of the Minister.

(3) A submission made under sub-clause (2) is to be made in
writing so as to reach the Minister on or before the date
determined by the Minister as the last date for that
submission.

(4) The failure of a body or organization to submit a panel of
names of persons in accordance with this clause does not
preclude the Minister from making a recommendation under
clause 1.
3. **Alternate members**

(1) The Minister must include with the recommendation of a member the name of a person to be appointed by the Governor in Council as an alternate member to act during the absence or illness of that member.

(2) A person to be appointed as an alternate member must hold the same qualifications and be nominated in the same manner as the member for whom the alternate member is to act.

(3) An alternate member has all the powers and may perform all the duties of the member for whom the alternate member is acting.

4. **Terms and conditions of office of members and alternate members**

(1) Each member of the Psychosurgery Review Board—

(a) holds office for a period of four years; and

(b) is eligible for re-appointment at the end of the term of office; and

(c) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(d) is not in respect of the office of member subject to the provisions of the **Public Sector Management and Employment Act 1998**.

(2) In the case only of the first appointment of the members of the Psychosurgery Review Board—

(a) 3 of the members so appointed are to hold office for a term of two years from their respective appointments; and

(b) 2 of the members so appointed are to hold office for a term of four years from their respective appointments—
but thereafter all appointments are to be for a term of four years.

(3) An alternate member of the Psychosurgery Review Board—

(a) holds office for the same period as the member for whom the alternate member is to act; and

(b) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(c) is not in respect of the office of alternate member subject to the provisions of the Public Sector Management and Employment Act 1998.

5. General provisions as to members and alternate members

(1) The Governor in Council may in the instrument of appointment of a person as a member or alternate member specify terms and conditions of appointment.

(2) The Governor in Council may on the recommendation of the Minister remove or suspend any member or alternate member from office.

(3) A member may resign from the office of member or alternate member by writing signed by the member or alternate member and delivered to the Governor in Council.

(5) If any member or alternate member—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of a member or alternate member; or

(d) is removed from office or resigns; or
(f) dies—

the office held by that member or alternate member becomes vacant.

6. Procedure of Psychosurgery Review Board

(1) The Psychosurgery Review Board must sit at such times as the chairperson determines.

(2) Meetings of the Psychosurgery Review Board are to be presided over by the chairperson or if the chairperson is absent by the deputy chairperson.

(3) At a meeting of the Psychosurgery Review Board, 4 members constitute a quorum.

(4) Subject to the presence of a quorum, a matter arising for determination by the Psychosurgery Review Board can be determined by a majority of votes of the members present.

(5) An act or decision of the Psychosurgery Review Board is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the case of an alternate member on the ground that the occasion for so acting had not arisen or had ceased.

(6) Subject to this Act and the regulations, the procedure of the Psychosurgery Review Board is in its discretion.
SCHEDULE 5

PROVISIONS WITH RESPECT TO COMMUNITY VISITORS

1. Community visitors

(1) Each community visitor—

(a) is to hold office for a period of three years; and

(b) is to be eligible for re-appointment at the end of the term of office; and

(c) is entitled to be paid such fees and travelling and other allowances as are from time to time fixed by the Governor in Council; and

(d) is not in respect of the office of community visitor subject to the provisions of the Public Sector Management and Employment Act 1998.

(2) A person cannot be appointed as a community visitor if that person—

(a) holds any appointment or employment with the Department; or

(b) has a direct interest in any contract with the Department or an approved mental health service; or

(c) has any financial interest in a private hospital.

(3) In nominating persons for appointment as community visitors for a region the Minister must as far as practicable nominate an equal number of males and females.

(4) At least one of the persons for the time being appointed as community visitors for a region must be a registered medical practitioner.
(5) Any three community visitors for a region constitute a panel of community visitors for that region.

2. **General provisions as to community visitors**

   (1) The Governor in Council may, in the instrument of appointment of a person as a community visitor, specify terms and conditions of appointment.

   (2) The Governor in Council may on the recommendation of the Minister remove a community visitor from office and in the case of a community visitor who is a registered medical practitioner appoint a person who is a registered medical practitioner as the replacement.

   (3) A person may resign from the office of community visitor by writing signed by that person and delivered to the Governor in Council.

   (5) If a community visitor—

   (a) becomes bankrupt; or

   (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

   (c) becomes incapable of performing the duties of the office of community visitor; or

   (d) is removed from office or resigns from office; or

   (f) dies—

   the office of that community visitor becomes vacant.

   * * * * * * *
Mental Health Act 1986

Sch. 6

Act No. 59/1986

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Sch. 7 amended by No. 50/1988 s. 93(1), repealed by No. 32/1990 s. 33(h).
ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 28 November 1985

Legislative Council: 26 March 1986

The long title for the Bill for this Act was "A Bill to provide for the care, treatment and protection of persons who are mentally ill, to establish a Mental Health Review Board, to define the role of the Department of Health with respect to mental health, to repeal the Mental Health Act 1959 and for other purposes."

The Mental Health Act 1986 was assented to on 3 June 1986 and came into operation as follows:

2. Table of Amendments

This reprint incorporates amendments made to the Mental Health Act 1986 by Acts and subordinate instruments as required by section 21A of the Interpretation of Legislation Act 1984.

Supreme Court Act 1986, No. 110/1986
Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

State Concessions (Amendment) Act 1987, No. 48/1987
Assent Date: 15.9.87
Commencement Date: 1.12.87: Government Gazette 18.11.87 p. 3072
Current State: All of Act in operation

Intellectually Disabled Persons' Services (Amendment) Act 1987, No. 74/1987
Assent Date: 24.11.87
Commencement Date: 24.11.87: Special Gazette (No. 50) 24.11.87 p. 1
Current State: All of Act in operation

Assent Date: 24.5.88
Commencement Date: S. 15(1) on 1.10.87: s. 2(1); s. 17(1) on 1.10.87: s. 2(1A); rest of Act on 3.10.88: Government Gazette 28.9.88 p. 2898
Current State: All of Act in operation

State Superannuation Act 1988, No. 50/1988
Assent Date: 24.5.88
Commencement Date: S. 93(3) on 1.7.87: s. 2(1); s. 93(4) on 27.11.87: s. 2(2); Pt 1, Pt 6 Div. 2, s. 91 on 1.1.88: s. 2(3); rest of Act on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: All of Act in operation

Guardianship and Administration Board (Amendment) Act 1989, No. 33/1989
Assent Date: 6.6.89
Commencement Date: 6.6.89
Current State: All of Act in operation

Mental Health (General Amendment) Act 1990, No. 32/1990
Assent Date: 13.6.90
Commencement Date: Ss 1–3, 22, 31 on 9.8.90: Government Gazette 8.8.90 p. 2416; rest of Act on 1.1.91: Special Gazette (No. 68) 20.12.90 p. 1
Current State: All of Act in operation

Assent Date: 25.6.91
Commencement Date: 22.4.92: Government Gazette 15.4.92 p. 898
Current State: All of Act in operation
Mental Health Act 1986

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Public Sector Management Act 1992, No. 68/1992
Assent Date: 19.11.92
Commencement Date: S. 114(Sch. 7 items 2.1–2.9) on 24.11.92: Special Gazette (No. 62) 24.11.92 p. 1
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 24.11.92
Commencement Date: S. 36 on 22.2.93: Government Gazette 28.1.93 p. 174
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 24.11.92
Commencement Date: S. 184(Sch. 6 item 13) on 1.3.93: Special Gazette (No. 63) 27.11.92 p. 1
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Health and Community Services (General Amendment) Act 1993, No. 42/1993
Assent Date: 1.6.93
Commencement Date: Pt 4 (ss 24–32) on 1.10.93: Government Gazette 16.9.93 p. 2548
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Health and Community Services (Further Amendment) Act 1993, No. 124/1993
Assent Date: 7.12.93
Commencement Date: All of Act (except Pt 3 (ss 4–8)) on 7.12.93: s. 2(1); Pt 3 on 18.12.94: Government Gazette 15.12.94 p. 3308
Current State: All of Act in operation

Assent Date: 17.5.94
Commencement Date: Ss 1, 2 on 17.5.94: s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: All of Act in operation

Assent Date: 31.5.94
Commencement Date: S. 3(Sch. 1 items 42.1–42.3) on 7.7.94: Government Gazette 7.7.94 p. 1878—see Interpretation of Legislation Act 1984; s. 4(Sch. 2 item 55) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the Mental Health Act 1986
Legal Aid Commission (Amendment) Act 1995, No. 48/1995
Assent Date: 14.6.95
Commencement Date: Pt 1 (ss 1–3) on 14.6.95: s. 2(1); rest of Act on 14.12.95: s. 2(3)
Current State: All of Act in operation

Mental Health (Amendment) Act 1995, No. 98/1995
Assent Date: 5.12.95
Commencement Date: Ss 1, 2 on 5.12.95: s. 2(1); s. 60 on 26.5.96: Government Gazette 9.5.96 p. 1099; rest of Act on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State: All of Act in operation

Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995
Assent Date: 5.12.95
Commencement Date: 1.1.96: s. 2
Current State: All of Act in operation

Assent Date: 2.7.96
Commencement Date: Pt 2 (ss 3, 4) on 1.7.96: s. 2(2)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Legal Practice Act 1996, No. 35/1996
Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 item 58) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 26.11.96
Commencement Date: S. 18(Sch. 2 items 10.1–10.16) on 6.2.97: Government Gazette 6.2.97 p. 257
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 10.12.96
Commencement Date: 10.12.96: s. 2
Current State: All of Act in operation

Assent Date: 12.12.96
Commencement Date: S. 10(Sch. 2 item 14) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15
Current State: This information relates only to the provision/s amending the Mental Health Act 1986
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Assent Date: 17.12.96
Commencement Date: Pt 5 (s. 17) on 16.5.95: s. 2(2); Pts 1 (ss 1, 2), 3 (ss 8–15), 4 (s. 16), 6 (ss 18–36), 7 (s. 37) on 17.12.96: s. 2(1); Pt 2 (ss 3–7) on 31.12.96: s. 2(3)
Current State: All of Act in operation

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997
Assent Date: 18.11.97
Commencement Date: Ss 86–88 on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Mental Health (Victorian Institute of Forensic Mental Health ) Act 1997, No. 77/1997
Assent Date: 25.11.97
Commencement Date: Ss 3–5 on 1.1.98: s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 26.5.98
Commencement Date: S. 41 on 18.4.98: s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

(as amended by No. 12/1999)
Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 61) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Public Sector Reform (Further Amendments) Act 1999, No. 12/1999
Assent Date: 11.5.99
Commencement Date: S. 4(Sch. 2 item 9) on 11.5.99: s. 2(1)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Mental Health (Amendment) Act 1999, No. 29/1999
Assent Date: 1.6.99
Commencement Date: Ss 1–3 on 1.6.99: s. 2(1); rest of Act on 1.6.00: s. 2(3)
Current State: All of Act in operation
Mental Health Act 1986

Assigned Date: 8.6.99
Commencement Date: S. 26 on 1.1.00; s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Guardianship and Administration (Amendment) Act 1999, No. 40/1999

Health Services (Governance) Act 2000, No. 39/2000

Assent Date: 6.6.00
Commencement Date: S. 13 on 30.6.00: Special Gazette (No. 88) 23.6.00 p. 11
Current State: This information relates only to the provision/s amending the Mental Health Act 1986


Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 50) on 1.6.01; s. 2(2)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986


Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 81) on 15.7.01; s. 2
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

Corrections (Custody) Act 2001, No. 45/2001

Assent Date: 27.6.01
Commencement Date: S. 44 on 1.3.02; s. 2(2)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986
Mental Health Act 1986

Act No. 59/1986


Assent Date: 25.9.01
Commencement Date: Ss 12–15 on 1.2.02: s. 2(2)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986


Assent Date: 9.4.02
Commencement Date: S. 51 on 10.4.02: s. 2(1); ss 36–48 on 1.7.02: s. 2(3)
Current State: This information relates only to the provision/s amending the Mental Health Act 1986

This reprint does not include amendments made to the Mental Health Act 1986 by the following Act/s. For these amendments see the Appendix.


Assent Date: 4.11.98
Commencement Date: S. 16 not yet proclaimed
Current State: This information relates only to the provision/s amending the Mental Health Act 1986
3. Explanatory Details

i S. 64(1)(c)–64(2):
S. 64(1)(c) repealed by No. 42/1988 s. 15(4)(b).
S. 64(2) inserted by No. 42/1988 s. 15(4)(c), repealed by No. 98/1995 s. 37(7).

ii Ss 68, 69:
S. 68 amended by No. 110/1986 s. 140(2), repealed by No. 42/1988 s. 15(5).
S. 69 repealed by No. 42/1988 s. 15(5).

iii Pt 5 Div. 6: Section 49 of the Mental Health (Amendment) Act 1995, No. 98/1995 reads as follows:

49. Transitional provision—amenities accounts

1) As soon as practicable after the commencement of this section, the senior officer of a psychiatric in-patient service (within the meaning of the Principal Act as in force immediately before the commencement of section 4 of this Act) or an approved mental health service must pay any amount held in the patients' amenities account established in the Patients Trust Account of that service to the Trust Fund.

2) In this section, "Trust Fund" means the trust fund known as the Psychiatric Illness and Intellectual Disabilities Donations Trust Fund, which was established as the Mental Health Donations Trust Fund by declaration of trust dated 11 July 1956.

iv S. 95(2) (repealed): The amendment proposed by section 184(Sch. 6 item 13) of the Employee Relations Act 1992, No. 83/1992 is not included in this publication, because section 95(2) was repealed before this amendment came into operation.
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*See also Community treatment orders; Patients' rights; Appeals and reviews; Interstate application and arrangements; Mentally ill offenders*

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