
CHAPTER 230
MENTAL HEALTH

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CHAPTER 230

MENTAL HEALTH

An Act to make fresh provision for the care and treatment of mentally disordered persons and with respect to their property and affairs and for purposes connected therewith.

*16 cf 1969
E L A O, 1974
5 cf 1987
9 cf 1991
25 cf 1995
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30 cf 2008*

[Commencement 28th July, 1969]

**PART I
PRELIMINARY**

1. This Act may be cited as the Mental Health Act. Short title.
2. (1) In this Act, unless the context otherwise requires — Interpretation.
 - “hospital” means any hospital, clinic or other institution which, with the approval of the Minister, provides medical treatment for mental disorder;
 - “medical practitioner” means a person registered under the provisions of the Medical Act; Ch. 224.
 - “medical treatment” includes nursing and also includes care and training under medical supervision;
 - “mental disorder” means mental illness, arrested or incomplete development of the mind, psychopathic disorder and any other disorder or disability of mind, and “mentally disordered” shall be construed accordingly;
 - “Minister” means the Minister responsible for Medical, Nursing and Health Services; E L A O, 1974
 - “patient” means a person suffering from or appearing to be suffering from mental disorder;
 - “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible

conduct on the part of the patient, and requires or is susceptible to medical treatment;

“responsible medical officer” means, in relation to any patient detained in hospital, the medical officer having charge of the case and treatment of the patient therein;

“severe subnormality” (otherwise known as severe mental retardation) means a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature or degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be so incapable when of an age to do so;

“subnormality” (otherwise known as mental retardation) means a state of arrested or incomplete development of mind (not amounting to severe subnormality) which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other special care or training of the patient.

(2) Nothing in this section shall be construed as implying that a person may be dealt with under this Act as suffering from any form of mental disorder by reason only of promiscuity or other immoral conduct.

3. (1) Nothing in this Act shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital in pursuance of arrangements made in that behalf with his consent and without any application, order or direction rendering him liable to be detained under this Act, or from remaining in any hospital in pursuance of such arrangements after he has ceased to be liable to be so detained.

(2) In the case of an infant who has attained the age of sixteen years and is capable of expressing his own wishes, any such arrangement may be made, carried out and determined notwithstanding any right of custody or control vested by law in his parent or guardian.

Informal
admission of
patients.

PART II
COMPULSORY ADMISSION TO HOSPITAL

4. (1) A patient may be admitted to a hospital and there detained for the period allowed by this section in pursuance of an application (in this Act referred to as an application for admission for observation) made in the prescribed form and in accordance with the provisions of this section.

Admission for
observation

(2) Subject to the provisions of section 8 of this Act, every application for admission for observation shall be founded upon the written recommendation of two medical practitioners including in each case a statement that in the opinion of the practitioner —

- (a) the patient is suffering from mental disorder of a nature or degree which warrants the detention of the patient under observation (with or without other medical treatment) for at least a limited period; and
- (b) the patient ought to be so detained in the interest of his own health or safety or with a view to the protection of other persons:

Provided that in any Out Island District, in any case where it is impracticable to obtain the evidence of more than one medical practitioner, an application for admission for observation may be founded upon the written recommendation of one such practitioner and of the Commissioner of that Out Island District.

(3) Subject to the provisions of section 8 of this Act, a patient admitted to hospital in pursuance of an application for admission for observation may be detained for a period not exceeding twenty-eight days beginning with the day on which he is admitted but shall not be detained thereafter unless, before the expiration of that period, he has become liable to be detained by virtue of a subsequent application, order or direction under any of the following provisions of this Act.

5. (1) A patient may be admitted to hospital and there detained for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as an application for admission for treatment) made in the prescribed form and in accordance with the provisions of this section.

Admission for
treatment

(2) Every application for admission for treatment shall be founded upon the written recommendation in the prescribed form of two medical practitioners including in each case a statement that in the opinion of the practitioner the patient —

- (a) is suffering from mental disorder being —
 - (i) in the case of a patient of any age, mental illness or severe subnormality; or
 - (ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality,

and that the said disorder is of a nature or degree which warrants the detention of the patient in a hospital for medical treatment; and

- (b) that it is necessary in the interests of a patient's health or safety or for the protection of other persons that the patient should be so detained.

(3) Every such recommendation by a medical practitioner shall include such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of subsection (2) of this section and a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) thereof, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

(4) An application for admission for treatment, and any recommendation given for the purposes of such application may describe the patient as suffering from more than one of the forms of mental disorder referred to in subsection (2) of this section.

(5) An application for admission for treatment founded on a recommendation that the patient is suffering from psychopathic disorder or subnormality only in terms of paragraph (b) of subsection (2) of this section shall state upon the face of it the age of the patient, or if his exact age is not known to the applicant, shall state that the patient is believed to be under the age of twenty-one years.

6. (1) Subject to the provisions of this section an application for admission for observation or treatment of a patient may be made either by the nearest relative of the

General
provisions as to
applications

patient or by an officer authorised in writing by the Minister (hereinafter referred to as an “authorised officer”).

(2) An application shall not be made by an authorised officer except after consultation with the person, if any, appearing to be the nearest relative of the patient unless it appears to that officer that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(3) No application for the admission of any patient shall be made by any person unless that person has seen the patient within the fourteen days ending with the date of the application.

7. (1) The recommendations required for the purposes of this Part of this Act shall be signed on, or not more than seven days before, the date of the application and shall be given by practitioners who have personally examined the patient either together or at an interval of not less than seven days.

General provisions as to medical recommendations

(2) The medical recommendations required for the purposes of this Part of this Act shall be given by practitioners whose names appear upon the register kept by the Bahamas Medical Council.

5 cf 1987, Sch

(3) A medical recommendation shall not be given for the purposes of this Part of this Act by any of the following persons —

- (a) the applicant;
- (b) a partner of the applicant or of a practitioner by whom a medical recommendation is given for the purposes of the same application;
- (c) an assistant of the applicant or of any such partner as aforesaid;
- (d) a person who receives or has any interest in the receipt of any payment made on account of the maintenance of the patient; or
- (e) the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient, or of a practitioner by whom another medical recommendation is given for the purposes of the same application.

Admission for
observation in
cases of
emergency

8. (1) Notwithstanding the preceding provisions of this Part of this Act, in any case of urgent necessity an application for admission for observation may be made in respect of a patient in accordance with the following provisions of this section.

(2) An application under this section may be made by the nearest relative of the patient or by an officer authorised in writing by the Minister or by some justice of the peace in any Out Island District. Every such application shall include a statement that it is of urgent necessity for the patient to be admitted to hospital and there detained.

(3) An application under this section may be founded in the first instance upon one only of the medical recommendations required by section 4 of this Act, and, in any case in any Out Island District where a competent medical practitioner is not available, it shall be sufficient if that medical recommendation is attached to the application at the first available opportunity, not being later than the time of first admission of the patient to hospital thereunder.

(4) An application made under this section shall authorise the admission and detention of the patient for a period of seventy-two hours only and shall cease to have effect upon the expiration of that period, unless within that period the second medical recommendation required by section 4 of this Act is given and received by the medical officer in charge of the hospital where the patient is detained, in which case the application shall thereafter be deemed to be an application for admission for observation made in respect of that patient under the provisions of that section.

Applications in
respect of
patients already
in hospital

9. (1) An application for the admission of a patient to hospital may be made under this Act —

- (a) in any case notwithstanding that the patient is already an in-patient in that hospital, not being liable to be detained under the provisions of this Act;
- (b) in the case of an application for admission for treatment, notwithstanding that the patient is for the time being liable to be detained in the hospital in accordance with a previous application for his admission for observation;

and where any application is made in such a case the patient shall be treated for the purposes of this Part of this Act as if he had been admitted to the hospital on the date of such application.

10. An application duly made under this Part of this Act shall be sufficient authority for the Minister or any person authorised by him or for the applicant to take the patient and convey him to the hospital and for the medical officer in charge of the hospital to receive and detain the patient therein in accordance with the provisions of this Act.

Effect of applications

11. Subject to the provisions of this Part of this Act, any application for admission of a patient to hospital for observation or for treatment shall be deemed to date from and to take effect upon the day of the admission of that patient into hospital thereunder.

Effective date of application for admission

PART III GUARDIANSHIP

12. (1) A patient may be received into guardianship for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as a guardianship application) made in the prescribed form and in accordance with the provisions of this section.

Guardianship application

(2) Every guardianship application shall be founded on the written recommendation in the prescribed form of two medical practitioners including in each case a statement that in the opinion of the practitioner the patient —

- (a) is suffering from mental disorder being —
 - (i) in the case of a patient of any age, mental illness or severe subnormality; or
 - (ii) in the case of a patient under the age of twenty-one years, psychopathic disorder or subnormality;

and that the said disorder is of a nature or degree which warrants the reception of the patient into guardianship; and
- (b) that it is necessary in the interests of the patient's health or safety, or for the protection of other persons that the patient should be so received.

(3) The provisions of subsections (3) and (4) of section 5 of this Act shall apply in every case of a guardianship application as they apply in the case of an application for admission for treatment.

(4) The person named in a guardianship application may be any person including the applicant himself but any person other than the applicant who is named as a prospective guardian shall be served with a copy of such application at least seven clear days before the effective date of the application.

(5) No guardianship application shall be made in any case unless and until —

- (a) the written approval of the Minister or of a person authorised by him has been given with respect to the person named in that application as the prospective guardian of the patient; and
- (b) the written consent of the prospective guardian, if other than the applicant, has been furnished to the Minister.

Effect of
guardianship
application

13. (1) A guardianship application duly made under this Part of this Act shall, subject to the provisions of any regulations made by the Minister under this Act, confer upon the person named therein as guardian, to the exclusion of any other person, all such powers as would be exercisable by him in relation to the patient if he was the father of the patient and the patient was under the age of fourteen years.

(2) Where a patient is received into guardianship in pursuance of an application made under section 12 of this Act, any previous application by which he was subject to guardianship or liable to be detained in a hospital shall cease to have effect.

Regulations as to
guardianship

14. (1) Subject to the provisions of this Part of this Act, the Minister may make regulations for regulating the exercise by guardians of patients received into guardianship under this Part of this Act of their powers as such and for imposing upon such guardians such duties as he considers necessary or expedient in the interests of the patients.

(2) Regulations under this section may, in particular, make provision for requiring the patient to be visited, on

such occasions and at such intervals as may be prescribed, by any officer of the Department of Health and shall provide for the appointment in every case of a medical practitioner to act as the nominated medical attendant of the patient.

15. Subject to the provisions of this Part of this Act, every guardianship application shall be deemed to date from and take effect upon the day when the patient is received into guardianship thereunder.

Effective date of application

**PART IV
TREATMENT AND LEAVE OF ABSENCE**

16. For the purpose of advising whether an application to the Mental Health Review Tribunal should be made by or in respect of any patient who is liable to be detained or subject to guardianship under the provisions of this Act or of furnishing information as to the condition of a patient for the purpose of such an application, any medical practitioner authorised by or on behalf of the patient or other person entitled to make the application or by the nearest relative of the patient may, at any reasonable time, visit the patient and examine him in private and may require the production of, and may inspect, any medical records relating to the treatment of the patient in the hospital in which he is detained.

Visiting and examination of patients

17. (1) If at any time it appears to the medical officer responsible for any patient detained in a hospital under an application for admission for treatment or subject to guardianship under a guardianship application, that the patient is suffering from a form of mental disorder other than the form or forms specified in the application, he may furnish to the Minister a report to that effect; and unless the Minister in any such case otherwise directs, the application shall thereupon have effect as if that other form of mental disorder were specified therein.

Reclassification of patients

(2) Where a report is furnished under the provisions of subsection (1) of this section in respect of a patient who has attained the age of sixteen years, the medical officer shall cause the patient and his nearest relative to be informed and the nearest relative to be supplied on request with a copy of the report.

Leave of absence
from hospital

18. (1) The responsible medical officer may, subject to any general or special directions of the Minister, grant to any patient who is for the time being liable to be detained in a hospital under the provisions of this Act, leave to be absent from the hospital subject to such conditions, if any, as that officer considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions for any specified period, and where leave is granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(3) Where it appears to the responsible medical officer that it is necessary to do so, he may upon granting leave of absence under this section direct that the patient remain in custody during his absence, and where leave of absence is so granted, the patient may be kept in the custody of any officer on the staff of the hospital or of any other person authorised in writing by the responsible medical officer.

(4) In any case where a patient is absent from a hospital with leave under the provisions of this section, the responsible medical officer may, if he considers it necessary to do so, revoke the leave of absence and recall the patient to the hospital by notice in writing given to the patient or to any person for the time being in charge of the patient.

Correspondence
of patients

19. (1) A postal packet addressed to a patient detained in a hospital under Part II or Part VI of this Act may be withheld from the patient if, in the opinion of the responsible medical officer after examination thereof, the receipt of the packet would be calculated to interfere with the treatment of the patient or to cause him unnecessary distress; and any such packet so withheld shall, if the name and address of the sender are sufficiently identified therein, be returned to him by post.

(2) Subject to the provisions of this section, any postal packet addressed by a patient so detained and delivered by him for dispatch may be withheld from the Post Office if—

- (a) the addressee has given written notice to the responsible medical officer requesting that communications addressed to him by that patient should be withheld; or

- (b) it appears to that officer that the packet would be unreasonably offensive to the addressee or is defamatory of other persons (other than persons on the staff of the hospital) or would be likely to prejudice the interests of the patient:

Provided that this subsection shall not apply to any postal packet addressed to the Minister, to any member of the Senate or the House of Assembly, to an officer of the Supreme Court or to any member of the Mental Health Review Tribunal.

- (3) This section shall apply in the case of any patient received into guardianship under Part III of this Act and in any such case the powers of the responsible medical officer shall be exercisable by the guardian of that patient.

20. (1) When it appears to the responsible medical officer that it would be for the benefit of any patient who is liable to be detained in hospital under the provisions of this Act, or that it is necessary for the purpose of obtaining special treatment for any such patient, that he should be temporarily transferred to and maintained in another hospital, the responsible medical officer may, with the consent of the Minister or of a person authorised by the Minister, arrange for the transfer of the patient accordingly.

Temporary transfer of patient

- (2) The responsible medical officer shall, if possible, cause the nearest relative of any patient temporarily transferred under the provisions of this section to be informed at the earliest opportunity of the transfer.

21. (1) Where a patient who is for the time being liable to be detained in a hospital under the provisions of this Act absents himself from the hospital without leave, or fails to return to the hospital at the expiration of any period of leave granted under section 18 of this Act or upon being recalled thereunder, or absents himself from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that section, he may be taken into custody and returned to that hospital or place by any person authorised in writing by the Minister or by any peace officer.

Patients absent without leave

- (2) Where any patient who is for the time being subject to guardianship under the provisions of this Act absents himself without the leave of his guardian from the

place at which he is required by the guardian to reside, he may be taken into custody and returned to that place by any peace officer or by the guardian or by any person authorised in writing by the Minister.

PART V
DURATION OF DETENTION OR GUARDIANSHIP
AND DISCHARGE

Duration of
authority

22. (1) Subject to the provisions of this Part of this Act, a patient admitted to hospital under an application for admission for treatment or subjected to guardianship under a guardianship application may be detained in hospital or kept under guardianship, as the case may be, for a period not exceeding one year from the date of such application, but shall not be so detained or kept for any longer period unless the authority for his detention or guardianship is renewed under the provisions of this section.

(2) It shall be the duty of the responsible medical officer in the case of a patient detained in hospital and of the nominated medical attendant of a patient under guardianship to examine the patient within the period of two months ending on the day when the authority for his detention or guardianship would normally expire; and if it appears to him to be necessary in the interests of the patient's health or safety or for the protection of other persons that the patient should continue to be liable to detention or subject to guardianship, he shall furnish the Minister with a report to that effect.

(3) The Minister may, upon consideration of any report furnished under subsection (2) of this section, renew the authority for detention or for guardianship, as the case may be, for —

- (a) a period of one further year from the expiration of the period referred to in subsection (1) of this section; and
- (b) a period of two further years at a time after the expiration of the period referred to in paragraph (a) of this subsection.

Discharge of
patients

23. (1) The Minister may at any time order the discharge of any patient who is liable to be detained in hospital pursuant to an application for admission for

observation or for admission for treatment or who is subject to guardianship under the provisions of this Act and the Minister shall discharge any patient in respect of whom a report is furnished under subsection (3) of this section.

(2) The responsible medical officer in the case of any patient who is liable to be detained in hospital, whenever he becomes satisfied that the patient has sufficiently recovered to enable him to be discharged forthwith, shall so discharge him and shall furnish a report to the Minister that he has done so.

(3) It shall be the duty of the nominated medical attendant of any patient subject to guardianship whenever he becomes satisfied that the patient has sufficiently recovered to enable him to be discharged forthwith to furnish a report to the Minister and to the guardian to that effect.

(4) The nearest relative of any patient detained in hospital under an application for admission for treatment may apply to the Minister at any time for the discharge of that patient, but every such application shall be accompanied by a written undertaking in the prescribed form, signed by such relative, that the patient will, if discharged, receive proper care and will be prevented from doing injury to himself or to other persons.

24. (1) For the purposes of this Part and any preceding Part of this Act “nearest relative” means the first named of the following, that is to say, husband or wife, son or daughter, father, mother, brother or sister, grandparent, grandchild, uncle or aunt, nephew or niece of any patient, any such relationship being traced either through the whole blood or the half blood, but relationship of the same degree through the whole blood being preferred before that of the half blood.

Nearest relative

(2) For the purpose of determining the nearest relative of any patient, adopted children shall be reckoned as natural children, but any relative who is an infant or who is not ordinarily resident within The Bahamas shall be disregarded. A husband or wife who is permanently separated from the patient, whether or not by agreement or under the order of any court, shall also be disregarded for that purpose.

(3) The Chief Magistrate or any stipendiary and circuit magistrate may, upon application being made to him by any relative of a patient specified in this section, or by any person authorised by the Minister, in any case of doubt or difficulty, direct, upon sufficient grounds being shown, that such applicant be treated for the time being as the nearest relative of that patient for the purposes of this Act.

(4) Where any order has been made under the provisions of subsection (3) of this section, the Chief Magistrate or a stipendiary and circuit magistrate may, upon fresh application being made on sufficient grounds, vary or discharge any such order and may make such further orders as appear just and necessary in the circumstances.

PART VI

ADMISSION AND TREATMENT OF PERSONS CONCERNED IN CRIMINAL PROCEEDINGS

Powers of court
to make hospital
order

25. (1) Where —

(a) a person is —

(i) convicted in the Supreme Court of an offence other than an offence the sentence for which is fixed by law; or

(ii) convicted by a magistrate of an offence punishable on summary conviction by imprisonment; or

(iii) charged before a magistrate with an act or omission punishable as an offence on summary conviction by imprisonment and the magistrate is satisfied that such person did the act or made the omission charged; and

(b) the judge or magistrate is satisfied by the oral or written evidence of two medical practitioners that —

(i) such person is suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; and

(ii) the mental disorder is of a nature or degree which warrants the detention of such person in hospital for treatment; and

- (c) the judge or magistrate is of the opinion having regard to all the circumstances including the nature of the offence and the character and antecedents of such person and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section;

the judge or magistrate may by a hospital order authorise the admission of that person to, and his detention in, such hospital as is specified in the order and may specify in the order the period during which such person should be so detained, which shall not be longer than the sentence of imprisonment which the judge or magistrate could have imposed for the offence with which such person was charged.

(2) Where a hospital order has been made under this section, the judge or magistrate shall not impose any punishment in respect of the offence but may make any other order which the judge or magistrate has power to make apart from this section.

(3) Of the medical practitioners whose evidence is received in accordance with subsection (1) of this section at least one shall be a practitioner having special experience in the diagnosis and treatment of mental disorder.

26. (1) A hospital order made under this Part of this Act shall be sufficient authority for —

Effect of hospital order

- (a) the Superintendent of Prisons, a peace officer or any other person directed to do so by the judge or magistrate, to convey the person named in the order to the hospital specified therein; and
- (b) the medical officer in charge of the hospital, to admit him to the hospital and to detain him therein in accordance with the provisions of this Act.

(2) A person admitted to hospital in pursuance of a hospital order shall be treated for the purposes of Parts IV and V of this Act as if he were a patient admitted under an application for admission for treatment except that —

- (a) if the period of his detention is specified in the hospital order he may be detained for the whole of that period;

E.L.A.O., 1974

- (b) the power to discharge such person shall be exercisable only by the Minister who shall not be obliged to discharge any such person; and
- (c) the power to grant leave of absence shall be exercisable only with the prior consent of the Minister in each case.

(3) Where a person is admitted to hospital under a hospital order, any previous application by which he was liable to be detained in hospital under the provisions of this Act, and any guardianship application made in relation to such person, shall cease to have effect.

Appeal against hospital order.

27. Any person who is aggrieved by a hospital order made in respect of himself or any child or young person of whom he is parent or guardian, may appeal against the hospital order in the same manner as if the order were a sentence of imprisonment passed on his conviction of the offence with which he was charged by the judge or magistrate who made the order.

Remand for observation.

28. (1) If a judge of the Supreme Court or any magistrate is of the opinion that a person who is charged before him with any offence, may be, or is alleged to be suffering from mental disorder, he may remand such person to a hospital for observation, investigation and treatment for any period not exceeding fourteen days, and on making any such order shall adjourn the proceedings for that period and may subsequently extend such period by further periods of seven days at a time, provided that the total period of remand does not in any case exceed forty-two days.

Ch. 91.

(2) If the Superintendent of Prisons is of the opinion that any person who has been committed for trial under section 127 of the Criminal Procedure Code Act or committed for sentence under section 214 of that Act is or may be suffering from mental disorder, he may apply to a magistrate to have that person remanded to a hospital, and upon any such application any magistrate may remand such person to a hospital for observation, investigation and treatment for the period or periods specified in subsection (1) of this section and such person shall stand committed for trial or sentence to the sessions of the Supreme Court next following the expiration of such period or periods.

29. (1) If the Minister is satisfied from the written report of any two medical practitioners that a person who is serving a sentence of imprisonment imposed upon him after conviction of any offence, or a child or young person who is detained in an industrial school under the provisions of the Children and Young Persons (Administration of Justice) Act, is suffering from mental disorder and that the nature and degree of the mental disorder warrants his detention in a hospital for treatment, the Minister may, with the consent of the appropriate Minister, by transfer order, direct that such person be removed to and detained in a hospital.

Removal of persons serving sentence of imprisonment or detained in industrial school

Ch 97

(2) A person who is admitted to a hospital in pursuance of a transfer order shall be treated for the purposes of Parts IV and V of this Act as if he were a patient admitted under an application for admission for treatment except that —

- (a) he may be detained in the hospital for the whole unexpired period for which he has been sentenced to imprisonment or ordered to be detained as the case may be;
- (b) the power to discharge such person shall be exercisable only by the Minister who shall not be obliged to discharge any such person; and
- (c) the power to grant leave of absence shall be exercisable only with the prior consent of the Minister in each case.

E L A O, 1974

PART VII
MENTAL HEALTH REVIEW TRIBUNAL

30. (1) There shall be a Mental Health Review Tribunal which shall consist of five members appointed by the Minister one of whom shall be appointed Chairman thereof.

Establishment and membership of Mental Health Review Tribunal
E L A O, 1974

(2) At least two members of the Tribunal shall be medical practitioners and at least one member shall be a person admitted to practise as counsel and attorney of the Supreme Court and at least one member shall be a person having experience in administration or social service or such other experience as the Minister considers suitable.

25 *cf* 1995, s 2
and Sch

(3) Members of the Tribunal shall hold office for a period not exceeding three years and shall be eligible for reappointment:

Provided that in the event of a casual vacancy occurring in the membership of the Tribunal any person appointed to fill such vacancy shall hold office for the remainder of the period for which the previous member was appointed.

Applications to
Mental Health
Review Tribunal

31. An application may be made to the Mental Health Review Tribunal by or in respect of a patient who is liable to be detained or received into guardianship under this Act in any of the following cases namely —

- (a) where any patient has been admitted to a hospital in pursuance of an application for admission for treatment, within the period of six months from the date of such application or from the day on which he attains the age of sixteen years, whichever is the later;
- (b) where any patient is received into guardianship in pursuance of a guardianship application, within the period of six months beginning with the date of such application or with the day on which he attains the age of sixteen years whichever is the later;
- (c) where a report in respect of any patient has been furnished to the Minister under section 17 of this Act, within the period of twenty-eight days from the making of that report, unless the Minister has directed that such report shall not take effect; and
- (d) where the authority for detention or guardianship of any patient has been renewed by the Minister under section 22(3) of this Act, within the period of six months from the date of such renewal.

Powers of Mental
Health Review
Tribunal

32. Where application is made to the Mental Health Review Tribunal under the provisions of this Part of the Act, and the Tribunal are satisfied that —

- (a) the patient is not at the date of the hearing thereof suffering from mental illness, psychopathic disorder, subnormality or severe subnormality; or

- (b) it is not necessary in the interest of the patient’s health or safety or for the protection of other persons that the patient should continue to be liable to be detained or to remain under guardianship as the case may be,

the Tribunal shall recommend to the Minister that the patient should be discharged and the Minister shall act in accordance with that recommendation.

33. (1) The Minister may make rules with respect to the proceedings of the Mental Health Review Tribunal, as to all matters concerning the practice and procedure thereof, and may by any such rules provide for the remuneration and allowances to be paid to the members of the Tribunal.

Rules of procedure and appeals.

(2) Any person aggrieved by the decision of the Mental Health Review Tribunal given or made upon any application before it, may appeal to the Supreme Court within such time and in such manner as may be prescribed by rules made under section 76 of the Supreme Court Act.

Ch. 53.

**PART VIII
MANAGEMENT OF PROPERTY AND AFFAIRS OF
PATIENT**

34. (1) A judge of the Supreme Court shall have jurisdiction under this Part of this Act where, after considering medical evidence, he is satisfied that a person is incapable by reason of mental disorder, of managing or administering his property and affairs; and any such person is in this Part of this Act referred to as a patient.

Persons within jurisdiction of the court.

(2) Application may be made by any person related by blood or marriage to the person alleged to be incapable, or by any person authorised in that behalf by the Minister, for the exercise by a judge of the Supreme Court of his jurisdiction under this Part of this Act and such jurisdiction shall be exercised in accordance with rules made under section 76 of the Supreme Court Act.

Ch. 53.

35. A judge may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient for —

General functions of judge regarding property of patient.

- (a) the maintenance or other benefit of the patient;

- (b) the maintenance or other benefit of members of the patient's family;
- (c) making provision for other persons or purposes for whom or for which the patient might be expected to provide if he was not mentally disordered; or
- (d) otherwise for administering the patient's affairs.

Powers of judge
as to patient's
property and
affairs

36. A judge shall have power to make such orders and give such directions and authorities as he thinks fit for the purposes of section 35 of this Act and, in particular, may for those purposes make orders or give directions or authorities for —

- (a) the control and management of any property of the patient;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient;
- (e) the carrying on by a suitable person of any profession, trade or business of the patient;
- (f) the dissolution of a partnership of which a patient is a member;
- (g) the carrying out of any contract entered into by the patient;
- (h) the conduct, subject to the supervision of an officer of the court, of legal proceedings in the name of the patient or on his behalf;
- (i) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts or for the maintenance or other benefit of the patient or members of his family; and
- (j) the exercise of any power vested in the patient whether beneficial or otherwise, subject to the supervision of an officer of the court.

Power to appoint
receiver

37. (1) A judge may by order appoint as receiver for a patient a person specified in the order or the holder for the time being of an office so specified; and the receiver shall do all such things in relation to the property and affairs of

the patient as the judge, in the exercise of the powers conferred upon him by this Part of this Act, orders or directs him to do and may do any such thing in relation thereto as the judge, in the exercise of those powers, authorises him to do.

(2) A receiver appointed for any person shall be discharged by order of a judge on the judge being satisfied that the person has become capable of managing and administering his property and affairs and may be discharged by order of the judge at any time if the judge considers it expedient to do so; and a receiver shall be discharged (without any order) on the death of the patient.

38. (1) Where the property of any person has been disposed of under this Part of this Act and under his will or any codicil thereto or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would, but for the disposal, have taken an interest in that property, he shall take the like interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and, if the property disposed of was real property, any property representing it shall be treated as if it were real property so long as it remains part of his estate.

Preservation of interest in patient's property.

(2) A judge may give such directions as appear to him necessary or expedient for giving effect to the operation of subsection (1) of this section.

(3) Where the judge has ordered, directed or authorised the expenditure of money for carrying out permanent improvement on, or for the permanent benefit of, any property of the patient, he may order that the whole or any part of such expenditure shall be a charge upon the property, with or without interest, in favour of such person as may be just or in favour of any person as a trustee for the patient and such order may provide for excluding or restricting the operation of subsection (1) of this section:

Provided that a charge created under this subsection shall not confer any right of sale or foreclosure during the lifetime of the patient.

PART IX GENERAL

Application for
property of
mentally
disordered
person found
wandering.

39. Any movable property which may be in the possession of a mentally disordered person found wandering at large who, after enquiry, is found to be without means of support and without any relative liable to contribute to his support, may be sold by order of a magistrate, and the proceeds thereof, or such part of the sum as may be necessary, applied towards payment of the charge of the lodging and maintenance of such person and of any other expenses incurred on his behalf.

Enforcement of
costs of
maintenance.

40. (1) The Supreme Court, on the application of the Minister and on being satisfied that any person detained in a hospital in accordance with the provisions of this Act has property which may be applied towards his maintenance or that any person is legally bound to maintain the patient and has sufficient means to enable him to do so, may make an order for the recovery of the cost of the maintenance of the patient, together with the costs of the application, out of the property of the patient or from such person.

(2) An order made under the provisions of this section shall be of the same force and effect and subject to the same appeal as a judgment or order made by the court in any civil proceedings respecting the property of the person therein named.

Offences against
patients.

41. (1) Any medical practitioner, attendant, nurse, servant or other person employed in a hospital who ill-treats or wilfully neglects any patient, shall be guilty of an offence and, on summary conviction, shall be liable to a fine of six hundred dollars or imprisonment for two years or to both such fine and imprisonment.

30 cf 2008, s 2

(2) Any person who has unlawful sexual intercourse with any mentally disordered person under care or treatment in a hospital or on leave of absence therefrom, or with any mentally disordered person subject to his guardianship or otherwise in his care or custody under this Act, is guilty of an offence and liable on conviction on information to imprisonment for life.

(3) Any person who attempts to have unlawful sexual intercourse with any mentally disordered person under care or treatment in a hospital or on leave of absence therefrom or with any mentally disordered person subject to his guardianship or otherwise in his care or custody

under this Act, is guilty of an offence and liable on conviction on information to imprisonment for life.

(4) If, on the trial of any person for the offence of rape, the court or jury is satisfied that the accused person is not guilty of rape but guilty of an offence under subsection (2) or subsection (3) of this section, the court or jury may acquit him of rape and find him guilty of the latter offence. *30 cf 2008, s 2*
9 cf 1991, s 38 and Sch

(5) It shall be a defence to any charge of an offence under the provisions of this section for an accused person to show that he did not know and had no reason to suspect the person with whom he had, or attempted to have, unlawful sexual intercourse to be a mentally disordered person. *9 cf 1991, s 38 and Sch*

42. (1) Any person who —

- (a) otherwise than in accordance with the provisions of this Act, wilfully detains in a hospital any person who is, or is alleged to be, mentally disordered; or
- (b) for gain, detains in any place not being a hospital two or more mentally disordered persons,

Penalty for improper detention.

shall be guilty of an offence and liable on summary conviction to a fine of six hundred dollars or imprisonment for two years or to both such fine and imprisonment.

(2) No prosecution under this section shall be instituted except by or with the consent of the Attorney-General.

43. (1) No person who has made application for the detention or reception into guardianship of any person, or signed or carried out, or done any act with a view to signing or carrying out, an order purporting to be an order made under the provisions of this Act or any report, application, recommendation or certificate purporting to be made under this Act, or has done anything or given any advice in a professional capacity in pursuance of this Act, shall be liable to any civil or criminal proceedings in any court in respect thereof whether on the ground of want of jurisdiction or otherwise, unless he has acted in bad faith or without reasonable care. Protection of person administering Act.

(2) No such proceedings shall be brought against any person in any court without the leave of the court, and leave shall not be granted unless the court is satisfied that there is substantial ground for supposing that the person

against whom it is sought to bring the proceedings has acted in bad faith or without reasonable care.

Regulations.

44. The Minister may make regulations for the better carrying into effect of all or any of the purposes or provisions of this Act and, in particular, may by such regulations provide for —

- (a) powers and duties of responsible medical officers and other persons employed in hospitals;
- (b) the appointment, discharge, powers and duties of nominated medical attendants for patients subject to guardianship;
- (c) the forms required for giving effect to the provisions of this Act, and of any such regulations;
- (d) the books and records to be kept in hospitals;
- (e) the conditions and circumstances under which mechanical means or restraint or seclusion may be applied to any patient;
- (f) the fees to be charged under this Act; and
- (g) the amounts which may be charged for the maintenance of patients.