



ELIZABETHAE SECUNDAE REGINAE

No. 2 of 1974

An Act relating to the Treatment and Care of mentally ill persons and to their property and affairs; to amend the Prisons Act 1958–1969 in certain particulars and The Inebriates Institutions Acts 1896 to 1968 in a certain particular; and for connected purposes

[ASSENTED TO 2ND APRIL, 1974]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short title and commencement. (1) This Act may be cited as the *Mental Health Act 1974*.

(2) Subject to subsection (13) of section 14, this Act shall commence on a day to be fixed by Proclamation.

2. Arrangement of Act. This Act is arranged as follows:—

PART I—PRELIMINARY;

PART II—ADMINISTRATION;

PART III—ADMISSION AND DETENTION OF PATIENTS GENERALLY,
AND REMOVALS TO PLACES OF SAFETY;

Division I—Informal Admissions;

Division II—Regulated Admissions;

Division III—Removals to Places of Safety;

PART IV—PATIENTS CONCERNED IN CRIMINAL AND LIKE
PROCEEDINGS;

PART V—TRANSFER, LEAVE OF ABSENCE, AND DISCHARGE OF
PATIENTS;

PART VI—MISCELLANEOUS AND GENERAL;

SCHEDULES

3. Repeals and amendments. (1) The Acts specified in the First Schedule are repealed and in this Act are referred to as “the repealed Acts”.

(2) (a) The *Prisons Act* 1958–1969 is amended as and to the extent indicated in Part A of the Second Schedule.

(b) That Act as so amended may be cited as the *Prisons Act* 1958–1974.

(3) (a) *The Inebriates Institutions Acts* 1896 to 1968 are amended as and to the extent indicated in Part B of the Second Schedule.

(b) Those Acts as so amended may be cited as the *Inebriates Institutions Act* 1896–1974.

4. Savings and transitional. (1) Without limiting in any respect the operation of the *Acts Interpretation Act* 1954–1971—

(a) unless otherwise provided by this Act, all persons who immediately prior to the commencement of this Act held office under the repealed Acts shall be deemed to have been appointed to their respective offices under and for the purposes of this Act, and, subject to this Act, shall continue to hold those offices respectively in terms of their appointment without further or other appointment under this Act;

(b) subject to subsection (2) and the Third Schedule, all proceedings initiated, pending, or part heard under the repealed Acts or a provision of the *Prisons Act* 1958–1969 repealed or amended by this Act shall be continued, if practicable, as if such proceedings had been taken or initiated under this Act, but if it is not practicable so to apply this Act, then such proceedings shall continue according to the provisions of the repealed Acts or the said *Prisons Act*, as the case may be, which shall for that purpose respectively be deemed to continue in force notwithstanding the repeal thereof or be deemed to continue in force as if such provision as aforesaid was not repealed or amended.

(c) unless otherwise expressly provided, every register, book, record, order, notice, warrant, report, arrangement, consent, application, medical recommendation, determination, declaration, certificate, approval or act of authority whatsoever kept, made, given, issued, done or otherwise originated under the repealed Acts and subsisting immediately prior to the

commencement of this Act shall, so far as it is consistent with this Act, continue in force for the purpose of this Act, but subject to this Act, as fully and effectually as if it had originated under the provisions of this Act, and shall, where necessary, be deemed to have so originated;

- (d) the care, protection, administration, and management of the estate or any part of the estate of any person which immediately prior to the commencement of this Act was exercised by the Public Curator, or a committee of the estate of such person, or a guardian, receiver, or other person, under the repealed Acts, may continue to be exercised by the Public Curator, committee, guardian, receiver, or other person as aforesaid so far as practicable under and subject to the provisions of this Act, but if in any case it is not so practicable, then under and subject to the provisions of the repealed Acts which shall for that purpose be deemed to continue in force notwithstanding the repeal thereof;
- (e) without derogating from the provisions of the *Prisons Act 1958-1969*, all persons lawfully in custody or detained in or removed to any prison, security patients' hospital, hospital or other place whatsoever under any of the provisions of the repealed Acts immediately prior to the commencement of this Act shall be deemed to be lawfully in custody or detained under and in accordance with the provisions of this Act unless this Act otherwise provides;
- (f) where in any other Act or law or rule—
 - (i) reference is made to a "person of unsound mind", or to an "insane person", or to a "person not of sound mind", or to a "lunatic", or to a "mentally ill person", or to any like term or expression, such reference shall where necessary for the purpose of applying this Act be read as a reference to a patient within the meaning of this Act;
 - (ii) reference is made to a "mental hospital" or a "special hospital", such reference shall be deemed to be a reference to a psychiatric hospital or, as the case may be, a training centre under and for the purposes of this Act.

(2) The transitional provisions set out in the Third Schedule shall have effect for the purposes of the transition to the provisions of this Act from the law in force in relation to certain classes of persons before the commencement of this Act.

5. Interpretation. (1) In this Act, unless the contrary intention appears—

- "authorized person", in relation to a patient, means a person who is appointed as such under and in accordance with the regulations;
- "Deputy Director" means the Deputy Director of Psychiatric Services appointed in accordance with section 10: The term includes any person who for the time being occupies the office or performs the duties of the Deputy Director;
- "Director" means the Director of Psychiatric Services appointed or deemed to be appointed under and for the purposes of this Act: The term includes any person who for the time being occupies the office or performs the duties of the Director;

- “ Director-General ” has the same meaning as it has in the *Health Act 1937-1973*;
- “ hospital ” means a private hospital, a public hospital, a psychiatric hospital, a security patients’ hospital, a training centre, an institution within the meaning of *The Inebriates Institutions Acts 1896 to 1968* or a place established by the Governor in Council pursuant to section 16;
- “ hospital administrator ”, in relation to—
- (a) a private hospital, means the person who manages that hospital;
 - (b) a public hospital, means the Hospitals Board, person or committee, as the case may be, having the control or management of that hospital, or other person appointed to carry on and exercise the functions of a Hospitals Board;
 - (c) a psychiatric hospital, a security patients’ hospital, a training centre, a place established by the Governor in Council pursuant to section 16 or an institution, means the holder of an office for the time being or other person prescribed in respect of the hospital, training centre, place or institution as the hospital administrator and, in the absence of such holder or other person, means the person for the time being occupying the office or performing the duties of the holder or other person;
- “ medical practitioner ” means a medical practitioner or a specialist within the respective meanings of these terms in section 4 of the *Medical Act 1939-1973*;
- “ medical treatment ” includes surgical treatment, and also care and training under medical supervision;
- “ Minister ” means the Minister for Health or other Minister of the Crown who, at the material time, is charged with the administration of this Act: The term includes any Minister of the Crown who is temporarily performing the duties of the Minister;
- “ Minister for Justice ” means the Minister for Justice and Attorney-General or other Minister of the Crown for the time being occupying the office or performing the duties of the Minister for Justice and Attorney-General;
- “ patient ” means a person suffering or appearing to be suffering from mental illness;
- “ place of safety ” means any hospital (other than a security patients’ hospital) or police station, or any other suitable place the occupier of which is willing to receive temporarily a patient;
- “ police station ” includes a police office, watchhouse, and lock-up;
- “ prison ” means a prison within the meaning of the *Prisons Act 1958-1969*;
- “ private hospital ” means a private hospital within the meaning of Division XI of Part III of the *Health Act 1937-1973* in relation to which a licence under that Division XI is in force;
- “ psychiatric hospital ” means a hospital, an institution or premises established or deemed to have been established under this Act as a psychiatric hospital;

- “psychiatrist” means a medical practitioner registered under the *Medical Act 1939–1973* as a specialist with respect to the specialty of psychiatry, and whose name remains upon the Register of Specialists, Queensland, with respect to such specialty;
- “public hospital” means a hospital within the meaning of the *Hospitals Act 1936–1971* and in relation to which Part III of that Act applies;
- “responsible medical practitioner”—in relation to
- (a) patients liable to be detained in a public hospital and classified under the regulations made pursuant to the *Hospitals Act 1936–1971* as public patients, means a medical practitioner appointed by the hospital administrator;
 - (b) patients liable to be detained in any hospital or other place not being a public hospital or a private hospital, means a medical practitioner appointed by the Director;
 - (c) patients admitted to and for the time being remaining in a psychiatric hospital or a training centre or any other place established by the Governor in Council pursuant to section 16 and not liable to be detained therein, means a medical practitioner appointed by the Director;
 - (d) any other patient, means the medical practitioner for the time being in charge of the treatment of the patient;
- “Schedule” means Schedule to this Act;
- “security patients’ hospital” means a security patients’ hospital within the meaning of the *Prisons Act 1958–1969*: The term includes any place established under section 16 in substitution for a security patients’ hospital as aforesaid;
- “stipendiary magistrate” has the same meaning as in the *Justices Act 1886–1973*;
- “the Supreme Court” includes a Circuit Court;
- “training centre” means a centre or premises established or deemed to have been established under this Act as a training centre;
- “treatment”, in relation to a patient, includes any form of treatment, including observation, examination and medical treatment, and care and, where necessary, training, education, supervision, social rehabilitation, help and advice;
- “Tribunal” means a Mental Health Review Tribunal constituted under section 14;
- “welfare”, in relation to a patient, means health or safety or both health and safety.

(2) For the purposes of this Act, drug dependence and mental retardation are forms of mental illness.

(3) For the purposes of this Act, a person is deemed not to have attained any age referred to in this Act until the commencement of the relevant anniversary of the date of his birth.

6. Construction and application of this Act. This Act shall be construed and applied—

- (a) so that any private hospital is not compelled to admit any patient;

- (b) so as not to prevent any patient who is in need of care and treatment for mental illness from receiving the same in pursuance of arrangements made in that behalf and, subject to considerations for the patient's own welfare or the protection of others, with no more legal formality or restriction of liberty than is applied to people who need care and treatment because of other types of illness, disability, or social difficulty; and
- (c) so that in the case of any patient the compulsory powers relating to detention conferred by this Act are exercised for the purposes only of the patient's own welfare or the protection of others.

PART II—ADMINISTRATION

7. Administration of Act. This Act shall be administered by the Minister, and, subject to the Minister, by the Director-General, and, subject as aforesaid, by the Director.

8. Annual report. The Director-General shall annually (in accordance with any determination by the Minister as to the time of the furnishing thereof) make and furnish to the Minister a report on his administration under this Act, and such report shall be laid before Parliament within fourteen sitting days after such publication if Parliament is in Session, and if not, then within fourteen sitting days after the commencement of the next Session.

9. Director-General. (1) The Director-General, in addition to the functions, powers and duties conferred or imposed upon him by this Act, may from time to time visit and inspect every hospital with or without previous notice and at any time of the day or night as he thinks fit, and may at any time make or cause to be made such inspections, investigations, and inquiries as he deems necessary for the purpose of administering this Act, and shall make or cause to be made such inspections, investigations and inquiries as are directed by the Minister or by this Act.

(2) The Director-General, for the purpose of any inspection, investigation or inquiry made by him under this Act, has and may exercise all the powers, authorities, protection and jurisdiction of a commission of inquiry, as well as of a chairman and of a member of a commission of inquiry, under *The Commissions of Inquiry Acts 1950 to 1954*.

10. Director, Deputy Director, and other officers. (1) The Governor in Council may appoint under and for the purposes of this Act a Director of Psychiatric Services who shall be paid a salary at such rate as the Governor in Council determines from time to time.

(2) In addition to the functions, powers and duties conferred or imposed upon the Director by this Act, he has also, without limiting the provisions or operation of section 9, the functions, powers and duties conferred or imposed upon the Director-General pursuant to subsection (1) of that section, and the provisions of subsection (2) of that section, with necessary adaptations, apply and extend with respect to the Director accordingly.

(3) The Governor in Council may appoint a Deputy Director of Psychiatric Services and such other officers as he considers necessary for the effectual administration of this Act.

The Deputy Director and other officers as aforesaid shall be appointed and hold their respective offices under and in accordance with the *Public Service Act 1922-1973*.

(4) The person who immediately before the commencement of this Act holds the office of Deputy Director shall, subject to the *Public Service Act 1922-1973*, continue to hold the office of and to be the Deputy Director for the purposes of this Act.

(5) Where the Director is unable through absence, illness, or other cause to exercise and discharge his functions, powers and duties under this Act, or in the event of a vacancy occurring in the office of Director and until a new Director is appointed, then, and in any such case, the Deputy Director may exercise and discharge all and any such functions, powers and duties; and where both the Director and the Deputy Director are so unable through absence, illness or other cause, or in the event of vacancies occurring concurrently in the offices of Director and Deputy Director and until a new Director or Deputy Director is appointed or new Director and Deputy Director are appointed, the Governor in Council may appoint a person to exercise and discharge the functions, powers and duties of the Director for the time being.

11. Delegation by Director. (1) The Director, with the prior approval of the Minister, may, either generally or otherwise as provided by the instrument of delegation, by instrument in writing under his hand, delegate to any person all or any of his functions, powers and duties under this Act as may be specified in the instrument (other than this power of delegation).

(2) A function, power or duty, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed in accordance with the terms of the delegation by the delegate to whom the exercise or performance thereof has been delegated.

(3) A delegation may be made subject to such conditions or such limitations as to the exercise or performance of any of the functions, powers or duties delegated or as to time, place or circumstances as may be specified in the instrument of delegation.

(4) Where the exercise or performance of a function, power or duty of the Director is dependent upon the opinion, belief or state of mind of the Director in relation to any matter, that function, power or duty may be exercised or performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing done had been done or suffered by the Director.

(6) A delegation under this section is revocable at will and does not prevent the exercise or performance of a function, power or duty by the Director.

12. Official visitors. (1) The Governor in Council may from time to time appoint, in relation to any hospital or any part of the State, two or more official visitors, one of whom shall be a medical practitioner, and one a barrister-at-law, a solicitor, a stipendiary magistrate, or person qualified for appointment as a stipendiary magistrate.

(2) Official visitors have such functions, powers and duties as are or may be prescribed and all or any of such prescribed functions, powers and duties may differ in relation to different official visitors appointed for the same hospital or part of the State.

13. Visits by official visitors. (1) Any one or more of the official visitors shall visit every hospital to which he or they may be appointed and every hospital which by the regulations he or they is or are required to so visit once at least in every month and shall make special visits concerning the administration of this Act or particular matters at such times as the Minister or the Director-General or Director may direct. Such visits may be made without previous notice and at such hours of the day or night as the official visitor or visitors making the same thinks or think fit, or as may be required by the person directing the visit.

(2) A report shall be transmitted to the Director immediately after each visit by the official visitor or visitors who made the visit, except where the Minister or the Director-General has directed the visit, when such report shall be furnished direct to the Minister or the Director-General, as the case may be.

(3) In addition to such other inquiries which he or they may make for the purposes of the administration of this Act, an official visitor or official visitors shall make such inquiries as are prescribed.

14. Mental Health Review Tribunals. (1) The Governor in Council may from time to time by Order in Council divide or re-divide the State into regions for the purposes of this section, but until the Governor in Council so divides the State, the whole of the State shall be, and shall be deemed always to have been, a region for the purposes of this section.

(2) For each region there shall be constituted a tribunal, to be called a Mental Health Review Tribunal, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(3) Each Tribunal shall consist of not less than three and not more than five members appointed by the Governor in Council—

(a) one at least of whom shall be a barrister-at-law, a solicitor, a stipendiary magistrate or a person qualified for appointment as a stipendiary magistrate;

(b) one at least of whom shall be a medical practitioner; and

(c) the other or others of whom shall be a person or persons considered suitable by the Minister.

(4) One of the members of each Tribunal shall be appointed by the Governor in Council as chairman of the Tribunal.

(5) (a) Subject to paragraph (b) of this subsection and subsection (6) of this section, a person appointed a member of a Tribunal holds office for a term of three years and is eligible for re-appointment.

(b) A person appointed to fill a vacancy, caused otherwise than by the retirement of a member on the expiration of his term of office, holds office only for the unexpired portion of the term of the office of the member in whose place he is appointed.

(c) (i) The Minister shall, in the case of a vacancy caused by the retirement on the expiration of his term of office of a member appointed in compliance with the requirements of paragraph (b) of subsection (3), and may, in the case of a vacancy arising, in respect of such a member, from any other cause, notify, as and in such manner as may be prescribed, the Queensland Branch of the Australian and New Zealand College of Psychiatrists, or any body which in the opinion of the Minister is the successor to that body if that body ceases to exist, of such vacancy, whether existing or impending.

(ii) The Branch of the College or other body as aforesaid, as the case may be, may, within four weeks after being notified by the Minister, submit to the Minister a list of the names of three or more medical practitioners considered suitable by it for appointment to the Tribunal.

(iii) The list shall be referred by the Minister to the Governor in Council and the Governor in Council shall appoint a medical practitioner whose name appears on such list.

(iv) Where a list is not received by the Minister as and within the time provided in subparagraph (ii), the Governor in Council shall appoint such medical practitioner as he thinks fit to fill the vacancy.

(v) The provisions of this paragraph do not apply in the case of a vacancy caused by the retirement of a medical practitioner appointed pursuant to paragraph (c) of subsection (3).

(vi) The appointment of a medical practitioner in compliance with the requirements of paragraph (b) of subsection (3) shall specify that he is appointed pursuant to that paragraph of that subsection.

(6) A casual vacancy in the office of member of a Tribunal occurs if a member holding the office—

- (a) dies;
- (b) reaches the retiring age prescribed by law for a Judge of the Supreme Court;
- (c) tenders his resignation from the office, in writing, addressed to the Minister;
- (d) absents himself from three consecutive meetings of that Tribunal, without having obtained leave of absence from the Tribunal;
- (e) is removed from office by the Governor in Council; or
- (f) becomes mentally ill or is otherwise incapable of performing his duties as a member.

(7) The Governor in Council may appoint any person who is eligible for appointment as a member of a Tribunal to fill any casual vacancy, and a person so appointed, while filling the casual vacancy, is deemed to be a member.

(8) (a) A Tribunal shall meet at such times and places and conduct its business in such manner as may be prescribed or, in so far as not prescribed, as it may from time to time determine.

(b) Three members of a Tribunal, of whom the chairman shall be one, constitute a quorum and have all the powers, authorities, duties and functions of a Tribunal pursuant to this Act.

(c) In respect of any decision or determination of a Tribunal, the decision or determination of the majority of the members thereof (there being a quorum) is the decision or determination of the Tribunal.

(d) If the members of the Tribunal are equally divided in any decision or determination, the decision or determination of the chairman prevails and is the decision or determination of the Tribunal.

(9) Without derogating from the provisions of the other subsections of this section—

(a) a member of a Tribunal appointed by the Governor in Council as chairman holds office as chairman for the term of his office as a member, unless the appointment is sooner determined by the Governor in Council;

(b) where a member ceases to hold office as chairman before the expiration of the term for which he is appointed, another person, being a member or other person eligible for appointment as a member of a Tribunal, may be appointed chairman by the Governor in Council for the unexpired portion of the term of office of the member so ceasing to hold office;

(c) the chairman of a Tribunal may, by notice in writing addressed to the Minister, resign his office as chairman, and where at any time the chairman ceases to be a member, he ceases to be chairman;

(d) The Governor in Council may appoint any member of a Tribunal or other person eligible for appointment as a member to act as chairman of the Tribunal during the absence through illness or other cause of the chairman, and while so acting such member or other person shall be deemed to be the chairman for the purposes of this Act.

(10) The chairman and other members of a Tribunal shall receive such remuneration and allowances, if any, as may be prescribed.

(11) (a) The Governor in Council may by notification published in the Gazette appoint a secretary to a Tribunal and such other officers as he considers necessary for the effectual operation of the Tribunal pursuant to this Act, and may, whenever he considers it necessary, likewise appoint any person to act temporarily as secretary to the Tribunal or in the room of any other officer who is absent or for any other reason is unable to carry out his duties for the time being.

(b) Where any officer of any Department of the Government of this State is appointed to any such office, he may, if the appointment is not a full-time appointment, hold such office in conjunction with the office for the time being held by him in that Department.

(c) Unless otherwise indicated or provided, nothing in this Act shall prejudice or in any way affect the application of the provisions of the *Public Service Act 1922-1973* to an officer appointed pursuant to this subsection.

(12) The chairman and each other member of a Tribunal constituted under the repealed Acts holding office as such immediately prior to the commencement of this Act shall forthwith go out of office on the commencement of this Act but, subject to the provisions of this Act, shall be eligible for appointment to a Tribunal under this Act.

(13) (a) For the purpose of the first constitution of a Tribunal under this Act on its commencement, the Governor in Council may appoint any person to be a member thereof, including the chairman, at any time prior to such commencement, and a person so appointed shall, forthwith on the commencement of this Act, be a member (including, where applicable, the chairman) of the Tribunal to which he was so appointed.

(b) In the case of an appointment in compliance with the requirements of paragraph (b) of subsection (3), the Minister shall, for the purposes of this subsection, notify in such manner as he thinks fit the Queensland Branch of the Australian and New Zealand College of Psychiatrists of the proposed appointment and invite the Branch to submit to him within a time specified by him in the notice a list of the names of three or more medical practitioners considered suitable by it for appointment to the Tribunal.

(c) The Branch may within the time specified by the Minister submit to him a list of names as referred to in paragraph (b) and the list shall be referred by the Minister to the Governor in Council who shall appoint a medical practitioner whose name appears on the list.

(d) Where a list is not received by the Minister in accordance with this subsection, the Governor in Council may appoint such medical practitioner as he thinks fit without further reference to the Branch.

15. Powers and proceedings of Tribunals. (1) An application shall not be made to a Tribunal by or in respect of a patient save as prescribed.

(2) A prescribed application shall be made by notice in writing addressed to the Tribunal for the region in which the hospital in which the patient is detained is situated or in which the patient, if he is not an in-patient, is residing, and subject thereto shall be made as prescribed.

(3) Where a prescribed application may be made within a specified period, not more than one such application shall be made within that period.

(4) Nothing in this section excludes or diminishes the power of the Tribunal to make or cause to be made any examination of or inquiry in relation to a patient or to make any recommendation it considers necessary or desirable for the patient's welfare or the protection of other persons.

(5) The case of any patient liable to be detained under this Act may at any time be referred to a Tribunal by the Minister or the Director.

(6) (a) Where application is made pursuant to this Act to a Tribunal by or in respect of a patient who is liable to be detained under Division II of Part III, the Tribunal may—

(i) refuse the application; or

(ii) order the Director to discharge the patient if it is satisfied that the patient—

(A) is not then suffering from mental illness; or

(B) if released, would not be likely to act in a manner dangerous to other persons or to himself and that it is not otherwise necessary in the interests of the patient's welfare or for the protection of other persons that the patient should continue to be liable to be so detained; or

(iii) if it is satisfied as to any other matter or matters, make such recommendations to the Director as it thinks fit.

(b) Where application is made pursuant to this Act to a Tribunal with respect to any matter relating to the detention of a patient under Part IV, the Tribunal may, if it is satisfied as to any matter or matters relating to such detention, make such recommendations to the Director as it thinks fit.

(c) Every order referred to in subparagraph (ii) of paragraph (a) and every recommendation referred to in subparagraph (iii) of paragraph (a) and in paragraph (b) shall set out the matter or matters as to which the Tribunal is so satisfied.

(d) This subsection applies in relation to any reference to a Tribunal made by the Minister or the Director under this Act as it applies in relation to an application made to a Tribunal by or in respect of a patient, but any order to the Director shall be made through the Minister, and, in the case of any reference by the Minister, any recommendation with respect thereto shall be made to the Minister.

(7) With respect to any application, reference, examination or inquiry to or by a Tribunal under this Act, the Tribunal may admit, and proceed and recommend upon, such information or evidence as it thinks fit, whether the same is such as the law would require or admit in other cases or not.

(8) For the purpose of assisting an applicant in such manner as the Tribunal may determine, there may be present during any hearing of an application at least one of the following persons:—

(a) an authorized person; or

(b) the patient's nearest relative, or such other relative or relatives as the Tribunal may determine.

(9) (a) As soon as practicable after the making by the Tribunal of an order under subparagraph (ii) of paragraph (a) of subsection (6) and in any case within seven days after the receipt by him of the order, the Director shall either—

(i) direct the discharge of the patient; or

(ii) with the approval in writing of the Minister, make application in writing to a Judge of the Supreme Court for the setting aside of the order of the Tribunal.

(b) A Judge of the Supreme Court shall have jurisdiction to hear and determine the application referred to in paragraph (a).

(c) The application of the Director shall be made by filing it in the registry of the Supreme Court and by complying with any rules of court made with respect thereto.

(d) A Judge of the Supreme Court in his discretion may allow additional time specified by him for the making of an application by the Director or may refuse to allow additional time, and, where additional time is so allowed, the Director shall make his application before the expiration of that additional time.

(e) The application shall state the grounds on which the Director seeks the setting aside of the order of the Tribunal.

(f) On the making of the application, a copy of it shall be given to each of them the secretary to the Tribunal and any person who made the application to the Tribunal in the first instance.

(g) Upon being given a copy of the application, the secretary to the Tribunal shall forthwith forward to the Supreme Court registry the originals of any evidence given and transcripts of any evidence and notes

taken in the proceedings before the Tribunal, or true copies thereof certified as such by the secretary to the Tribunal, as well as certified true copies of any resolution, direction, decision or other writing of or in the possession of the Tribunal relevant to the matter of the application.

(h) A Judge of the Supreme Court before whom the application is heard may make such order or determination with respect to the application as he thinks fit and such order or determination shall be final and binding on the Director and the Tribunal and all other persons concerned.

(i) Until rules of court are made regulating the practice and procedure of the Supreme Court for the purpose of giving full effect to this subsection or in so far as rules of court do not extend, a Judge of the Supreme Court may give directions with respect to practice and procedure on the application and in relation to the application such directions shall have the force and effect of rules of court.

(j) Without limiting the foregoing provisions, a Judge of the Supreme Court has and may exercise with respect to an application by the Director under this subsection, with all necessary adaptations, the powers conferred by section 70 on a Judge acting in pursuance of that section.

(k) Where an application is made to a Judge of the Supreme Court by the Director under this subsection, the order of the Tribunal shall not operate to require the Director to discharge the patient pending the order or determination of the Judge hearing the application, but nothing herein contained shall preclude the Director from directing the discharge of the patient at any time.

16. Psychiatric hospitals, training centres and other places. (1) The Governor in Council may by Order in Council establish psychiatric hospitals, training centres, and such other places as he thinks fit for the purposes of this Act including any place in substitution for a security patients' hospital within the meaning of the *Prisons Act 1958-1969* in respect of a class of persons where a security patients' hospital is not in existence for the time being under that Act in respect of that class.

(2) The special hospitals established or deemed to be established under the repealed Acts and set out in column 1 of the Fourth Schedule shall, subject to subsection (4), continue and be deemed to have been established under and for the purposes of this Act as psychiatric hospitals or training centres as the case may be as specified in column 2 of the Fourth Schedule opposite and relative to the names of those special hospitals.

(3) Subject to the Minister and subject to the general administration of the Director-General, the Director is charged with the administration of psychiatric hospitals, training centres, and other places established under this section for the purposes of this Act.

(4) The Governor in Council may by Order in Council declare that—

- (a) any psychiatric hospital or part of any psychiatric hospital;
- (b) any training centre or part of any training centre;
- (c) any other place established under this section for the purposes of this Act or part of any such place

shall cease to be a psychiatric hospital, training centre or other place as aforesaid as the case may be in respect of the whole thereof or the part thereof in question, and may at any time vary or revoke any such declaration.

Every such declaration shall have effect according to its tenor.

PART III—ADMISSION AND DETENTION OF PATIENTS GENERALLY, AND
REMOVALS TO PLACES OF SAFETY

Division I—Informal Admissions

17. Informal admission of patients. (1) Nothing in this Act shall be construed as preventing a patient who is in need of treatment for mental illness—

- (a) from being admitted to any hospital other than a security patients' hospital in pursuance of arrangements made in that behalf and without any application, order or direction rendering him liable to be detained under this Act; or
- (b) where he was liable to be detained under this Act but has ceased to be so liable, from remaining in any hospital other than a security patients' hospital in pursuance of arrangements made in that behalf.

Unless otherwise indicated in this Act, a hospital administrator may refuse to make arrangements to admit a patient to, or otherwise to have or keep a patient in, a hospital.

(2) In the case of a patient who has attained the age of eighteen years and is capable of expressing his own wishes, any arrangements referred to in subsection (1) may be made, carried out or determined notwithstanding any right of custody or control vested by law in his parent or guardian.

Division II—Regulated Admissions

18. Application for admission. (1) A patient may be admitted to a hospital other than a security patients' hospital for treatment of mental illness in pursuance of an application (in this Act referred to as an application for admission) made by a relative of the patient or by an authorized person in accordance with the provisions of this section.

(2) An application for admission may be made in respect of a patient on the grounds—

- (a) that he is suffering from mental illness of a nature or degree which warrants his detention in a hospital; and
- (b) that he ought to be so detained in the interests of his own welfare or with a view to the protection of other persons.

(3) An application for admission shall be founded on the written recommendation in the prescribed form of a medical practitioner.

(4) A patient shall not be admitted under this section to a public hospital as other than a public patient as so classified under the regulations made pursuant to the *Hospitals Act 1936-1971* without the consent of the hospital administrator.

19. Applications in respect of patients already in hospital. (1) An application for admission of a patient to a hospital may be made under this Division notwithstanding that the patient is already an in-patient in that hospital, not being liable to be detained in pursuance of an application under this Division; and where an application is so made the patient shall be regarded for the purposes of this Act as having been admitted to the hospital at the time when that application was received by the hospital administrator.

(2) If, in the case of a person who is an in-patient in a hospital, not being liable to be detained therein under this Act, it appears to the medical practitioner in charge of the treatment of that patient that an application ought to be made under this Division for the admission of the patient to hospital, he may furnish to the hospital administrator a report in writing to that effect; and in any such case the patient may be detained in the hospital pursuant to that report for a period not exceeding three days from the day on which the report is so furnished.

(3) A patient shall not be detained by virtue of a report furnished under subsection (2) if at any time during the twenty-four hours preceding the furnishing of such report he has been liable to detention by virtue of a previous report furnished under that subsection.

20. Effect of application for admission. (1) An application for the admission of a patient to a hospital under this Division and the medical recommendation on which it is founded, duly completed in accordance with the provisions of this Act, shall be sufficient authority for the applicant, or any person authorized by the applicant, to take the patient and convey him to the hospital at any time within a period of fourteen days from the day on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purpose of the application.

(2) Where a medical practitioner who completes a medical recommendation in accordance with the provisions of this Act is of the opinion that the assistance of a member of the police force is necessary in taking the patient the subject of the medical recommendation, and conveying him to the hospital, he may certify as to his opinion by endorsement on the medical recommendation to that effect.

Any member of the police force to whose notice any such endorsement as aforesaid is brought may as soon as practicable take the patient and convey him or assist in taking him and conveying him to the hospital or make or cause to be made arrangements for some other member of the police force to take the patient and convey him or assist in taking him and conveying him to the hospital.

(3) It is lawful for any person acting in accordance with any authority vested in him under or pursuant to this section—

- (a) to use such force as may be reasonably necessary in taking the patient the subject of the medical recommendation and conveying him to the hospital or in assisting in taking him and conveying him to the hospital;
- (b) to enter into or upon and search any premises in or upon which the patient is or is reasonably believed to be and to use such force as may be reasonably necessary in so doing.

21. Duration of authority for detention. (1) A patient admitted to a hospital in pursuance of an application for admission may be detained there for a period not exceeding three days from the day of admission, and shall not be detained thereafter in pursuance of that application unless, before the expiration of that period, a second recommendation in the prescribed form, given by a medical practitioner who has examined the patient subsequent to such admission and who is not the medical practitioner who gave the recommendation under subsection (3) of section 18, has been received by the hospital administrator.

(2) Where a second recommendation has been so received, the patient, unless it is otherwise provided in this Act, may be detained in a hospital for a period not exceeding twenty-one days from the day of his admission, and shall not be detained thereafter in respect of the application in question unless authority for his detention is renewed in accordance with this section.

(3) Authority for the detention of a patient may, unless the patient has previously been discharged, be renewed under this section—

(a) from the expiration of the period referred to in subsection (2), for a further period not exceeding twelve months from the day of his admission;

(b) from the expiration of any period of renewal under paragraph (a), for a further period not exceeding twelve months, and so on for periods not exceeding twelve months at a time.

(4) On or before the day on which a patient who is liable to be detained in a hospital in pursuance of subsection (2) would under this section cease to be so liable in the absence of renewal of the authority for his detention, or within the period of two months ending on the day on which any period of renewal under subsection (3) would expire, as the case may be, the hospital administrator shall cause the patient to be examined by a psychiatrist, and if it appears to the psychiatrist that it is necessary in the interests of the patient's welfare or for the protection of other persons that the patient should continue to be liable to be detained, he shall furnish to the hospital administrator a report to that effect in the prescribed form.

(5) The furnishing to the hospital administrator of the report pursuant to subsection (4) constitutes the renewal of the authority for the detention in a hospital of the patient for the period pursuant to subsection (3).

(6) (a) Where the detention of the patient has been renewed pursuant to subsections (4) and (5), the hospital administrator shall cause the patient, if he has attained the age of eighteen years, and any other person prescribed to be informed of such renewal and that an application may be made to a Tribunal pursuant to this subsection.

(b) An application for the patient's discharge may be made to a Tribunal within the period for which the authority for his detention is renewed pursuant to subsections (4) and (5) by the patient or for or on behalf of the patient by any authorized person or relative, provided that in the case of an application by a relative who is not the nearest relative, the nearest relative shall be informed of the time and place of the hearing and shall be allowed to appear before the Tribunal if he so desires.

(7) In the case of a patient who is absent from the hospital on leave in accordance with the provisions relating to leave of absence of patients contained in this Act at the time when the authority for his detention would expire, the examination referred to in subsection (4) may, if the hospital administrator thinks fit, be made by a medical practitioner who is not a psychiatrist, and any report furnished to the hospital administrator relative to such examination shall have the same effect as if the examination had been made and the report had been furnished by a psychiatrist.

22. Admission applications generally. A person shall not make an application for the admission of a patient unless—

- (a) he is of or above the age of eighteen years; and
- (b) he has personally seen the patient within the period of fourteen days ending with the date of the application.

23. Medical recommendations generally. (1) Unless otherwise provided by this Act, the medical recommendation required for the purposes of an application for admission of a patient shall be signed on or before the date of the application by a medical practitioner who has personally examined the patient.

(2) Unless otherwise provided by this Act, a medical recommendation shall cease to have effect, for the purposes of an application for admission, on the expiration of fourteen days from the day of the examination to which it relates.

(3) A medical recommendation for the purposes of an application for the admission of a patient under this Act or for the purposes of subsection (1) of section 21 shall not be given by any of the following persons, that is to say—

- (a) the applicant;
- (b) a partner of the applicant;
- (c) a person employed as an assistant by the applicant;
- (d) a person who receives or has an interest in the receipt of any payments 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
 - (i) of the patient;
 - (ii) of any person referred to in paragraphs (a) to (d); or
 - (iii) in the case of a second medical recommendation given for the purposes of subsection (1) of section 21, of the medical practitioner by whom the medical recommendation has been given under subsection (3) of section 18.

(4) The following rules shall be observed in making and signing medical recommendations for the purposes of this Act:—

- (a) the medical recommendation shall be in the prescribed form;
- (b) the medical practitioner making and signing the medical recommendation shall state his qualifications in the medical recommendation;
- (c) the medical practitioner shall state the facts indicating mental illness observed by him at the examination to which the recommendation refers and such other information as may be prescribed;
- (d) the medical recommendation shall state the day or the last day on which the patient was examined;
- (e) every medical recommendation shall contain a statement that the medical practitioner making and signing the same is not prohibited by this Act from giving such medical recommendation.

(5) A medical recommendation shall not be sufficient for the purposes of this Act if it purports to be founded only upon facts communicated by others.

24. Incorrect or defective application. (1) As soon as is reasonably practicable within the period of twenty-four hours after the admission of a patient to a hospital as provided in this Division, the hospital administrator shall satisfy himself that the application for the patient's admission is sufficient to justify the detention of the patient in hospital in that such application and the medical recommendation on which it is founded comply with this Act in all respects.

(2) If the hospital administrator is not so satisfied he shall return the application and the medical recommendation to the applicant and shall notify the medical practitioner in charge of the treatment of the patient.

(3) On receipt of such notification that medical practitioner shall—

(a) if he considers the patient should continue to be detained because of mental illness, furnish to the hospital administrator a report in writing to that effect as provided in subsection (2) of section 19 and the furnishing of such report shall have the same effect as the furnishing of a report under that subsection; or

(b) if he considers the patient should not be liable to be detained because of mental illness, furnish to the hospital administrator a report in writing to that effect whereupon the patient shall be discharged.

(4) Nothing in this section shall be construed so as to deprive any person of any rights or protection conferred by this Act or by any other Act or law.

Division III—Removals to Places of Safety

25. Warrant to remove to place of safety. (1) (a) If it appears to a justice, on information by any person on oath, in the prescribed form, that there is reasonable cause to suspect that a person is mentally ill and that in the interests of that person or for the protection of other persons it is necessary to do so, the justice may issue a warrant in the prescribed form and as hereinafter provided.

(b) A justice who issues a warrant as provided in this subsection shall forthwith forward a copy of the warrant and a copy of the sworn information relied on to the clerk of the court or, if more than one, a clerk of the court in the Magistrates Court District in which the patient then is.

(2) A warrant issued under this section shall authorize and require the member of the police force to whom it is directed or any other member of the police force to remove or cause to be removed, within the period of fourteen days after the date of the warrant but as soon as practicable, the person in respect of whom the warrant is issued to a place of safety.

(3) (a) In the execution of a warrant issued under this section, the member of the police force by whom it is being executed shall be accompanied by a medical practitioner, save in a case where one is not available, and may be accompanied by an authorized person.

(b) If the medical practitioner accompanying the member of the police force informs that member in writing that in his opinion the person in respect of whom the warrant is issued is not mentally ill, such member of the police force shall not execute the warrant but he shall as soon as practicable thereafter make a report in respect of the issue of the warrant and of the reasons for its not having been executed and cause the report to be forwarded to the Director, who shall notify the clerk of the court and the justice who issued the warrant.

(c) Where the member of the police force executes a warrant and is not at the time accompanied by a medical practitioner because one is unavailable, he shall as soon as practicable thereafter make a report of the circumstances in respect of the unavailability of a medical practitioner and cause it to be forwarded to the Director.

(4) For the purpose of enabling the member of the police force to whom the warrant is directed or any other member of the police force to act in accordance with the provisions of subsection (2), the warrant shall authorize the member so acting to do or to cause to be done all or any of the following things—

- (a) to execute the warrant at any time whether by day or by night;
- (b) to call to his assistance such members of the police force, medical practitioners or other persons as he thinks fit;
- (c) to apprehend, whether in a place to which the public has access or not, the person in respect of whom the warrant is issued;
- (d) to enter, re-enter and search, if need be by force, the premises (if any) specified in the warrant and any other premises in which the member of the police force reasonably believes the person in respect of whom the warrant is issued will be found.

(5) It shall not be necessary in any information or warrant under this section to name the person the subject thereof provided that the person is otherwise sufficiently identified in such document.

26. Removal without warrant to place of safety. (1) Subject to subsection (2), a member of the police force may, without a warrant, remove from any place to a place of safety any person who appears to him to be mentally ill and in immediate need of treatment or control if that member thinks it necessary to do so in the interests of that person or for the protection of other persons.

(2) A member of the police force may remove a person from any place that is not a public place to a place of safety without a warrant in pursuance of subsection (1) only if—

- (a) he reasonably believes that the obtaining of a warrant under section 25 would involve unreasonable delay, having regard to the circumstances of the case; and
- (b) he obtains the consent of the occupier or person apparently in charge or control of that place or, where the place is the subject of more than one occupancy, the part of the place in question:

Provided that such consent shall not be necessary where such occupier or person apparently in charge or control is the person the subject of the removal or where the occupier or person apparently in charge or control does not appear to the member of the police force to be readily identifiable or available.

(3) For the purposes of this section the term "public place" includes every road and also every place of public resort open to or used by the public as of right: The term also includes—

- (a) any vessel, vehicle, train, bus, building, room, licensed premises, field, ground, park, reserve, garden, wharf, pier, jetty, bridge, platform, market, passage, or other place for the time being used for a public purpose or open to access by the public by the express or tacit consent or sufferance of the owner, and whether the same is or is not at all times so open;
- (b) any vacant land or any premises at any material time unoccupied; and
- (c) any place declared by Order in Council to be a public place for the purposes of this section.

27. Procedure on and following removal to place of safety. (1) A person removed to a place of safety under this Division may be detained there for a period not exceeding three days from the day when he is removed to that place and shall be examined, or further examined, as soon as possible by a medical practitioner and interviewed there by an authorized person, with a view to the making of an application in respect of him under Division II or of other arrangements for his treatment.

Without derogating from any other provision of this Act, the member of the police force who removes the person to a place of safety pursuant to the provisions of this Division is deemed to be an authorized person for the purposes of the interview and of the application referred to in this subsection.

(2) (a) A person removed to a place of safety pursuant to the provisions of this Division shall be removed to a hospital in preference to any other place of safety unless a hospital is not readily accessible.

(b) Without limiting the generality of the foregoing, a hospital is deemed to be not readily accessible in a case where the hospital administrator of a readily accessible private hospital is not willing to receive the patient and also in a case where the patient is not able to be cared for in any other readily accessible hospital.

(3) (a) Subject to the provisions of subsections (1) and (2), a person conveyed to a place of safety pursuant to this Division may, during the period referred to in subsection (1), be conveyed from one place of safety to another, provided that such person shall not be detained in places of safety, if more than one, for a period, in the aggregate, in excess of the period so referred to.

(b) The power conferred by this subsection to convey a person from one place of safety to another may be exercised by—

- (i) the member of the police force who, pursuant to this Division, conveyed that person to the place of safety from which he may be conveyed under this subsection;
- (ii) any other member of the police force; or
- (iii) any other person prescribed.

(4) If a medical practitioner on examining a patient detained in a place of safety pursuant to this Division is of the opinion that the patient is not mentally ill, he shall certify in writing his opinion to this effect to the hospital administrator, manager or other person in charge or control of the place of safety, whereupon the patient shall be discharged forthwith from the place of safety and the hospital administrator, manager or other person as aforesaid shall forward to the Director a report of the circumstances of the case.

PART IV—PATIENTS CONCERNED IN CRIMINAL AND LIKE PROCEEDINGS

28. Construction of Part with The Criminal Code. Unless otherwise indicated or provided, this Part shall be read and construed with and as being in addition to and in aid of and not in substitution for or in derogation from the provisions of *The Criminal Code*.

29. Plea of not guilty may be entered in certain cases. (1) If on the trial of a person charged with an indictable offence, whether alleged to have been committed before or after the commencement of this Act, such person pleads guilty and it is alleged or appears—

(a) that he is mentally ill; or

(b) that he was or may have been mentally ill at the time when the act or omission alleged to constitute the offence occurred,

the court may if it thinks fit order a plea of not guilty to be entered on his behalf, and such plea so entered has the same effect as if it had been actually pleaded.

(2) If on the appearance for sentence of a person charged with an indictable offence, whether alleged to have been committed before or after the commencement of this Act, who has pleaded guilty before and has been ordered by justices to be committed for sentence pursuant to the *Justices Act 1886–1973* it is alleged or appears—

(a) that he is mentally ill; or

(b) that he was or may have been mentally ill at the time when the act or omission alleged to constitute the offence occurred,

the court may if it thinks fit order a plea of not guilty to be entered on his behalf, and such plea so entered has the same effect as if it had been actually pleaded, and the trial of such person shall proceed in the same manner as if he had been committed by the justices for trial and not for sentence.

30. Persons attempting to commit suicide. Where any person is charged with having attempted to kill himself and is found by two medical practitioners to be mentally ill, he shall forthwith be removed to a hospital, and, when found by two medical practitioners no longer to need to be detained on account of mental illness, he shall be discharged from detention and shall not be put upon his trial or sentenced or be liable to any charge or indictment or otherwise be held to be criminally responsible for having so attempted to kill himself.

31. Admission of prisoners to hospital for treatment. (1) (a) A person serving a sentence of imprisonment or detention for a period pursuant to the order of a court, made before or after the commencement of this Act, may be removed from a prison and admitted to a hospital for treatment for mental illness, and such an admission shall be based on an application made by an authorized person through the Comptroller-General of Prisons in accordance with the provisions of this section.

(b) For the purposes of this section an authorized person is a superintendent of a prison or such other person as may be prescribed in this respect.

(2) The application shall be founded on the written recommendation of a medical practitioner who shall be a Government medical officer or a medical practitioner appointed under the *Prisons Act 1958-1969*, and the medical recommendation shall set out the reasons why, in the opinion of the medical practitioner, the prisoner should be admitted to a hospital for treatment.

(3) The making of the application and the medical recommendation shall be in accordance with and subject to such other conditions and requirements as may be prescribed.

(4) The Comptroller-General of Prisons shall forward or deliver the application and the medical recommendation on which it is based to the Director and shall order the removal of the prisoner to such hospital as the Director, with the consent in writing of the Minister, may order in writing, and the prisoner shall be detained in such hospital accordingly until he is otherwise dealt with pursuant to this section.

(5) Within the period of three days from the day of the admission of a person to a hospital pursuant to this section he shall be examined by a psychiatrist who shall certify to the hospital administrator his opinion whether the person is mentally ill and needs to be detained in a hospital on account of mental illness. If that psychiatrist certifies that the person needs to be so detained the person shall be detained pursuant to this section, but if the psychiatrist certifies that the person does not need to be so detained the hospital administrator shall inform the Director and the Comptroller-General of Prisons and the Comptroller-General of Prisons shall cause the person to be returned to the prison from which he was admitted or to be removed to some other prison.

(6) Where it appears to the superintendent of a prison that a person referred to in subsection (1) is mentally ill and in immediate need of treatment or control of a kind that cannot be provided at that prison or at any other prison to which the prisoner could reasonably be removed, and the superintendent reasonably believes that—

(a) the obtaining, pursuant to this section, of a medical recommendation and the order of the Director in writing with the consent in writing of the Minister; or

(b) the obtaining of a medical recommendation or the order of the Director in writing with the consent in writing of the Minister would involve unreasonable delay, having regard to the circumstances of the case, he shall report immediately to the Comptroller-General of Prisons who may order the removal of the prisoner to a security patients' hospital without obtaining the medical recommendation and the order of the Director with the consent of the Minister or either of them, and the Comptroller-General of Prisons shall, on making such order for removal, report forthwith the circumstances to the Director.

(7) (a) A person removed to a security patients' hospital pursuant to subsection (6) shall as soon as possible and in any case within three days from the day of admission be examined by a Government medical officer for consideration in respect of the making of a medical recommendation as provided under subsection (2).

(b) If the Government medical officer does not make a medical recommendation and certifies to the hospital administrator his opinion that the person does not need to be detained in a hospital on account

of mental illness, the hospital administrator shall inform the Director and the Comptroller-General of Prisons and the Comptroller-General of Prisons shall cause the person to be returned to the prison from which he was admitted or to some other prison.

(c) If the Government medical officer makes a medical recommendation, the person, within a period of three days from the day of the examination to which the recommendation relates, shall be further examined by a psychiatrist who shall certify to the hospital administrator his opinion whether the person is mentally ill and needs to be detained in a hospital on account of mental illness.

(d) If the psychiatrist certifies that the person needs to be so detained, he shall be detained pursuant to this section, but if the psychiatrist certifies that the person does not need to be so detained, the hospital administrator shall inform the Director and the Comptroller-General of Prisons and the Comptroller-General of Prisons shall cause the person to be returned to the prison from which he was admitted or to some other prison.

(8) (a) A person admitted to a hospital pursuant to this section and in respect of whom a psychiatrist has certified that in his opinion the person needs to be detained in a hospital on account of mental illness shall,—

(i) unless the Comptroller-General of Prisons sooner directs his return to a prison (whereupon he shall be returned to such prison as the Comptroller-General of Prisons directs); or

(ii) unless a medical practitioner nominated by the Director sooner certifies that he does not any longer need to be detained on account of mental illness (whereupon he shall be returned to such prison as the Comptroller-General of Prisons directs),

continue to be detained in the hospital to which he was admitted or in such other hospital as the Director with the consent in writing of the Minister from time to time directs in writing for the balance of the period in respect of which the court ordered him to be imprisoned or detained less any remissions which he would have been granted had his detention continued to be in a prison, and thereupon the provisions of subsection (9) apply in respect of him.

(b) Subject to this subsection, the provisions of this Act relating to the treatment or custody of a patient apply, with all necessary adaptations, to such person.

(c) A medical practitioner referred to in subparagraph (ii) of paragraph (a) may be nominated by the Director—

(i) either generally or in respect of a particular case or class of case;

(ii) as an individual or as the holder of an office.

(d) The psychiatrist in charge of the treatment of a patient who continues to be detained in a hospital pursuant to this section shall review the patient's case at least once in every period of twelve months until the provisions of subsection (9) apply in respect of the patient and he shall make a report with respect to each such review to the Director.

(9) (a) At the expiration of the period in respect of which the court ordered a person referred to in subsection (8), not being a person within either exception specified therein, to be imprisoned or detained (or at the expiration of the period last expiring where the person is serving more than one such period), less any remissions which he would have been granted had his detention continued to be in a prison, the person shall not, by virtue of such expiration, be, or be entitled to be, discharged but, commencing on the day of such expiration, he shall be deemed—

- (i) to have been admitted to the hospital where he then is as if an application had been made pursuant to Division II of Part III and as if the authority for his detention had been renewed for a period of twelve months following such expiration; and
- (ii) to be a restricted patient as provided in section 50.

This paragraph applies subject to paragraph (b).

(b) As soon as practicable within the period commencing fourteen days before such expiration and concluding seven days after such expiration, the psychiatrist in charge of the treatment of that patient shall review the case and recommend to the Director whether the patient should be or continue to be a restricted patient and make such other recommendations to the Director as he thinks fit.

The Director shall consider the recommendations of the psychiatrist as soon as practicable after they are made to him and, as soon as practicable thereafter, shall—

- (i) determine that the patient be or continue to be a restricted patient;
- (ii) determine that the patient not be or continue to be a restricted patient and order his transfer (after such expiration of sentence as aforesaid) to another hospital if he is detained in a security patients' hospital; or
- (iii) discharge the patient from detention on the expiration of sentence as aforesaid or forthwith if his sentence has expired, and every such decision of the Director shall have effect according to its tenor.

(10) The Comptroller-General of Prisons has and may exercise, with respect to the removal of a person, pursuant to this section, from a prison to a hospital or the removal or return of a person, pursuant to this section, from a hospital to a prison, the power and authority he has under section 16 of the *Prisons Act 1958-1969* with respect to an order by him under that section.

32. Persons charged with simple offences mentally ill. (1) In this section—

- (a) "complaint" includes "information" and "charge"; and
- (b) "simple offence" means an offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment or otherwise.

(2) Where a complaint for a simple offence, whether alleged to have been committed before or after the commencement of this Act, is before justices for hearing and determination and they are satisfied, on the evidence of two medical practitioners, that the defendant is mentally ill, they may make an order (in this section referred to as a "court order") authorizing his admission to a hospital, not being a security patients' hospital, prescribed by the regulations and specified in the order.

(3) A court order is sufficient authority—

(a) for a member of the police force or for any person named for the purpose therein to convey the patient to the hospital specified in the order; and

(b) for the hospital administrator to admit the patient for treatment.

(4) The patient, on being admitted to hospital pursuant to the court order, shall be deemed to have been admitted pursuant to Division II of Part III and may be detained therein as if the authority for his detention had been renewed for a period of twelve months from the date of the court order.

(5) The justices on making a court order shall refrain from dealing further at that time with the complaint before them and shall adjourn it to a date to be fixed.

(6) Notice of the court order shall be given in the prescribed form by the clerk of the court, together with a transcript of the evidence or a copy of the depositions and a copy of all material placed before the court, to the Under Secretary, Department of Justice and to the Director as soon as possible and in any case within seven days after the making of the order.

(7) On receipt of the notice referred to in subsection (6), the Director shall arrange for the patient to be examined by a psychiatrist who, in making his examination, shall have regard to—

(a) the mental condition of the patient;

(b) any relationship between the mental illness of the patient and the alleged offence the subject of the complaint;

(c) the likely duration of the mental illness and the likely outcome of treatment;

(d) any other matter likely to assist the Governor in Council in determining, pursuant to this section, whether the hearing of the complaint against the patient should continue; and

(e) any other matter prescribed.

(8) Within such time or times as may be prescribed, the psychiatrist shall forward to the Director a report on his examination of the patient, and the Director, having regard to that report and to the matters referred to in subsection (7), shall himself make a report to the Minister for Justice for submission, with the report of the psychiatrist, to the Governor in Council.

(9) In submitting the reports of the Director and the psychiatrist to the Governor in Council, the Minister for Justice shall recommend to the Governor in Council whether the hearing of the complaint against the patient should continue.

(10) On receipt of the reports of the Director and the psychiatrist and the recommendation of the Minister for Justice, the Governor in Council may, after consideration of them,—

(a) order that the hearing of the complaint shall not proceed further, whereupon the complaint shall be deemed to be dismissed and the Minister for Justice shall cause the clerk of the court and any other person prescribed to be notified accordingly; or

(b) order, where the patient is no longer detained, or no longer need be detained, on account of mental illness, that the hearing of the complaint proceed.

(11) Where a complaint is deemed to be dismissed in accordance with paragraph (a) of subsection (10) or in accordance with subsection (15) it shall not be taken for any purpose to have been heard upon the merits.

(12) Where the Governor in Council makes an order pursuant to paragraph (b) of subsection (10)—

- (a) the Under Secretary, Department of Justice shall cause the clerk of the court to be notified accordingly and the clerk of the court shall notify in writing in the prescribed form the complainant and any other person prescribed; and
- (b) the complainant may cause to be issued and served on the patient in accordance with the provisions of the *Justices Act 1886-1973* a summons in respect of the complaint in question and such summons may be issued by the justice before whom the complaint was made or by some other justice.

(13) Nothing contained in this section operates to require the complainant to proceed with the complaint or to prevent him from informing the court that he does not intend to offer any further evidence.

(14) Where the hearing of a complaint proceeds in accordance with this section, the evidence previously heard shall be disregarded and the justices hearing the complaint shall hear the evidence *de novo*.

(15) If within three months from the date of the court order the Governor in Council has made no order under this section, the complaint shall be deemed at the expiration of that period to be dismissed.

33. Persons charged with indictable offences mentally ill upon examination of witnesses. (1) If upon an examination of witnesses by justices in respect of a person charged with an indictable offence, whether alleged to have been committed before or after the commencement of this Act, the justices—

- (a) are satisfied, on the evidence of two medical practitioners, that the defendant is mentally ill; and
- (b) are of the opinion on the examination of witnesses as aforesaid that the evidence is sufficient to put the defendant upon his trial for an indictable offence,

they shall, irrespective of what the defendant says, if anything, in answer to the charge,—

- (c) commit the defendant for trial to a criminal sittings of the Supreme Court or a District Court, as the case requires, to be determined; and
- (d) make an order (in this section referred to as a “court order”) authorizing his admission to a security patients’ hospital.

(2) If upon an examination of witnesses by justices as referred to in subsection (1)—

- (a) the justices are satisfied, on the evidence of two medical practitioners, that the defendant is mentally ill; and
- (b) it appears to the justices that the examination of witnesses cannot reasonably be completed on the day in question,

the justices shall, without making any committal in relation to the matter before them, make a court order authorizing the admission of the defendant to a security patients’ hospital.

(3) Where justices make a court order pursuant to subsection (1) or subsection (2)—

- (a) no order shall be made that relates to custody or bail; and
- (b) it shall not be necessary for witnesses examined before the justices to enter into recognizances.

(4) A court order under this section is sufficient authority—

- (a) for a member of the police force or for any person named for the purpose therein to convey the patient to the security patients' hospital; and
- (b) for the hospital administrator to admit the patient and detain him until he is otherwise dealt with pursuant to this section.

(5) Notice of the court order shall be given in the prescribed form by the clerk of the court, together with a transcript of the evidence or a copy of the depositions and a copy of all material placed before the court, to the Under Secretary, Department of Justice and to the Director as soon as possible and in any case within seven days after the making of the order.

(6) On receipt of the notice referred to in subsection (5), the Director shall arrange for the patient to be examined by a psychiatrist who, in making his examination, shall have regard to—

- (a) the mental condition of the patient;
- (b) any relationship between the mental illness of the patient and the alleged offence the subject of the charge and, in particular, the mental capacity of the patient at the time of the alleged offence, having regard to the provisions of section 27 of *The Criminal Code*;
- (c) the likely duration of the mental illness and the likely outcome of treatment;
- (d) any other matter likely to assist the Governor in Council in making a determination pursuant to this section;
- (e) any other matter prescribed.

(7) Within such time or times as may be prescribed, the psychiatrist shall forward to the Director a report on his examination of the patient, and the Director, having regard to that report and to the matters referred to in subsection (6), shall himself make a report to the Minister for Justice for submission, with the report of the psychiatrist, to the Governor in Council.

(8) In submitting the reports of the Director and the psychiatrist to the Governor in Council, the Minister for Justice shall make a recommendation to the Governor in Council concerning the continuation or otherwise of proceedings in respect of the charge against the patient.

(9) The recommendation to the Governor in Council shall be made within three months from the date of the court order.

(10) On receipt of the reports of the Director and the psychiatrist and the recommendation of the Minister for Justice, the Governor in Council may, after consideration of them,—

- (a) order that the patient be not further proceeded against in respect of the charge against him;
- (b) order that proceedings be continued against the patient forthwith; or

- (c) before making an order referred to in paragraph (a) or paragraph (b), defer a determination with respect to the matter for a period not exceeding twelve months within which period he shall further consider the matter at least once, and, before making an order as aforesaid, may after any such further consideration defer a determination for further periods not exceeding twelve months at a time, and within each such further period he shall further consider the matter at least once.

(11) The Governor in Council shall, on any deferment as referred to in paragraph (c) of subsection (10), by Order in Council specify any further medical examination of the patient and report thereon and any other report on the patient he requires, by whom or on whose nomination any such examination and report and any other such report is or are to be made and within what time, and any other information required by him with respect to the patient.

(12) Where, pursuant to subsection (10), the Governor in Council orders that the patient be not further proceeded against—

- (a) the Under Secretary, Department of Justice, shall give notice of the order to the clerk of the court, the Commissioner of Police, the Director and any other person prescribed, and the patient shall not be required to take his trial or the examination of witnesses shall not be proceeded with, as the case may be; and
- (b) the Director, on receipt of the notice referred to in paragraph (a), shall notify the psychiatrist in charge of the treatment of the patient accordingly.

(13) (a) The patient shall not, by virtue of the order of the Governor in Council that he be not further proceeded against, be, or be entitled to be, discharged but, commencing on the day of the notification to the psychiatrist, he shall be deemed—

- (i) to have been admitted to the hospital where he then is as if an application had been made pursuant to Division II of Part III and as if the authority for his detention had been renewed for a period of twelve months following such day of notification; and
- (ii) to be a restricted patient as provided in section 50.

(b) Within a period of seven days from such day of notification, the psychiatrist shall review the case and recommend to the Director whether the patient should continue to be a restricted patient and, after consideration of such recommendation as soon as practicable after it is made to him, the Director shall make a determination as soon as practicable thereafter in that respect.

(14) If the Director makes a determination that the patient not continue to be a restricted patient, he shall order the transfer of the patient to another hospital if he is detained in a security patients' hospital, and the patient shall be transferred accordingly.

(15) Where the Governor in Council orders that proceedings be continued against the patient as provided in subsection (10)—

- (a) the Under Secretary, Department of Justice, shall give notice thereof forthwith to the clerk of the court, the Commissioner of Police, the Director and any other person prescribed;

- (b) the patient shall be brought before justices as soon as possible and in any case within seven days from the date of the order of the Governor in Council, and the justices shall, in respect of the offence with which he is charged—
- (i) remand him in custody or on bail or make such other order as they think fit pursuant to the provisions of the *Justices Act 1886-1973*;
 - (ii) where he was, before or at the time of the making of the court order, committed for trial to a criminal sittings of the Supreme Court or a District Court, as the case required, to be determined, fix the committal for trial to the next criminal sittings of the Court concerned as though the examination of witnesses had just been completed by them;
 - (iii) make such order as to the binding of witnesses, examined prior to committal for trial, by recognizances as they think fit; and
 - (iv) where the examination of witnesses was not completed prior to the making of the court order, make such order or arrangements as they think fit with a view to the continuation of the examination of witnesses at a suitable time.

(16) Any member of the police force or other person prescribed is authorized to convey the patient from the security patients' hospital to appear before justices in accordance with the provisions of subsection (15).

(17) Notwithstanding any other provision of this section, where a patient has been admitted for treatment to a security patients' hospital pursuant to a court order under this section and, prior to any order or deferment by the Governor in Council in accordance with subsection (10), the Director is satisfied, on material available to him, including the report of a psychiatrist who has examined the patient in accordance with arrangements made by the Director, that the patient is no longer or is not mentally ill, he shall notify the Under Secretary, Department of Justice forthwith accordingly and thereupon the provisions of subsections (15) and (16), with all necessary adaptations, shall apply with respect thereto.

34. Persons charged with indictable offences mentally ill before examination or completion of examination of witnesses. (1) (a) Where a person who has been charged with an indictable offence, whether alleged to have been committed before or after the commencement of this Act, and who is on bail or otherwise not in custody awaiting the commencement or the continuation of the examination of witnesses by justices in respect of that charge is admitted to a hospital pursuant to Division II of Part III, he shall be deemed to be a restricted patient as provided in section 50 immediately upon the charge and admission coming to the notice of the Director.

(b) The Director shall, upon the charge and admission coming to his notice, notify the Under Secretary, Department of Justice, and the Commissioner of Police of the admission of the patient to hospital, and the Under Secretary on being so notified shall give notice of the admission to the clerk of the court at the place where the examination of witnesses by justices is to commence or continue.

(2) (a) Where a person who has been charged with an indictable offence, whether alleged to have been committed before or after the commencement of this Act, is in custody awaiting the commencement or the continuation of the examination of witnesses by justices in respect of that charge, he may be removed from his place of custody and admitted to a security patients' hospital for treatment for mental illness, and such an admission shall be based on an application made by an authorized person in accordance with the provisions of this section.

(b) For the purposes of this section an authorized person is a superintendent of a prison or such other person as may be prescribed in relation thereto in the case of a prison and, in the case of a place of custody other than a prison, is the person in charge of that place of custody or such other person as may be prescribed in relation thereto.

(c) The application shall be founded on the written recommendation of a medical practitioner who shall be a Government medical officer or a medical practitioner appointed under the *Prisons Act 1958-1969*, and the medical recommendation shall set out the reasons why, in the opinion of the medical practitioner, the person charged should be admitted to a security patients' hospital for treatment.

(d) The making of the application and the medical recommendation shall be in accordance with and subject to such other conditions and requirements as may be prescribed and, in a case where the place of custody is a prison, the application shall be made through the Comptroller-General of Prisons.

(e) The Comptroller-General of Prisons or the authorized person, as the case requires, shall forward or deliver the application and the medical recommendation on which it is based to the Director and shall order the removal of the person charged to such security patients' hospital as the Director, with the consent in writing of the Minister, may order in writing.

(f) Within the period of three days from the day of the admission of the person to a security patients' hospital, he shall be examined by a psychiatrist who shall certify to the hospital administrator his opinion whether the person is mentally ill and needs to be detained in hospital on account of mental illness. If the psychiatrist certifies that the person needs to be so detained the person shall be detained pursuant to this section, but if the psychiatrist certifies that the person does not need to be so detained, the hospital administrator shall inform the Director, the Comptroller-General of Prisons and, where the person charged was admitted from a place of custody other than a prison, the authorized person in relation thereto, and the Comptroller-General of Prisons shall cause the person charged—

(i) where he was admitted from a prison, to be returned to the prison from which he was admitted or to be removed to some other prison;

(ii) where he was admitted from a place of custody other than a prison, to be removed to a prison.

(g) Where it appears to the superintendent of the prison or the person in charge of the place of custody other than a prison, as the case requires, that a person to whom this subsection refers is mentally ill and in immediate need of treatment or control of a kind that cannot be provided at that prison or at any other prison to which the person could

reasonably be removed, or at that place of custody other than a prison, as the case may be, and the superintendent or person in charge reasonably believes that—

- (i) the obtaining, pursuant to this subsection, of a medical recommendation and the order of the Director in writing with the consent in writing of the Minister; or
- (ii) the obtaining of a medical recommendation or the order of the Director in writing with the consent in writing of the Minister

would involve unreasonable delay, having regard to the circumstances of the case, then, as the case requires—

- (iii) the superintendent shall report immediately to the Comptroller-General of Prisons who may order the removal of the person to a security patients' hospital without obtaining the medical recommendation and the order of the Director with the consent of the Minister or either of them and the Comptroller-General of Prisons shall, on making such order for removal, report forthwith the circumstances to the Director; or
- (iv) the person in charge may order the removal of the person to a security patients' hospital without obtaining the medical recommendation and the order of the Director with the consent of the Minister or either of them and he shall, on making such order for removal, report forthwith the circumstances to the Director.

(h) (i) A person removed to a security patients' hospital pursuant to paragraph (g) shall as soon as possible and in any case within three days from the day of admission be examined by a Government medical officer for consideration in respect of the making of a medical recommendation as provided under paragraph (c).

(ii) If the Government medical officer does not make a medical recommendation and certifies to the hospital administrator his opinion that the person does not need to be detained in hospital on account of mental illness, the hospital administrator shall inform the Director, the Comptroller-General of Prisons and, where the person was removed from a place of custody other than a prison, the person in charge thereof, and the Comptroller-General of Prisons shall cause the person—

- (A) where he was removed from a prison to be returned to that prison or to be removed to some other prison;
- (B) where he was removed from a place of custody other than a prison, to be removed to a prison.

(iii) If the Government medical officer makes a medical recommendation, the person, within a period of three days from the day of the examination to which the recommendation relates, shall be further examined by a psychiatrist who shall certify to the hospital administrator his opinion whether the person is mentally ill and needs to be detained in hospital on account of mental illness.

(iv) If the psychiatrist certifies that the person needs to be so detained, he shall be detained pursuant to this section, but if the psychiatrist certifies that the person does not need to be so detained the hospital

administrator shall inform the Director, the Comptroller-General of Prisons and, where the person was removed from a place of custody other than a prison, the person in charge thereof, and the Comptroller-General of Prisons shall cause the person—

- (A) where he was removed from a prison, to be returned to that prison or to be removed to some other prison;
- (B) where he was removed from a place of custody other than a prison, to be removed to a prison.

(3) (a) The Director shall, upon the admission of a person to a security patients' hospital pursuant to subsection (2) coming to his notice, notify the Under Secretary, Department of Justice and the Commissioner of Police of such admission, and the Under Secretary, on being so notified, shall give notice of the admission to the clerk of the court at the place where the examination of witnesses by justices is to commence or continue.

(b) A person who has been admitted to hospital pursuant to Division II of Part III and to whom the provisions of subsection (1) apply or who has been removed from his place of custody and admitted to a security patients' hospital pursuant to subsection (2) shall be detained in the hospital to which he has been admitted or in such other hospital as the Director with the consent in writing of the Minister for Justice directs in writing until he is otherwise dealt with pursuant to this section.

(4) Each of them the Comptroller-General of Prisons and the person in charge of a place of custody other than a prison has and may exercise, with respect to the removal of a person, pursuant to subsection (2), from a prison or place of custody other than a prison, as the case may be, to a security patients' hospital the power and authority the Comptroller-General of Prisons has under section 16 of the *Prisons Act 1958-1969* with respect to an order by him under that section, and the Comptroller-General of Prisons has and may exercise such power and authority as aforesaid under the said Act with respect to the removal or return of a person, pursuant to subsection (2), from a security patients' hospital to a prison.

(5) Subject to subsection (6), the Director, upon a charge and admission coming to his notice under subsection (1) or upon or in respect of an admission to a security patients' hospital under subsection (2), as the case may be, shall arrange for the patient to be examined by a psychiatrist who, in making his examination, shall have regard to the matters referred to in, or prescribed pursuant to, subsection (6) of section 33 as applied to this section.

(6) A psychiatrist may make an examination of a patient for the purposes of subsection (5) in conjunction with an examination made by him of that patient pursuant to paragraph (f) of subsection (2) or paragraph (h) of subsection (2).

(7) Within such time or times as may be prescribed, the psychiatrist shall forward to the Director a report on his examination of the patient made pursuant to subsection (5), and the Director, having regard to that report and to the matters referred to in that subsection, shall himself make a report to the Minister for Justice for submission with the report of the psychiatrist, to the Governor in Council.

(8) In submitting the reports of the Director and the psychiatrist to the Governor in Council, the Minister for Justice shall make a recommendation to the Governor in Council concerning the continuation or otherwise of proceedings in respect of the charge against the patient.

(9) The recommendation to the Governor in Council shall be made within three months from the admission coming to the notice of the Director under subsection (1) or within three months from the admission to a security patients' hospital under subsection (2), as the case may be.

(10) On receipt of the reports of the Director and the psychiatrist and the recommendation of the Minister for Justice, the Governor in Council may, after consideration of them,—

- (a) order that the patient be not further proceeded against in respect of the charge against him;
- (b) order that proceedings be continued against the patient forthwith; or
- (c) before making an order referred to in paragraph (a) or paragraph (b), defer a determination with respect to the matter for a period not exceeding twelve months within which period he shall further consider the matter at least once, and, before making an order as aforesaid, may after any such further consideration defer a determination for further periods not exceeding twelve months at a time, and within each such further period he shall further consider the matter at least once.

(11) The Governor in Council shall, on any deferment as referred to in paragraph (c) of subsection (10), by Order in Council specify any further medical examination of the patient and report thereon and any other report on the patient he requires, by whom or on whose nomination any such examination and report and any other such report is or are to be made and within what time, and any other information required by him with respect to the patient.

(12) Where, pursuant to subsection (10), the Governor in Council orders that the patient be not further proceeded against—

- (a) the Under Secretary, Department of Justice, shall give notice of the order to the clerk of the court at the place where the examination of witnesses by justices in respect of the charge in question was to commence or continue, the Commissioner of Police, the Director and any other person prescribed, and the patient shall not be further proceeded against in respect of the charge against him; and
- (b) the Director, on receipt of the notice referred to in paragraph (a), shall notify the psychiatrist in charge of the treatment of the patient accordingly.

(13) In the case of a patient to whom subsection (1) refers, the psychiatrist in charge of the treatment of the patient shall, within seven days from the notification referred to in paragraph (b) of subsection (12), review the case and recommend to the Director whether the patient should continue to be a restricted patient and, after consideration of such recommendation as soon as practicable after it is made to him, the Director shall make a determination as soon as practicable thereafter in that respect.

(14) (a) A patient to whom subsection (2) refers shall not, by virtue of the order of the Governor in Council that he be not further proceeded

against, be, or be entitled to be, discharged but, commencing on the day of the notification to the psychiatrist as referred to in paragraph (b) of subsection (12), he shall be deemed—

(i) to have been admitted to the hospital where he then is as if an application had been made pursuant to Division II of Part III and as if authority for his detention had been renewed for a period of twelve months following such day of notification; and

(ii) to be a restricted patient as provided in section 50.

(b) Within a period of seven days from such day of notification, the psychiatrist in charge of the treatment of the patient shall review the case and recommend to the Director whether the patient should continue to be a restricted patient and, after consideration of such recommendation as soon as practicable after it is made to him, the Director shall make a determination as soon as practicable thereafter in that respect.

(15) If the Director makes a determination that the patient not continue to be a restricted patient, he shall order the transfer of the patient to another hospital if he is detained in a security patients' hospital, and the patient shall be transferred accordingly.

(16) Where the Governor in Council orders that proceedings be continued against the patient as provided in subsection (10)—

(a) the Under Secretary, Department of Justice, shall give notice thereof forthwith to the clerk of the court at the place where the examination of witnesses by justices in respect of the charge is to commence or continue, the Commissioner of Police, the Director and any other person prescribed;

(b) the patient shall be brought before justices as soon as possible and in any case within seven days from the date of the order of the Governor in Council and the justices shall, in respect of the offence with which he is charged—

(i) remand him in custody or on bail or make such other order as they think fit pursuant to the provisions of the *Justices Act 1886-1973*;

(ii) make such order as they think fit as to the binding by recognizances of witnesses examined prior to the admission of the patient to hospital pursuant to subsection (1) or subsection (2); and

(iii) make such other order as they think fit with a view to the commencement or continuation of the examination of witnesses in respect of the charge against the patient; and

(c) neither the patient nor any surety shall suffer any detriment by reason only of the patient's failure to appear before justices in respect of the offence with which he is charged where such failure to appear has been occasioned by his admission to hospital pursuant to subsection (1) or subsection (2).

(17) Any member of the police force or other person prescribed is authorized to convey the patient from a hospital to appear before justices in accordance with the provisions of subsection (16).

(18) Notwithstanding any other provision of this section, where a patient has been admitted to a hospital pursuant to subsection (1) or subsection (2) and, prior to any order or deferment by the Governor in Council in accordance with subsection (10), the Director is satisfied, on material available to him, including the report of a psychiatrist who has examined the patient in accordance with arrangements made by the Director, that the patient is no longer or is not mentally ill, he shall notify the Under Secretary, Department of Justice forthwith accordingly and thereupon the provisions of subsections (16) and (17), with all necessary adaptations, shall apply with respect thereto.

35. Persons mentally ill after committal for trial or sentence. (1) (a) Where a person who has been committed for trial or sentence for an indictable offence, whether alleged to have been committed before or after the commencement of this Act, and who is on bail awaiting such trial or sentence is admitted to a hospital pursuant to Division II of Part III, he shall be deemed to be a restricted patient as provided in section 50 immediately upon the committal and admission coming to the notice of the Director.

(b) The Director shall, upon the committal and admission coming to his notice, notify the Under Secretary, Department of Justice, and the Commissioner of Police of the admission of the patient to hospital, and the Under Secretary, on being so notified, shall give notice of the admission to the registrar of the court at the place where the patient is to appear for trial or sentence.

(2) Where a person who has been committed for trial or sentence for an indictable offence, whether alleged to have been committed before or after the commencement of this Act, is in custody awaiting such trial or sentence, he may be removed from his place of custody and admitted to a security patients' hospital for treatment for mental illness, and such an admission shall be based on an application made by an authorized person in pursuance of this section.

(3) The provisions of paragraphs (b) to (h) of subsection (2) of section 34 and subsections (3) to (15) of that section shall, with necessary adaptations, apply and extend to and with respect to persons referred to in subsections (1) and (2) of this section as if such persons were persons respectively referred to in subsections (1) and (2) of section 34 and, in the application and extension of those provisions—

- (a) a reference in subsection (2) of section 34 to "the person charged" shall be read as a reference to "the person committed for trial or sentence";
- (b) the reference in subsection (3) of section 34 to "the clerk of the court at the place where the examination of witnesses by justices is to commence or continue" shall be read as a reference to "the registrar of the court at the place where the person is to appear for trial or sentence";
- (c) the reference in subsection (5) of section 34 to "a charge" shall be read as a reference to "a committal";
- (d) the reference to "the charge" in subsection (6) of section 33, which subsection is referred to in subsection (5) of section 34, shall be read as a reference to "the committal";
- (e) the reference in paragraph (a) of subsection (10) of section 34 to "the charge" shall be read as a reference to "the offence the subject of the committal proceedings";

- (f) the provisions of paragraph (b) of subsection (10) of section 34 shall be read as if the words "with a view to his standing his trial or appearing for sentence" occur after the word "forthwith";
- (g) the reference in subsection (12) of section 34 to—
- (i) "the clerk of the court at the place where the examination of witnesses by justices in respect of the charge in question was to commence or continue" shall be read as a reference to "the registrar of the court at the place where the patient was to appear for trial or sentence"; and
 - (ii) "further proceeded against in respect of the charge against him" shall be read as a reference to "required to take his trial or be sentenced, as the case may be".
- (4) Where the Governor in Council, pursuant to subsection (10) of section 34 as applied and extended to this section, orders that proceedings be continued against the patient forthwith with a view to his standing his trial or appearing for sentence, as the case may be,—
- (a) the Under Secretary, Department of Justice, shall give notice thereof forthwith to the registrar of the court at the place where the patient is to appear for trial or sentence, the Commissioner of Police, the Director and any other person prescribed;
 - (b) the patient shall be brought before justices as soon as possible and in any case within seven days from the date of the order of the Governor in Council, and the justices shall, in respect of the offence with which he is charged, the subject of the committal for trial or sentence, remand him in custody or on bail or make such other order as they think fit pursuant to the provisions of the *Justices Act* 1886–1973;
 - (c) subject to paragraph (b), the committal shall be treated as a committal for trial or sentence, as the case may be, at a sittings of the court in its criminal jurisdiction as soon as practicable after the date of the order of the Governor in Council and the registrar of the court shall make the necessary arrangements accordingly, and the consequences are the same in all respects and with regard to all persons as if the committal of the patient had been to the sittings as aforesaid in the first instance; and
 - (d) neither the patient nor any surety shall suffer any detriment by reason only of the patient's failure to appear for trial or sentence where such failure to appear has been occasioned by his admission to hospital pursuant to subsection (1) or subsection (2).
- (5) Any member of the police force or other person prescribed is authorized to convey the patient from a hospital to appear before justices in accordance with the provisions of subsection (4).
- (6) Notwithstanding any other provision of this section, where a patient has been admitted to a hospital pursuant to subsection (1) or subsection (2) and, prior to any order or deferment by the Governor in Council in accordance with subsection (10) of section 34 as applied and extended to this section, the Director is satisfied, on material available to him, including the report of a psychiatrist who has examined the patient in accordance with arrangements made by the Director, that the

patient is no longer or is not mentally ill, he shall notify the Under Secretary, Department of Justice forthwith accordingly and thereupon the provisions of subsections (4) and (5), with all necessary adaptations, shall apply with respect thereto.

(7) Nothing contained in this section precludes a patient from being dealt with at the sittings to which he has been committed for trial or sentence, as the case may be, in the first instance where he no longer need be detained on account of mental illness prior to the conclusion of that sittings.

36. Persons mentally ill where sections 613 and 645 of The Criminal Code applicable. (1) Where, before or after the commencement of this Act, a person indicted for an indictable offence is or has been, by reason of his having been found to be of unsound mind by a jury, ordered by the court to be kept in strict custody in a place determined by the court until he is dealt with under the laws relating to insane persons, or to be kept in custody in a place determined by the court until he can be dealt with according to law, or where, under circumstances as aforesaid, some other order to the like effect is or has been made by the court, the Minister may—

- (a) in the case of a court order made before the commencement of this Act where the person is not in a security patients' hospital, order as soon as practicable after the commencement of this Act that the person be admitted to a security patients' hospital;
- (b) in the case of a court order made after the commencement of this Act where, pursuant thereto, the person is in custody or in strict custody in a place other than a security patients' hospital, order that such person be admitted to a security patients' hospital.

(2) Every order made by the Minister under subsection (1) shall be given effect to according to its tenor and shall be sufficient authority—

- (a) for a member of the police force or for any person named for the purpose therein to convey the patient to the security patients' hospital; and
- (b) for the hospital administrator to admit the patient for treatment.

(3) Where, pursuant to section 613 or section 645 of *The Criminal Code*, a court makes an order as referred to in subsection (1), the registrar of the court shall give notice of the order in the prescribed form to the Under Secretary, Department of Justice, and to the Director as soon as possible after it is made and in any case within seven days after it is made.

(4) The Director shall arrange for a patient admitted to a security patients' hospital pursuant to a court order under section 613 or section 645 of *The Criminal Code* or pursuant to an order of the Minister under subsection (1) to be examined by a psychiatrist who, in making his examination, shall have regard to the matters referred to in, or prescribed pursuant to, subsection (6) of section 33 as applied to this section.

(5) Within such time or times as may be prescribed, the psychiatrist shall forward to the Director a report on his examination of the patient, and the Director, having regard to that report and to the matters referred to in subsection (6) of section 33, shall himself make a report to the Minister for Justice for submission, with the report of the psychiatrist, to the Governor in Council.

(6) In submitting the reports of the Director and the psychiatrist to the Governor in Council, the Minister for Justice shall make a recommendation to the Governor in Council with respect to the patient being or not being again indicted and tried for the offence.

(7) The recommendation to the Governor in Council shall be made within three months from the date of admission of the patient to a security patients' hospital or within three months from the commencement of this Act, whichever is the later.

(8) On receipt of the reports of the Director and the psychiatrist and the recommendation of the Minister for Justice, the Governor in Council may, after consideration of them,—

- (a) order that the patient be not further proceeded against for the offence;
- (b) order that the patient be again indicted and tried for the offence; or
- (c) before making an order referred to in paragraph (a) or paragraph (b), defer a determination with respect to the matter for a period not exceeding twelve months within which period he shall further consider the matter at least once, and, before making an order as aforesaid, may after any such further consideration defer a determination for further periods not exceeding twelve months at a time, and within each such further period he shall further consider the matter at least once.

(9) The Governor in Council shall, on any deferment as referred to in paragraph (c) of subsection (8), by Order in Council specify any further medical examination of the patient and report thereon and any other report on the patient he requires, by whom or on whose nomination any such examination and report and any other such report is or are to be made and within what time, and any other information required by him with respect to the patient.

(10) Where, pursuant to subsection (8), the Governor in Council orders that the patient be not further proceeded against—

- (a) the Under Secretary, Department of Justice, shall forthwith give notice of the order to the registrar of the court in question, the Commissioner of Police, the Comptroller-General of Prisons, the Director and any other person prescribed, and the patient shall not be again indicted and tried for the offence; and
- (b) the Director, on receipt of the notice referred to in paragraph (a), shall notify the psychiatrist in charge of the treatment of the patient accordingly.

(11) (a) The patient shall not, by virtue of the order of the Governor in Council that he be not further proceeded against, be, or be entitled to be, discharged but, commencing on the day of the notification to the psychiatrist, he shall be deemed—

- (i) to be admitted to the hospital where he then is as if an application had been made pursuant to Division II of Part III and as if the authority for his detention had been renewed for a period of twelve months following such day of notification; and
- (ii) to be a restricted patient as provided in section 50.

(b) Within a period of seven days from such day of notification, the psychiatrist shall review the case and recommend to the Director whether the patient should continue to be a restricted patient and, after consideration of such recommendation as soon as practicable after it is made to him, the Director shall make a determination as soon as practicable thereafter in that respect.

(12) If the Director makes a determination that the patient not continue to be a restricted patient, he shall order the transfer of the patient to another hospital if he is detained in a security patients' hospital, and the patient shall be transferred accordingly.

(13) Where the Governor in Council orders that the patient be again indicted and tried as provided in subsection (8), the Under Secretary, Department of Justice, shall give notice thereof to the registrar of the court in question, the Commissioner of Police and any other person prescribed, and, pending his being again indicted and tried, the patient shall be brought before justices as soon as possible and in any case within seven days from the date of the order of the Governor in Council, and the justices shall remand him in custody or on bail or make such other order as they think fit pursuant to the provisions of the *Justices Act* 1886-1973.

(14) Any member of the police force or other person prescribed is authorized to convey the patient from a hospital to appear before justices in accordance with the provisions of subsection (13).

37. Persons mentally ill where section 647 of The Criminal Code applicable. (1) Where, before or after the commencement of this Act, a person indicted for an indictable offence and found by a jury to be not guilty on the ground of unsoundness of mind is or has been ordered by the court to be kept in strict custody in a place determined by the court until Her Majesty's pleasure is known, the Minister may—

- (a) in the case of a court order made before the commencement of this Act where the person is not in a security patients' hospital and the Governor in Council, pursuant to section 647 of *The Criminal Code*, has not determined a place of confinement for the safe custody of such person, order as soon as practicable after the commencement of this Act that such person be admitted to a security patients' hospital;
- (b) in the case of a court order made before the commencement of this Act where the person is not in a security patients' hospital and the Governor in Council, pursuant to section 647 of *The Criminal Code*, has determined a place of confinement for the safe custody of that person that is not a security patients' hospital, make such recommendation to the Governor in Council, as soon as practicable after the commencement of this Act, for the admission of such person to a security patients' hospital as he thinks fit; and the Governor in Council may order that such person be admitted to a security patients' hospital;
- (c) in the case of a court order made after the commencement of this Act where, pursuant thereto, the person is in strict custody in a place other than a security patients' hospital, order that such person be admitted to and, subject to this Act, detained in a security patients' hospital until the Governor in Council, pursuant to section 647 of *The Criminal Code*, determines otherwise.

(2) Every order made by the Minister under paragraphs (a) and (c) of subsection (1) and every order made by the Governor in Council under paragraph (b) of subsection (1) shall be given effect to according to its tenor and shall be sufficient authority—

- (a) for a member of the police force or for any person named for the purpose therein to convey the patient to the security patients' hospital; and
- (b) for the hospital administrator to admit the person for treatment.

(3) Where a person is indicted for an indictable offence and found by a jury to be not guilty on the ground of unsoundness of mind as aforesaid and is confined in a security patients' hospital or other place of confinement until Her Majesty's pleasure is known,—

- (a) the Minister; or
- (b) the Minister for the time being charged with the administration of the *Prisons Act 1958–1969*

may, if after such inquiry as he thinks fit he is satisfied that such person may be released on parole or leave of absence with safety to himself and others recommend to the Governor in Council that the person be so released on parole or leave of absence, and the Governor in Council, if satisfied that the person may be released on parole or leave of absence with safety to himself and others, may release him on parole or leave of absence subject to such terms and conditions as the Governor in Council may fix (he being hereby thereunto authorized) and as may be prescribed, including terms and conditions in respect of apprehension for breach of any term or condition fixed.

(4) Where a person is indicted for an indictable offence and found by a jury to be not guilty on the ground of unsoundness of mind as aforesaid and is confined in a security patients' hospital or other place of confinement until Her Majesty's pleasure is known or has been released on parole or leave of absence in accordance with subsection (3),—

- (a) the Minister; or
- (b) the Minister for the time being charged with the administration of the *Prisons Act 1958–1969*

may, if after such inquiry as he thinks fit he is satisfied that such person no longer need be detained on account of mental illness or that he is harmless and may be discharged without danger to himself or others, recommend to the Governor in Council that the person be discharged, whereupon the Governor in Council, if satisfied that the person no longer need be detained on account of mental illness or that he is harmless and may be discharged without danger to himself or others, may order him to be discharged, and thereupon he shall be discharged.

(5) The psychiatrist in charge of the treatment of a patient to whom this section refers shall review that patient's case at least once in every period of twelve months, and so that a period of not more than twelve months shall elapse between one review and the next, and make a report with respect thereto which shall be directed through the Director to the Minister who shall bring such report to the attention of the Governor in Council as soon as practicable after he receives it and make such recommendation in relation thereto as he thinks fit.

38. Persons mentally ill in other cases. (1) The provisions of subsections (2) and (3) are subject to and not in derogation of the other provisions contained in this Part.

(2) Where a court, before or after the commencement of this Act, has made an order in respect of a person, whether a person within the purview of the other provisions contained in this Part or not, resulting directly or indirectly in the detention of that person, or following which that person is detained, in a hospital for treatment for mental illness for an indeterminate period, the Minister, if satisfied by the certificates of two medical practitioners nominated by the Director that such person need no longer be detained on account of mental illness, may, with the approval of the Governor in Council, order—

(a) unconditionally; or

(b) subject to such conditions as may be prescribed or, where or to the extent not prescribed, as the Governor in Council may impose (he being hereby authorized so to do),

that the patient be discharged from the hospital, and thereupon such order shall have effect according to its tenor.

(3) The Governor in Council, in imposing any conditions pursuant to subsection (2), shall have regard to any proceeding or other matter or thing undetermined with respect to the person concerned.

39. Persons detained pursuant to section 18 of The Criminal Law Amendment Act of 1945. Where a person, pursuant to the provisions of section 18 of *The Criminal Law Amendment Act of 1945*, is detained in an institution (as defined in that section) either for a period determined by a judge or during Her Majesty's pleasure, then, without prejudice to the operation of any Act or law in relation to the serving by that person of any sentence of imprisonment imposed on him, the Governor in Council may, on the recommendation of two medical practitioners nominated by the Director in that behalf, release such person on parole or on leave of absence subject to such terms and conditions as the Governor in Council may fix (he being hereby thereunto authorized) and as may be prescribed, including terms and conditions in respect of apprehension for breach of any term or condition fixed.

40. Special provisions as to patients in custody. Where a patient who is liable to be detained under this Act in a hospital under Part III is detained in custody pursuant to an order under this Part or under any other Act or pursuant to a sentence or order passed or made by a court or stipendiary magistrate or justices in Queensland (including an order committing or remanding him in custody), he shall not cease at any time before he is discharged from such custody to be liable to be detained under this Act in a hospital or cease to be otherwise subject to any provision of this Act applicable to him, and

(a) if, apart from this section, the patient would have ceased to be liable to be detained under this Act in a hospital on or before the day on which he is discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; or

(b) if the patient is still liable to be detained under this Act in a hospital after the day on which he is discharged from custody, he shall continue to be so liable and to be so subject as if his detention in custody had been a detention under this Act in a hospital,

and in any case section 47 shall apply in relation to the patient as if he had absented himself from hospital without leave on the day of his discharge from custody.

41. Transfer of detained person by Director. (1) (a) The Director has authority to direct, with the consent in writing of the Minister, and may accordingly order by writing under his hand, the transfer of any person who is detained in a hospital pursuant to this Part from one hospital to another for the purpose of the provision of suitable treatment or for any other reason whatsoever that he thinks sufficient.

(b) In the case of a person detained pursuant to section 33, section 34, section 35 or section 36, a transfer under paragraph (a) is subject also to the consent of the Minister for Justice, and in the case of a person detained pursuant to section 37, a transfer under paragraph (a) is subject also to the consent of the Governor in Council.

(2) The Director has authority to direct, with the consent in writing of the Minister, and may accordingly order by writing under his hand, the removal of any person who is detained in a hospital pursuant to this Part from the hospital to—

- (a) a clinic, dental hospital or such other place as may be prescribed, for the purpose of the provision of suitable medical, dental, optical or other treatment or for any other reason whatsoever that he thinks sufficient, and the return of that person to hospital;
- (b) any court or other place to appear as a party or witness to any proceeding or for examination, and the return of that person to hospital;
- (c) any place specified by the Director in his order in connexion with the funeral of anyone determined by the Director to be a close relative of that person or in connexion with any other circumstances determined by the Director to be compassionate circumstances, and the return of that person to hospital.

(3) In any case appearing to the Director to be one of urgency where he reasonably believes that the obtaining by him of consent in accordance with this section would involve unreasonable delay, having regard to the circumstances of the case, he may make an order under this section without obtaining such consent, but in any such case he shall as soon as possible thereafter notify any person whose consent would otherwise be required, and any such person shall as soon as practicable thereafter either confirm the order of the Director or require him to order the return of the person concerned to the hospital from which he was removed or his removal to some other specified place, whereupon the Director shall make such order accordingly.

(4) Subject to this section, the order of the Director shall be sufficient authority for the transfer, removal, conveyance, admission, detention and return of the person the subject of the order in accordance with the terms thereof.

(5) (a) Where the Director is of the opinion that the assistance of a member of the police force is necessary in transferring, removing, conveying, admitting or returning a person the subject of an order under this section, he shall certify as to his opinion by endorsement on the order to that effect.

(b) Any member of the police force to whose notice any such certification as aforesaid is brought may as soon as practicable assist in transferring, removing, conveying, admitting or returning the person the subject of the order in terms thereof or make or cause to be made arrangements for some other member of the police force to render such assistance.

42. Granting of leave to detained persons. A person detained in a hospital under this Part may be granted leave as and in manner prescribed for such period or periods as the Director may determine, subject to the provisions of this Part and to the concurrence of the Comptroller-General of Prisons where prescribed.

43. Applications to Tribunal. Without derogating from any other provision of this Act, an application to a Tribunal with respect to any matter relating to the detention of a patient under this Part may be made by the patient or a relative of the patient or an authorized person within the first six months of the patient's detention under this Part and thereafter an application may be made within each subsequent period of twelve months.

PART V—TRANSFER, LEAVE OF ABSENCE, AND DISCHARGE OF PATIENTS

44. Transfer of patients. (1) A patient liable to be detained in a hospital pursuant to Division II of Part III may be transferred from any hospital to any other hospital other than a security patients' hospital in pursuance of arrangements made in that behalf by the hospital administrators of the hospitals concerned and without any order or direction under this Act for that purpose.

(2) Subject to Part IV, the Director, for the purpose of providing suitable treatment or for any other reason whatsoever that he thinks sufficient, may, by writing under his hand, order the transfer of a patient from any hospital to any other hospital, and such an order shall be sufficient authority for the transfer, removal, conveyance and admission of the patient in accordance with the terms thereof:

Provided that any order by the Director for such a transfer to a security patients' hospital may be made only in the case of a patient who is a restricted patient as provided in section 50.

(3) Where a patient, liable to be detained in a hospital pursuant to an application for admission under Division II of Part III is transferred to another hospital in pursuance of arrangements referred to in subsection (1) or an order referred to in subsection (2), the provisions of this Act shall thereafter apply to him as though the application were an application for admission to that other hospital, and as though he had been admitted to that other hospital at the time of his original admission to hospital pursuant to the application first referred to.

(4) (a) (i) Where a hospital administrator is of the opinion that the assistance of a member of the police force is necessary in transferring a patient in pursuance of arrangements referred to in subsection (1) he shall certify as to his opinion in writing, stating clearly the reasons for such opinion.

(ii) Where the Director is of the opinion that the assistance of a member of the police force is necessary in transferring a patient in pursuance of an order referred to in subsection (2) he shall certify as to his opinion by endorsement on the order to that effect.

(b) Any member of the police force to whose notice any such certification as aforesaid is brought may as soon as practicable convey or assist in conveying the patient to the hospital to which he is to be transferred as provided in this section or make or cause to be made arrangements for some other member of the police force to convey or assist in conveying the patient.

45. Removal of patients out of Queensland. If it is made to appear to the Supreme Court or a judge thereof by any person that a patient (including a patient who is for the time being liable to be detained under Part IV) has a relation or other person in any place beyond Queensland who is willing to undertake the care and charge of him and that it would be for his benefit that he should be removed from Queensland to such place, the Court or judge may order him to be removed from Queensland, and may make such further or any other order authorizing or directing his removal, and touching his safe custody and maintenance, as to the Court or judge seems fit, and may order that security be given for the safe custody and maintenance of such patient in any place beyond Queensland:

Provided that no order shall be made for the removal of such patient until after fourteen days' notice of the intention to apply for such order has been given to the person in whose care or custody the patient is, unless such person himself is applying for the order.

46. Leave of absence from hospital. (1) Subject to this Act, the responsible medical practitioner may grant to a patient who is for the time being liable to be detained under this Act (other than under Part IV) in a hospital, leave to be absent from the hospital subject to such conditions, if any, as that medical practitioner considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence under subsection (1) may be granted to a patient either indefinitely or for any specified period; and where leave is so granted for a specified period, that period may from time to time be extended, and, where the responsible medical practitioner thinks fit, any such extension may be granted on the recommendation of some other medical practitioner.

(3) Where it appears to the responsible medical practitioner that it is necessary so to do in the interests of the patient or for the protection of other persons, 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 shall not be absent from the hospital on such leave unless he is kept in the custody of the person who is authorized in that behalf in writing by the hospital administrator which writing shall be sufficient authority for that person to keep the patient in his custody and at the place where the patient is required to reside in accordance with the conditions imposed, and at any time while the authority remains in force to return the patient to the hospital.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section and it appears to the responsible medical practitioner or the hospital administrator or the Director that it is necessary so to do in the interests of the patient's welfare or for the protection of other persons, that medical practitioner or the hospital administrator or the Director, as the case may be, may, subject to subsection (5), by notice in writing revoke the leave of absence and recall the patient to the hospital forthwith or within a time stipulated in the notice.

(5) Without prejudice to any other provision of this Act, a patient to whom leave of absence is granted under this section shall cease to be liable to be detained under this Act in a hospital at the expiration of the period of twelve months beginning on the first day of his absence on leave unless—

- (a) he has returned or has been returned to the hospital, or has been transferred or removed to another hospital under the provisions of this Act or any other Act before the expiration of that period; or
 - (b) he is absent without leave at the expiration of that period; or
 - (c) the Director orders in writing that the patient shall continue to be liable to be detained for a period not exceeding twenty-four months beginning on the first day of his absence on leave.
- (6) This section applies subject to section 50.

47. Return and re-admission of patients absent without leave. (1)

Where a patient who is for the time being liable to be detained under this Act in a hospital—

- (a) absents himself from the hospital without leave granted under section 46; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that section, or upon being recalled thereunder; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on grant of leave of absence under that section,

he may, if the hospital administrator or the responsible medical practitioner or the Director so requires, and subject to the provisions of this section, be taken into custody and returned to the hospital or, pursuant to an order of the Minister or the Director, admitted to some other hospital, or where he has absented himself without permission from any place where he is so required to reside, to the hospital or some other hospital as aforesaid or to the place from which he has absented himself, by any member of the police force, by any person authorized in writing by the hospital administrator, or by any other prescribed person.

(2) (a) A patient may be taken into custody under this section at any time before the expiration of twelve months beginning on the first day of his absence without leave, failure to return or absenting himself without permission as aforesaid, as the case may be, but a patient who has not returned or been taken into custody under this section within such period ceases to be liable to be so taken into custody.

(b) In computing for the purposes of any provision of this Act any period of time therein set forth during which a patient who is absent without leave is liable to be detained upon his being retaken under this section, no account shall be taken of any time during which the patient was absent without leave and liable to be retaken by virtue of this section.

(3) In this Act “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this section, and kindred expressions shall be construed accordingly.

48. Discharge of patients generally. (1) Subject to the provisions of this section and sections 49 and 50, a patient who is for the time being liable to be detained under this Act in a hospital (other than under the provisions of Part IV) ceases to be so liable if an order in writing discharging him from detention (in this Act referred to as an order for discharge) is made in accordance with this section.

(2) An order for discharge may be made in respect of a patient by the responsible medical practitioner, the hospital administrator, the Director or the nearest relative of the patient or, where the application for admission was made by an authorized person, by the authorized person.

(3) Subject to section 50, nothing in this Part shall be read as preventing the discharge from hospital of a patient forthwith upon his recovery from mental illness.

49. Restrictions on discharge by certain persons. (1) An order for discharge of a patient who is liable to be detained in a hospital in pursuance of an application for his admission shall not be made by his nearest relative or an authorized person except after such person giving at least seventy-two hours' notice in writing to the hospital administrator of his intention to make the order for discharge as well as, in a case where the responsible medical practitioner considers that certain conditions relating to the care of the patient on his discharge should be observed, his giving before the making of the order for discharge an undertaking in writing to the hospital administrator that such conditions will be observed.

(2) If, within seventy-two hours after notice of intention to make the order for discharge has been given, the responsible medical practitioner furnishes to the hospital administrator a report certifying that in his opinion the patient, if discharged, would be likely to act in a manner dangerous to himself or to other persons—

(a) any order for discharge of the patient made by that relative or authorized person in pursuance of the notice shall be of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative or authorized person during the period of six months beginning on the date of the report.

A copy of the report made by the responsible medical practitioner shall be forwarded to the Director.

(3) In any case where a report under subsection (2) is furnished in respect of a patient or where the responsible medical practitioner considers that certain conditions relating to the care of the patient on his discharge should be observed, the hospital administrator shall cause the nearest relative of the patient or the authorized person to be informed, and, without derogating from the provisions of subsection (6) of section 21 and notwithstanding the provisions of subsection (3) of section 15, that relative or authorized person, within the period of twenty-eight days beginning on the day on which he is so informed, may apply to a Tribunal in respect of the patient for review in accordance with this Act.

50. Restrictions on leave and discharge of certain persons. (1) (a) Where the Director is of the opinion that a patient liable to be detained under this Act, if granted leave of absence or discharged from a hospital,

would be likely to act in a manner dangerous to himself or to other persons, and 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 restricted in the manner provided in this section, he may, with the consent of the Director-General and with the approval of the Minister, determine that the patient shall not be granted leave of absence or discharged from hospital without his consent. Such a patient is in this Act referred to as a restricted patient.

(b) For the purposes of paragraph (a) of subsection (7) and paragraph (c) of subsection (9), the determination of the Director, in the case of a patient who is deemed to be a restricted patient under any of the provisions of Part IV, shall be deemed to be made on the day of the Director's determination pursuant to that Part that such person should be or continue to be a restricted patient.

(2) The Director shall notify or cause to be notified the name of every restricted patient to the hospital administrator of the hospital where such restricted patient is for the time being detained, and in each case shall notify the restricted patient, if he has attained the age of eighteen years (or if he is under the age of eighteen years, on attaining that age), and also his nearest relative and any other person prescribed to be so notified of his determination in respect of that restricted patient.

(3) (a) The hospital administrator of every hospital where restricted patients are detained shall keep a restricted patients' register in the prescribed form and shall enter therein the name of every restricted patient detained in that hospital and such other particulars as are prescribed.

(b) The official visitor shall at least once in every month certify in the restricted patients' register that he has reviewed the register and satisfied himself that all requirements of this section have been complied with.

(4) A responsible medical practitioner shall not grant leave of absence to a restricted patient without the consent in writing of the Director.

(5) A responsible medical practitioner, hospital administrator, authorized person or nearest relative shall not make an order for discharge of a restricted patient without the consent in writing of the Director.

(6) If any responsible medical practitioner grants leave of absence to a restricted patient without the consent in writing of the Director, or if any responsible medical practitioner, hospital administrator, authorized person or nearest relative makes an order for discharge of a restricted patient without the consent in writing of the Director, such grant of leave of absence or order for discharge, as the case may be, shall be of no effect, and if the restricted patient has left the hospital pursuant to such grant of leave of absence or order for discharge, he may, where the Director so requires, be returned to the hospital by any member of the police force or any person authorized in writing by the Director, or by any other person prescribed in relation thereto.

(7) (a) Within the period of six months after a determination provided for in subsection (1) and at least once in every period of twelve months thereafter, the Director shall review his determination in respect

of that restricted patient, who shall forthwith cease to be and to be classified as a restricted patient upon a determination to that effect by the Director following any such review, but otherwise he shall continue to be and to be classified as a restricted patient.

(b) The persons notified in accordance with the provisions of subsection (2) shall be notified of a patient's ceasing to be a restricted patient pursuant to this subsection, and the hospital administrator shall note the restricted patients' register accordingly.

(8) (a) Nothing in this section shall be read as preventing the discharge from hospital of a restricted patient forthwith upon the Director being of the opinion that he need no longer be detained on account of mental illness, and upon such discharge he shall cease forthwith to be a restricted patient.

(b) Nothing in this section shall be read as preventing an application being made to a Tribunal by or on behalf of a restricted patient at such time and in such manner as is provided for patients detained under this Act.

(9) (a) Where a determination is made by the Director pursuant to the provisions of subsection (1), the restricted patient, if he has attained the age of eighteen years, the nearest relative of the restricted patient, an authorized person or any other person prescribed may, without derogating from the provisions of subsection (6) of section 21 and notwithstanding the provisions of subsection (3) of section 15, make application to a Tribunal for a review of the determination in accordance with this Act.

(b) The Tribunal, on reviewing the determination, shall make such recommendations or observations as it thinks fit, and the Director shall bring such recommendations or observations to the notice of the Minister.

(c) An application referred to in this subsection may be made within the period of six months after the Director's determination and in any subsequent period of twelve months.

(10) (a) Notwithstanding anything contained in this Act, a restricted patient shall not cease to be a restricted patient or to be liable to be detained by reason only that the authority for his detention is not renewed as provided by this Act.

(b) In the event that the authority for detention of a restricted patient is not renewed for any reason whatsoever, the facts of the case shall be reported by the hospital administrator to the Director who shall also be furnished with a report by a psychiatrist who has examined the patient within a period of fourteen days prior to his report being so furnished.

(c) Where the facts of the case and the report of the psychiatrist are received by the Director, he may direct that the restricted patient be no longer a restricted patient and be discharged from detention or that the authority for his detention be renewed, as he thinks fit.

(d) Where the Director renews the authority for the detention of a restricted patient pursuant to paragraph (c), the provisions of this Act shall apply and be deemed to have applied to that restricted patient as if the authority for his detention had been renewed as provided by section 21.

PART VI—MISCELLANEOUS AND GENERAL

51. Relatives and nearest relatives of patients. (1) In this Act, "relative" means, subject to section 52, any of the following, that is to say—

- (a) husband or wife;
- (b) son or daughter;
- (c) father;
- (d) mother;
- (e) brother or sister;
- (f) grandparent;
- (g) grandchild;
- (h) uncle or aunt;
- (i) nephew or niece;
- (j) other relative or relatives as may be prescribed.

(2) In deducing relationships for the purposes of this section, any relationship of the half-blood shall, subject to subsection (3), be treated as a relationship of the whole blood, and a person born out of wedlock shall be treated as the child of his mother.

(3) In this Act, the "nearest relative" means, subject to section 52, the person first described in subsection (1) who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives described in any paragraph of that subsection being preferred to the other or others of those relatives, regardless of sex.

(4) Where the person who, under subsection (3), would be the nearest relative of a patient—

- (a) is not ordinarily resident within Queensland; or
- (b) being the husband or wife of the patient, is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
- (c) not being the husband, wife, father or mother of the patient, is for the time being under eighteen years of age,

the nearest relative of the patient for the purposes of this Act shall be ascertained as if that person were dead.

52. Guardians and custodians as nearest relatives. (1) Where a patient—

- (a) is, by virtue of an order made by a court in the exercise of its jurisdiction, by virtue of a declaration made under section 47 of the *Children's Services Act 1965-1973*, or by virtue of a deed or will executed by his father or mother, under the guardianship of a person not being his nearest relative, or is under the joint guardianship of two persons of whom one is such a person as aforesaid; or
- (b) is, by virtue of an order made by a court in the exercise of its jurisdiction, or by virtue of a separation agreement between his father and mother, in the custody of any such person,

the person or persons having the guardianship or custody of the patient shall, for the purposes of this Act to the exclusion of any other person, be deemed to be his nearest relative.

(2) Subsection (4) of section 51 shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this section as it applies in relation to a person who would be the nearest relative under subsection (3) of that section.

53. Correspondence of patients. (1) Any postal matter, written by a patient detained under this Act in a hospital and addressed to—

- (a) the Minister;
- (b) a member of the Legislative Assembly;
- (c) the medical superintendent or other person responsible for the treatment of patients in the hospital where the patient is detained;
- (d) an official visitor;
- (e) a judge of the Supreme Court or a District Court;
- (f) an authority or a person having power to discharge the patient under this Act;
- (g) the Public Curator;
- (h) a Tribunal, at any time when the patient is entitled to make application to that Tribunal; or
- (i) any other person or body prescribed for the purpose of this subsection,

shall be despatched by the hospital administrator, without being opened, to the person to whom it is addressed.

(2) Any postal matter, written by a patient so detained as aforesaid, addressed to a person or body other than a person or body referred to in subsection (1) and delivered by the patient for despatch may be opened by the hospital administrator or the responsible medical practitioner and may be withheld from posting—

- (a) if the addressee has given notice in writing to the hospital administrator or to the responsible medical practitioner requesting that communications addressed to him by the patient should be withheld; or
- (b) if it appears to the hospital administrator or to the responsible medical practitioner that the postal matter 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,

but otherwise it shall be despatched to the addressee.

(3) Where any postal matter has been withheld from posting pursuant to subsection (2), the hospital administrator or the responsible medical practitioner, as the case may be, shall notify the patient of the withholding from posting of such postal matter unless he has reason to believe that such notification would be likely to interfere with the patient's treatment.

(4) Any postal matter addressed to a patient so detained as aforesaid may be opened by the hospital administrator or the responsible medical practitioner if he has reason to believe that the postal matter is of such a nature that, if received by the patient, it would be likely to interfere with his treatment or cause him unnecessary distress or prejudice his safety or the safety of others, and any postal matter so opened may be withheld from the patient if in the opinion of the hospital administrator or the responsible medical practitioner it is of such a nature.

(5) Where any postal matter addressed by or to a patient so detained as aforesaid is withheld as hereinbefore provided, the hospital administrator or the responsible medical practitioner shall endorse it to that effect and forward it to or place it before the official visitor who shall deal with it as he thinks fit.

54. Visiting and examination of patients. (1) For the purpose of—

- (a) advising whether an application to a Tribunal should be made by or in respect of a patient who is liable to be detained under this Act in a hospital; or
- (b) furnishing information as to the condition of a patient for the purposes of such an application; or
- (c) advising as to the exercise by the nearest relative of any such patient of any power to order his discharge,

a medical practitioner authorized by or on behalf of the patient or other person who is entitled to make or who has made the application, or authorized by the nearest relative of the patient, as the case may be, may, at any reasonable time, and in accordance with arrangements made, visit the patient and examine him.

(2) Any person admitted to a hospital for treatment of mental illness may be visited by his private medical practitioner in accordance with arrangements made in that behalf with the responsible medical practitioner, and the private medical practitioner may consult with the responsible medical practitioner concerning the treatment of such person.

55. Management of the estates of patients. (1) The provisions of the Fifth Schedule apply in relation to the management of the estates of patients as therein defined.

(2) The responsible medical practitioner, forthwith upon his forming the opinion that a person admitted to a psychiatric hospital, training centre or other place referred to in section 16 or a person liable to be detained in a hospital by virtue of an application, order or direction under this or any other Act is mentally ill and incapable of managing his estate, shall notify the Public Curator in writing his opinion as well as the name of the patient and place where the patient is then to be found.

(3) In this section, the expressions “management of the estates” and “managing his estate” have the meanings corresponding to the meaning the expression “management of the estate” has in the Fifth Schedule.

56. Notification of patient needing coercion or restraint. (1) Any person having the care or custody of a patient, whether a relative or not, shall, if the patient has needed any coercion or restraint for the patient's own safety or for the protection of others for a period of four weeks, forthwith upon the expiration of that period notify the Director of such need and of his name and address as well as the name and address of the patient, and, if it is desired that the patient remain under private care, shall include in that notification a statement of the reasons why the patient should be permitted to so remain.

(2) Any medical practitioner attending a patient who has needed any coercion or restraint for the patient's own safety or for the protection of others for a period of four weeks, shall forthwith upon the expiration of that period, notify the Director of such need and of

the name and address of the patient as well as the name and address of the person who to the best of his knowledge and belief has the care or custody of the patient.

(3) The Director, on being notified in accordance with subsection (1) or subsection (2), may make or cause to be made such inquiry relating to the patient as he considers necessary including, at any reasonable time, an examination of the patient and an inspection of the place that is his address and may—

- (a) approve the person who has the care or custody of the patient continuing to have such care or custody either without conditions or subject to such conditions as the Director thinks fit (which conditions shall be observed by the person on whom they are imposed); or
- (b) take such steps as he thinks fit with a view to an application being made under Division II of Part III for the admission of the patient to a hospital.

(4) (a) The Director shall keep or cause to be kept a register of the names of all patients notified to him in accordance with subsection (1) or subsection (2), and the register shall be kept in such form and manner and contain such particulars as are prescribed.

(b) Within twelve months after the commencement of the keeping of the register and at least once in every period of twelve months thereafter the Director shall make a review of the names of patients entered in the register and may take such action in respect of any such patient, having regard to that patient's welfare, as he may take under subsection (3) on being notified in accordance with subsection (1) or subsection (2).

(5) In this section, "address" means—

- (a) (in relation to the person who has, or who to the best of the informant's knowledge and belief has, the care or custody of the patient), the place of residence or of business of that person; and
- (b) (in relation to the patient), the place where the patient then is to be found.

(6) Nothing in this section shall apply—

- (a) to any patient detained under this Act; or
- (b) to any person detained under this Act who is absent on leave under this Act and who is under the care or custody of any person while so absent pursuant to any condition imposed on the granting of such leave.

57. Forgery of documents and use of forged documents. (1) Any person who forges any of the following documents, that is to say—

- (a) an application under this Act;
- (b) a medical recommendation or report under this Act; or
- (c) any other document required or authorized to be made for any of the purposes of this Act,

is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

(2) Any person who, with intent to deceive, uses, permits or allows another person to use, or has in his possession a document referred to in subsection (1) that he knows to have been forged, or makes, uses, permits

or allows another person to use, or has in his possession a document so closely resembling any such document as to be calculated to deceive, is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

(3) In this section, "forge" has the same meaning as in section 486 of *The Criminal Code*.

58. Wilfully making, or making use of, false entry. Any person who wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorized to be made for any of the purposes of this Act or, with intent to deceive, makes use of any such entry or statement that he knows to be false is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

59. Ill-treatment of patient. (1) Any person, being a person associated with the treatment of patients in a hospital, or a member of the staff of, or otherwise employed in or about, a hospital, or having charge or control of a hospital or of a part thereof, who ill-treats, wilfully neglects or molests a patient for the time being receiving treatment for mental illness, whether as an in-patient or an out-patient, in or at that hospital is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

(2) Any person who ill-treats or wilfully neglects a patient who is for the time being in his custody or care (whether by virtue of any legal or moral obligation or otherwise) is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

(3) No proceedings shall be instituted for an offence under this section except by the Director-General or by some other person with the consent in writing of the Director-General.

(4) In this section the term "hospital" does not include a security patients' hospital.

60. Assisting patients to absent themselves without leave. (1) Any person who induces or knowingly assists a patient—

- (a) who is for the time being liable to be detained under this Act in a hospital, to absent himself without leave; or
- (b) who is in legal custody by virtue of section 66, to escape from such custody,

is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

(2) Any person who harbours a patient who, to the knowledge of such person, is absent without leave or is otherwise at large and liable to be re-taken under this Act, or who gives any such patient any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be or from which he has absented himself, is guilty of an offence, and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$400, or to both.

61. Obstruction. (1) Any person who—

- (a) refuses or fails to allow the inspection of any premises by a person authorized by or under this Act to so inspect; or
- (b) refuses or fails, without reasonable cause, to allow the visiting, interviewing or examination of any person by a person authorized in that behalf by or under this Act; or
- (c) refuses or fails to produce any document or record for the inspection of a person authorized by or under this Act to require such production when such person so requires such production; or
- (d) otherwise obstructs a person in the exercise of his functions under this Act,

is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding \$200, or to both.

(3) This section is not applicable in the case of a security patients' hospital.

62. Offence provisions of The Criminal Code not affected. The provisions of this Act relating to offences are in addition to and not in substitution for or in derogation of the provisions of *The Criminal Code* or any other Act.

63. Penalties. (1) Any person who contravenes or fails to comply with any provision of this Act or of any order, direction, undertaking or requirement made or given under this Act is guilty of an offence against this Act.

(2) Any person guilty of an offence against this Act is liable, unless some other penalty is provided for that offence, to a penalty not exceeding \$200.

(3) Proceedings for an offence against this Act shall be before a stipendiary magistrate sitting alone.

(4) Proceedings for an offence against this Act may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

(5) Subject as aforesaid, all offences against this Act may be prosecuted in a summary way under the *Justices Act* 1886–1973.

64. Application of Traffic Act to vehicles in hospital grounds. (1) In this section—

“hospital grounds” means the land on which is situated a psychiatric hospital, a training centre or other place referred to in section 16 including all land appurtenant thereto and, where the psychiatric hospital, training centre or other place is situated on any reserve within the meaning of the *Land Act* 1962–1973, the whole of that reserve;

“vehicle” means a vehicle within the meaning of the *Traffic Act* 1949–1971.

(2) Subject to such exceptions as may be prescribed, any part of any hospital grounds which at any time is used by a vehicle shall, in relation to and for the purposes of that use, be deemed to be a road within the meaning of the *Traffic Act* 1949–1971, and the provisions of that Act and the regulations thereunder, subject as aforesaid, shall apply and extend accordingly.

(3) The provisions of this section shall apply for the purpose of assisting in the regulation and control and the prohibition of the use of vehicles in hospital grounds, but shall not apply for any other purpose whatsoever and shall not prejudice or otherwise affect the provisions of any other Act and shall not limit the power to make regulations under this Act for the purpose of regulating, controlling, and prohibiting traffic (or for any of these purposes) in relation to all or any hospital grounds.

65. Evidentiary provisions. In any proceeding under or for the purposes of this Act—

- (a) any certificate purporting to be under the hand of the Director that any place described therein in such manner as the Director thinks sufficient to identify the same is a psychiatric hospital, a training centre or other place referred to in section 16, a security patients' hospital, a public hospital, a private hospital, a place of safety, or other prescribed place within the meaning of this Act, or that any land, described in such manner as the Director thinks sufficient to identify the same, is a part of hospital grounds, as specified therein, within the meaning of section 64, shall, upon its production, be conclusive evidence of such matter;
- (b) it shall not be necessary to prove the appointment of the Director-General or the Director or the Deputy Director, or of any official visitor or of any member or the chairman of any Tribunal, or of any member of the police force, or of any authorized person;
- (c) a signature purporting to be that of the Director, a hospital administrator, a responsible medical practitioner, a medical practitioner in charge of the treatment of a person or any other medical practitioner shall be taken to be the signature it purports to be until the contrary is proved;
- (d) any certificate purporting to be under the hand of the Director of the receipt or non-receipt of any notice or application required or authorized or permitted by this Act to be given or made to him shall be evidence of the matter or matters certified to therein, and in the absence of evidence in rebuttal thereof, shall be conclusive evidence of such matter or matters;
- (e) a writing purporting to be a medical certificate or medical recommendation shall be taken to be the medical certificate or medical recommendation it purports to be until the contrary is proved.

66. Provisions as to custody, conveyance, and detention. (1) Any person required or authorized by or by virtue of this Act to be conveyed to any place or to be kept in custody or detained in any place shall, while being so conveyed, detained, or kept, as the case may be, be deemed to be in legal custody.

(2) In subsection (1) "convey" includes any other expression denoting transfer or removal from one place to another.

67. Retaking of persons escaping from legal custody. (1) If any person being in legal custody by virtue of section 66 escapes, he may be retaken under the provisions of this section.

(2) Without derogating from the meaning of "escapes" in this section—

(a) a patient to whom section 47 applies by reason of absenting himself without leave from any hospital or without permission from any place where he is required to reside or of failing to return to any hospital shall be deemed to have escaped from legal custody within the meaning of section 66, and may be retaken either under the provisions of the said section 47 or under this section, and for this purpose the said section 47 as well as this section shall be each read as being in addition to and not in derogation of the other;

(b) a patient who contravenes or fails to comply with any term or condition subject to which he has been released on parole or leave of absence under or pursuant to a provision of Part IV shall be deemed to have escaped from legal custody within the meaning of section 66, and may be retaken either under any provision of or pursuant to the said Part IV and appropriate in the circumstances or under this section, and for this purpose any such provision of or pursuant to the said Part IV as well as this section shall be each read as being in addition to and not in derogation of the other.

(3) A person may be retaken under the provisions of this section by the person who had his custody immediately before the escape or by any person authorized in writing by the person who so had his custody, or by any member of the police force, or by any prescribed person.

(4) Subject to subsection (5), a person may be retaken under this section before the expiration of twelve months beginning from the day of his escape unless he is a person who escapes while being taken to or detained in a place of safety under Division III of Part III, when he may be retaken before the expiration of three days beginning from the day of his escape. In any case as aforesaid the person who has escaped may be retaken after the period prescribed by this subsection in his case under a warrant authorizing his apprehension issued as prescribed.

(5) A person who is—

(a) for the time being liable to be detained under the provisions of Part IV; or

(b) a restricted patient as provided in section 50

may be retaken at any time.

(6) In computing for the purposes of any provision of this Act any period of time therein set forth during which the person who has escaped is liable to be detained upon his being retaken under this section, no account shall be taken of any time during which the patient was at large and liable to be retaken by virtue of this section.

68. Exercise of powers by hospital administrator. (1) Unless otherwise expressly provided by this Act, all or any of the functions and powers conferred by this Act on any hospital administrator, in the case of a private hospital or a public hospital, may be exercised by any person or persons authorized in writing in that behalf by the hospital administrator.

(2) A hospital administrator being a partnership of more than three members may exercise all or any of the functions and powers referred to in subsection (1) through any three or more members who may authorize in writing any person or persons to exercise such functions and powers of the hospital administrator.

(3) Where by this Act any document or writing is required or permitted to be given to or received by a hospital administrator, then such document or writing is deemed to have been so given or received if it is given to or received by the person for the time being in control of the hospital in question or other person as may be prescribed.

69. Protection for acts done in pursuance of this Act. (1) No matter or thing done or omitted to be done by any person in good faith and without negligence in pursuance of this Act or in the execution of his functions, powers, or duties under this Act shall subject that person to any liability in respect thereof.

(2) When any question arises as to whether any liability for any act or omission, the subject of any proceedings, is negatived under the provisions of subsection (1) and it appears that the act or omission of the person proceeded against was in pursuance of this Act or in the execution of any of his functions, powers, or duties under this Act, the burden of proof of negligence and the absence of good faith shall lie upon the person taking those proceedings.

(3) Any proceedings taken against any person for any act or omission which apparently was in pursuance of this Act or in the execution of any of his functions, powers, or duties under this Act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging negligence or, as alleged, want of good faith, or both, or, without limiting the provisions of any other Act or any rule thereunder, that the proceedings are frivolous or vexatious.

(4) Nothing in this section shall be so construed as to deprive any person of any defence which he would have independently of this section.

70. Powers of Judge in respect of patient. (1) A Judge of the Supreme Court may, whenever he thinks fit, whether of his own motion or on the application of any person, by order under his hand, direct any one or more persons whom he may select in that behalf to visit and examine any person who the said Judge has reason to believe is detained as mentally ill in any hospital, or other place, or by any person, and inquire into and report on such matters relating to that person as the Judge thinks fit.

(2) A Judge of the Supreme Court may, whenever he thinks fit, whether on his own motion or on the application of any person, and whether any such order as is referred to in subsection (1) has been made or not, by order under his hand direct any hospital administrator, or the occupier or inmate of any house or other place in which the Judge has any reason to believe or suspect that any person is detained as mentally

ill, or any person having the custody or care of that person, to bring that person before the said Judge in open court or in chambers for examination at a time to be specified in the order.

(3) If, on the examination of the person so ordered to be brought before him and on the evidence of any medical or other witnesses (power to summon whom to testify on oath in the matter of such examination and to produce any documents is hereby conferred on the Judge), it appears to the satisfaction of the Judge that such person is not mentally ill, or that his state of mind does not require his detention as a patient, or that such person is illegally detained as a patient, the Judge shall by order direct that he shall be immediately discharged or caused to be discharged by the hospital administrator, or the occupier or inmate of the house or other place in which he is detained, or by any other person in whose custody or charge he is, unless the person is legally detained for some other cause.

(4) In determining in pursuance of this section whether the state of mind of any person requires that he should be detained as a patient, the Judge may take into consideration the fact that some relative or friend of that person is able and willing to exercise sufficient care and control over him, and may, as a condition of making an order for his discharge, require an undertaking in writing from such relative or friend to exercise such care and control over such person so discharged for such time and in such manner as the Judge requires and as are in the said undertaking set forth. Any person who wilfully fails to fulfil any undertaking so given by him shall be deemed guilty of a contempt of the Supreme Court, and may be dealt with accordingly in due course of law.

(5) Nothing in this section shall be deemed to prevent the exercise of any other remedy or proceeding available by or on behalf of any person who is or is alleged to be unlawfully detained, confined, or imprisoned.

71. Rules of the Supreme Court. Such rules of court may be made as are deemed necessary or desirable or convenient for regulating the procedure and practice of the Supreme Court for the purpose of giving full effect to any of the provisions of this Act.

72. Regulations. (1) The Governor in Council may make regulations, not inconsistent with this Act, for or with respect to all or any of the purposes, matters and things set forth in the Sixth Schedule.

(2) Regulations may be made at any time after the passing hereof.

(3) The power to regulate conferred pursuant to this section includes the power to prohibit.

SCHEDULES

FIRST SCHEDULE

[Section 3 (1)]

Title of Act	Number of Act
<i>The Mental Health Act of 1962</i>	No. 46 of 1962
<i>The Mental Health Act Amendment Act of 1964</i>	No. 50 of 1964

SECOND SCHEDULE

Part A

AMENDMENTS OF THE PRISONS ACT 1958-1969

[Section 3 (2)]

Provision amended	Amendment
Section 4	1. Section 4 is amended by, in the meaning of the term "Chaplain", omitting the words "or security patients' hospital".
Section 7	<p>2. Section 7 is amended by, in subsection (3)—</p> <p>(a) inserting in paragraph (a) after the words "Providing for", being the first two words of the paragraph, the words "the safe custody of security patients and";</p> <p>(b) omitting from the said paragraph (a) the words "and security patients";</p> <p>(c) omitting from paragraph (b) the words "and security patients";</p> <p>(d) omitting from paragraph (c) the words "and security patients' hospitals";</p> <p>(e) omitting from paragraph (d) the words "and security patients";</p> <p>(f) omitting from paragraph (g) the words "and security patients";</p> <p>(g) omitting from paragraph (h) the words "and the treatment of security patients generally";</p> <p>(h) omitting from paragraph (i) the words "and security patients";</p> <p>(i) omitting from paragraph (q) the words "be not mentally ill" and inserting in their stead the words "no longer need to be detained on account of mental illness";</p> <p>(j) omitting paragraph (r) and inserting in its stead the following paragraph:—</p> <p style="padding-left: 2em;">“(r) Providing for and regulating the detention, discharge, release on parole, leave of absence or transfer of any person who is detained in a prison after having been found not guilty on the ground of unsoundness of mind under section 647 of <i>The Criminal Code</i> or is detained in a prison pursuant to an order made under section 18 of <i>The Criminal Law Amendment Act of 1945</i>; prescribing the conditions of such discharge, release on parole, leave of absence or transfer; providing for and regulating the apprehension of any person so discharged, released or granted leave subject to any condition for a breach of any condition imposed;”;</p> <p>(k) omitting paragraph (s) and inserting in its stead the following paragraph:—</p> <p style="padding-left: 2em;">“(s) Prescribing procedures with respect to persons returned or being returned to a prison from a hospital in accordance with any provision of the <i>Mental Health Act 1974</i> with respect thereto;”;</p> <p>(l) omitting paragraphs (t) and (u).</p>

SECOND SCHEDULE—continued

Provision amended	Amendment
Section 13	3. Section 13 is amended by omitting the words “ or security patients’ hospital ” where twice occurring.
Section 15	4. Section 15 is amended by inserting, after the words “ employment of prisoners and ”, the words “ the safe custody of ”.
Section 16	5. Section 16 is amended by— (a) omitting from paragraph (ii) of subsection (1) the words “, security patients’ hospital, special hospital,”; (b) omitting subsections (1A) and (1B); (c) in subsection (2)— (i) omitting the words “ or security patient ” where twice occurring; (ii) omitting the words “ or security patients’ hospital ” where twice occurring; (iii) omitting the words “ or subsection 1A ”.
Section 16A	6. Section 16A is repealed.
Section 19	7. Section 19 is amended by, in subsection (1), inserting after the words “ provided by this Act ” the words “ or by the <i>Mental Health Act 1974</i> ”.
Section 23	8. Section 23 is amended by— (a) omitting from subsection (1) the second paragraph (including its proviso), being that part of the subsection commencing with the words “ On reception into a security patients’ hospital ” and ending with the words “ return it to the prisoner on his release from prison.”; (b) omitting from subsection (2) the words “ or security patient ” where twice occurring.
Section 27A	9. Section 27A is repealed.
Section 38	10. Section 38 is amended by inserting at the end of subsection (1) the following proviso:— “ : Provided, however, that anything hereinbefore specified in this subsection that it is lawful to do or attempt to do because it is done or attempted to be done under the authority of the Superintendent may be done or attempted to be done, in the case of a security patients’ hospital, under the authority of the medical practitioner for the time being in charge of the treatment of security patients in that hospital.”.

Part B

AMENDMENT OF THE INEBRIATES INSTITUTIONS ACTS,
1896 TO 1968 [Section 3 (3)]

Provision amended	Amendment
Section 2	Section 2 is amended by, in the meaning of the term "Inebriate", omitting the words " , not being amenable to any jurisdiction in lunacy, is notwithstanding " and inserting in their stead the word " is " .

THIRD SCHEDULE

TRANSITIONAL PROVISIONS [Section 4 (2)]

On the commencement of this Act, every person who, immediately before the commencement of this Act—

- (a) is a patient in a hospital pursuant to section 17 of the repealed Acts shall be deemed to have been duly admitted in pursuance of arrangements made in that behalf, as referred to in section 17 of this Act, and without any application, order or direction rendering him liable to be detained under this Act;
- (b) is a patient admitted to a hospital within the period of twelve months immediately prior to the commencement of this Act—
 - (i) for treatment pursuant to the provisions of Division II of Part III of the repealed Acts; or
 - (ii) pursuant to the issue of a hospital order under Division III of Part III of the repealed Acts

shall be deemed to be a patient who has been duly admitted pursuant to the provisions of Division II of Part III of this Act the authority for whose detention has been renewed, as provided in such Division, for a period not exceeding twelve months from the day of his admission to hospital;
- (c) is a patient, the authority for whose detention in a hospital has been renewed for a period of twelve months pursuant to the provisions of the repealed Acts, shall be deemed to be a patient the authority for whose detention has been renewed for the same period pursuant to the provisions of this Act;
- (d) is a patient, the authority for whose detention in a hospital has been renewed for a period in excess of twelve months pursuant to the provisions of the repealed Acts, shall be deemed to be a patient the authority for whose detention has been renewed pursuant to the provisions of this Act for the same period or for a period not exceeding twelve months from the commencement of this Act, whichever period shall first expire;
- (e) is a patient admitted to a hospital for observation pursuant to the provisions of Division II of Part III of the repealed Acts shall be deemed to be a patient who has been duly admitted pursuant to the provisions of Division II of Part III of this Act and in respect of whom a second medical recommendation has been given as therein provided, provided

that for the purposes of this paragraph section 21 of this Act shall have effect as if in subsection (2) of that section, for the words "twenty-one days", there were substituted the words "twenty-eight days";

- (f) is a patient admitted to a hospital for observation pursuant to an emergency application under Division II of Part III of the repealed Acts shall be deemed to have been duly admitted pursuant to the provisions of Division II of Part III of this Act;
- (g) is a patient detained in a hospital pursuant to a report furnished under section 23 of the repealed Acts shall be deemed to be duly detained pursuant to a report furnished under section 19 of this Act;
- (h) is a person removed to a place of safety pursuant to the provisions of Division III of Part III of the repealed Acts shall be deemed to have been duly removed to that place of safety pursuant to the provisions of Division III of Part III of this Act;
- (i) is a person in respect of whom a stipendiary magistrate has made an order for detention pending the completion of an inquiry under section 28 of the repealed Acts shall be deemed to be a person duly removed to a place of safety pursuant to Division III of Part III of this Act on the day of the commencement of this Act, and the stipendiary magistrate shall not proceed with the inquiry or make or issue an order in respect of such person;
- (j) is detained in a hospital or other place of safety pursuant to the provisions of subsection (7) of section 28 of the repealed Acts shall be deemed to have been duly removed to that hospital or other place of safety pursuant to the provisions of Division III of Part III of this Act:

Provided that, for the purposes of subsection (1) of section 27 of this Act, such person shall be deemed to have been so removed at the time of the commencement of this Act;

- (k) is detained—
 - (i) pursuant to an order under or a provision of Part IV of the repealed Acts; or
 - (ii) pursuant to an order under section 16 of the *Prisons Act* 1958–1969 for his removal to a special hospital or a security patients' hospital, in a special hospital or a security patients' hospital or in some other place for treatment, observation or examination prior to his return to a special hospital or a security patients' hospital or to prison,
 shall, having regard to that order or provision, but subject to Part IV of this Act and to all necessary adaptations, be deemed to have been duly detained pursuant to an order under or a provision of Part IV of this Act appropriate, or as nearly appropriate as may be, to the circumstances and may be dealt with accordingly:

Provided that, in relation to the foregoing, where under this Act any thing is required or permitted to be done within a specified period following a specified event, and such event has occurred prior to the commencement of this Act, such event shall where necessary for the purposes of the transition

from the repealed Acts to this Act, unless the contrary intention appears, be deemed to have occurred on the day of the commencement of this Act;

- (l) is detained, pursuant to an order or a provision referred to in paragraph (k), in a hospital other than a security patients' hospital may continue to be detained in that hospital but subject to the provisions of this Act;
- (m) was a patient within the meaning of the repealed Acts shall, subject to the provisions of this Act, be a patient within the meaning of this Act;
- (n) is a patient who is absent on leave or absent without leave from a hospital or other place pursuant to the provisions of sections 35 and 36 of the repealed Acts shall be deemed to be absent on leave or absent without leave, as the case may be, pursuant to the provisions of sections 46 and 47 of this Act;
- (o) is on parole or leave of absence pursuant to Part XXIX of The Prisons Regulations of 1959 shall be deemed to be on parole or leave of absence under any provision of this Act appropriate to the circumstances and may be dealt with subject to and in accordance with any such provision accordingly:

Provided that where there are no provisions of this Act appropriate to the circumstances, such person shall be deemed to be on parole or leave of absence pursuant to section 37 and any regulations made in connexion therewith;

- (p) is a person who is deemed, under the repealed Acts, to have escaped from legal custody shall be deemed to have escaped from legal custody under this Act;
- (q) is a patient admitted to a hospital within the period of fourteen days immediately prior to the commencement of this Act and who, under this Schedule, is deemed to have been admitted pursuant to the provisions of Division II of Part III of this Act shall, for the purposes of section 24 of this Act, be deemed to have been so admitted on the day of the commencement of this Act.

FOURTH SCHEDULE

[Section 16 (2)]

Column 1	Column 2
Wolston Park Hospital, Wacol	Psychiatric Hospital
Those parts of the "Basil Stafford Training Centre for the Intellectually Handicapped, Wacol" comprising the "Training Centre for Intellectually Handicapped Children, Wacol" and the "School for Intellectually Handicapped Children, Wacol"	Training Centre designated "Basil Stafford Training Centre for the Intellectually Handicapped, Wacol"
Challinor Centre for the Training and Care of the Intellectually Handicapped, Ipswich	Training Centre
Baillie Henderson Hospital, Toowoomba ..	Psychiatric Hospital
Mosman Hall Hospital, Charters Towers ..	Psychiatric Hospital

FIFTH SCHEDULE

[Section 55]

1. Meaning of terms. In this Schedule, unless the contrary intention appears—

- “ Court ” means the Supreme Court or any Judge thereof;
- “ management of the estate ”, in relation to any patient, means the custody, management and administration of the property and affairs of the patient;
- “ patient ” means a person—
- (a) who is declared by the Court to be mentally ill and incapable of managing his estate;
 - (b) who is notified to the Public Curator pursuant to the provisions of section 55 of this Act by the responsible medical practitioner as being, in the medical practitioner’s opinion, mentally ill and incapable of managing his estate;
 - (c) who is notified to the Public Curator by the superintendent or person charged with the control of a prison where the person is detained as being, in the opinion of a psychiatrist, mentally ill and incapable of managing his estate; or
 - (d) (without limiting the provisions of paragraphs (b) and (c)) who is notified to the Public Curator by or on behalf of the superintendent or person charged with the control of a hospital or other place in which the person, having been admitted and being for the time being therein, is receiving treatment for mental illness as being, in the opinion of a psychiatrist, mentally ill and incapable of managing his estate;
- “ property ” includes both real and personal property of every description or kind whatsoever and every thing in action, and every interest in real or personal property;
- “ Public Curator ” means the Public Curator within the meaning of the *Public Curator Act 1915–1973*;
- “ stock ” means a share or other interest in any company, society or association, and any fund, annuity or security transferable in books kept by any company, society or association or transferable by deed alone, or by deed accompanied by other formalities, and any money payable in respect thereof, and any share or interest therein.

2. General function of the Public Curator in relation to the estate of a patient. (1) Subject to this Schedule, the Public Curator shall, without further or other authority, manage the estate of every person who is a patient by virtue of the provisions of paragraph (b) or paragraph (c) or paragraph (d) of the meaning of the term “ patient ” in clause 1 of this Schedule.

(2) The authority of the Public Curator to so manage the estate of a patient shall cease—

- (a) when the patient dies and the Public Curator receives notice thereof as prescribed;
- (b) when a committee of the estate of the patient is appointed under the provisions of this Schedule;
- (c) when the Court or a Tribunal so orders;

- (d) in the case of a patient liable to be detained in a hospital or admitted to a psychiatric hospital, training centre or other place referred to in section 16 of this Act, not more than fourteen days after the Public Curator is notified by the responsible medical practitioner that the patient is able to manage his estate; or
- (e) when the Public Curator is sooner satisfied that the patient is able to manage his estate:

Provided that if, immediately prior to the ceasing of the authority of the Public Curator as provided by this subclause, there is anything within the powers of the Public Curator in relation to the estate which, having been commenced by him, is not completed, then, subject to any order of the Court to the contrary, that thing, if the Public Curator thinks fit, may be completed by him as if his authority still continued, and for this purpose the provisions of this Schedule with all necessary adaptations shall apply and extend accordingly.

(3) The Court may order that the authority of the Public Curator under this clause to manage the estate of any patient shall cease if, on application by the patient or any authorized person, nearest relative or relative, it is proved to the satisfaction of the Court that the patient is capable of managing his estate.

(4) A Tribunal may order that the authority of the Public Curator, under this clause to manage the estate of any patient shall cease if, on application by the patient or any authorized person, nearest relative or relative, it is proved to the satisfaction of the Tribunal that the patient is capable of managing his estate:

Provided that a Tribunal shall not hear any application in relation to a patient—

- (a) in respect of whom an application has previously been made to the Court and has been disposed of or is still pending or in respect of whom the Court has previously appointed a committee or made a declaration that the patient was mentally ill and incapable of managing his estate;
- (b) if a period of less than twelve months has elapsed since a previous application in respect of that patient has been dealt with by a Tribunal.

(5) Notwithstanding anything to the contrary contained in the foregoing provisions of this clause, the Public Curator shall supervise and enforce the performance of the obligations and duties of all committees of mentally ill persons and receivers of their estates whether appointed before or after the commencement of this Act.

(6) This clause does not apply in the case of a patient who is a protected person within the meaning of Part IIIA of the *Public Curator Act 1915-1973*.

3. Appointment of committee of estate. (1) The Court may, on application by the Public Curator or any other person, appoint the Public Curator or any other person or persons as the committee of the estate of any patient.

(2) Any committee so appointed shall have the same powers, duties and functions as if such committee had been appointed after inquisition by the Court in accordance with the provisions in that behalf hereinafter contained.

(3) Any committee appointed in pursuance of this clause shall continue in office until the person of whose estate he is or they are the committee dies, or the order appointing him or them as such committee is rescinded by the Court.

(4) The Court may at any time, on the application of the person of whose estate a committee has been so appointed, or of the committee, or of any other person, rescind the order appointing the committee on proof that such first-mentioned person is able to manage his estate.

(5) The Court may at any time, on the application of the person of whose estate a committee has been so appointed, or of the committee, or of any other person, and on proof that there is good cause for so doing, make an order appointing any other person or persons as the committee of the said estate in lieu of the committee so appointed.

4. Application to Supreme Court in lieu of commission de lunatico inquirendo. (1) No commission *de lunatico inquirendo* shall be issued.

(2) In any case in which it is proved to the satisfaction of the Court that a person is mentally ill and incapable of managing his estate, the Court may—

- (a) make a declaration to that effect;
- (b) direct a reference to the Public Curator to make inquiries concerning the property of such person;
- (c) make all proper orders for rendering the property of such person or the income thereof available for the payment of his debts, and for the maintenance or benefit of himself and his family, and for carrying on his trade or business (if any); and
- (d) if necessary, appoint a committee of his estate, and also, when desirable, a committee of his person.

(3) If it is subsequently proved to the satisfaction of the Court that such person is capable of managing his estate, the Court may make a declaration to that effect and an order discharging any committee of his estate or person.

5. Court may make certain auxiliary orders. Where the Court has made an order that the authority of the Public Curator to manage the estate of a patient should cease or has rescinded the appointment of a committee of a patient or made a declaration under clause 4 of this Schedule that a patient is capable of managing his estate, the Court may make all further proper orders to give effect to such decision and for releasing the estate of the person concerned from the control of the Court or the authority of the Public Curator and for discharging any committee.

6. Application to be by petition. (1) Applications to the Court under clauses 2, 3 and 4 of this Schedule shall be by petition supported by affidavit.

(2) Copies of the petition and affidavits shall be served in the prescribed manner upon the person alleged to be mentally ill and incapable of managing his estate or, in the case of a petition by or with respect to a person so declared, upon his committee and the persons on whose application he was so declared.

(3) Such copies shall also be served upon the Public Curator and such other persons as the Court may direct.

7. Cross-examination on affidavit, and receipt of evidence. Every deponent may be cross-examined upon his affidavit, either at the hearing or at such time and place as the Court directs, and at such hearing the Court may receive or require the oral evidence of witnesses, and such other proof as it thinks necessary.

8. Court may order inquiry before a jury. (1) The Court may in any case, instead of determining whether or not the person the subject of inquiry is mentally ill and incapable of managing his estate, order that question to be tried by a jury, and in such order shall direct whether the jury shall be a jury of four or of twelve men, and thereupon the like proceedings for summoning a jury shall be had and taken as are provided by the law for the time being in force for the return of juries for the trial of issues in civil actions in the Supreme Court.

(2) When an inquiry before a jury is ordered the Court shall direct the question to be tried before the Court, and the trial of every such question and the verdict thereon shall be had and dealt with in all respects in accordance with the law for the time being in force relating to trials in the Supreme Court.

(3) When the verdict of the jury has been returned, unless a new trial is granted the Court may make such declaration and orders as are hereinbefore provided.

(4) On the hearing of a petition before the Court or a trial before a jury the person the subject thereof shall, if he can be produced in court, be so produced and be examined in open court or in private as is deemed expedient.

9. The word "commission" to apply to petition and declaration. Where in any Act, Rule of Court or instrument reference is made to a commission of insanity, or a writ in the nature of a writ *de lunatico inquirendo*, or to any inquisition thereon, or to a traverse or supersedeas of any inquisition or commission, the proceedings hereby respectively substituted for them shall respectively be taken to be intended by and comprehended in such reference.

10. Persons found mentally ill in places beyond the State. When the Court is satisfied upon the report of the Public Curator or otherwise that any person has been found to be mentally ill, and incapable of managing himself and his estate, by any competent court or commission in any place outside Queensland, the Court may appoint the Public Curator or any other person or persons a committee of the patient's estate or person, or both, and may give such other orders in respect of the management of his estate or person as it may deem expedient, and such committee shall have the same duties, powers and liabilities as the committee of the estate of a patient under this Act.

11. Court may order costs. The Court may make such order as to the costs, charges and expenses of and incidental to any proceeding authorized by this Act as the Court thinks proper, and every such order shall have the same effect as orders for the payment of money made by the Court.

12. Appeal. The powers of the Court under this Act may be exercised by a Judge thereof, but an appeal shall lie to the Full Court from every order made by a single Judge.

13. Particulars to be furnished to Public Curator. (1) Within fourteen days from the admission of a patient into any hospital, the hospital administrator shall cause to be given to the Public Curator—

- (a) the name of such patient and his age;
- (b) such information concerning his property as the hospital administrator has in his possession;
- (c) copies of medical certificates relating to his admission; and
- (d) the names and residences of his relatives known or supposed to be able to maintain or contribute to his maintenance.

(2) Every hospital administrator and official visitor shall communicate to the Public Curator all particulars that may come to his knowledge respecting the property of any patient, and if any such hospital administrator or official visitor has reason to believe that the property of any patient is not duly protected, or that the income thereof is not duly applied for his maintenance or benefit, such hospital administrator or official visitor shall report thereon to the Minister as well as to the Public Curator.

14. Property not to vest in Public Curator when acting as committee or manager. When the Public Curator is appointed as the committee of the estate of a patient, or under this Act is authorized to manage the estate of a patient, the estate shall not thereby become vested in the Public Curator, but he shall be entitled to the possession and management of the same in accordance with the provisions hereinafter contained.

15. Power of Public Curator so acting. (1) The Public Curator, being appointed as the committee of the estate of a patient, or having under this Act the authority to manage the estate of a patient, may, without the leave of the Court, but subject to any order of the Court to the contrary, do any of the following things:—

- (a) take possession and control and manage all the property of that patient;
- (b) sell any property of that patient, other than freehold or leasehold property, either by public auction or private contract, and subject to such terms and conditions as the Public Curator thinks fit;
- (c) grant or concur in granting leases or sub-leases of any property of that patient for any term not exceeding three years (to take effect in possession within six months of the date of the lease or sub-lease), or from year to year or for a weekly, monthly, or other like tenancy, or at will;
- (d) repair, and insure against fire or accident, any property of that patient;
- (e) pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the property of that patient, or under any policy of insurance of any kind;
- (f) surrender any policy of life assurance, or have any policy of life assurance converted into a paid-up or other suitable policy;

- (g) grant powers of attorney to any person in or out of Queensland to do any act or thing with respect to the property of such patient which the Public Curator can do as committee of the estate of that patient, or as authorized to manage that estate;
- (h) take proceedings (whether formal or informal, and including proceedings in any court) in his corporate name or in the name of the patient for the recovery or protection of any property or of any debt or damage whatsoever or to obtain any moneys or compensation, and defend or resist in a like manner any such proceedings or claim brought against the patient, and compromise, compound, or otherwise settle such proceedings or claim and consent to any judgment, decree or order upon such terms as the Public Curator thinks fit or suffer judgment to be entered by default;
- (i) compromise any claims or demands made against or upon the patient or his estate or made by the patient before he became a patient or made by the Public Curator upon such terms as the Public Curator thinks fit and upon such evidence as he deems sufficient, or submit such claims or demands to arbitration, and do all acts and things necessary to render any such compromise or arbitration effectual;
- (j) take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to such patient, and vote and act either personally or by proxy at all meetings of creditors, and in all other matters relating to the bankruptcy or liquidation;
- (k) take criminal proceedings respecting the property of that patient;
- (l) demand, receive, and recover all moneys payable or belonging to that patient (including any legacy or distributive balance in the estate of a deceased person), as well as all documents (including wills and all testamentary instruments) belonging to the patient or of which he is entitled to possession or custody;
- (m) repudiate or refuse to recognize contracts or transactions of every description to which the patient is or, prior to his becoming a patient, became a party, to the same extent as the patient could have done had he not become a patient and, to the like extent, to elect in the name of and on behalf of the patient to avoid any such contract or transaction;
- (n) apply moneys belonging to that patient, whether arising from real or personal property, and whether income or capital, in or towards the payment of any debt, obligation or liability of that person, or incurred by the Public Curator in the exercise of the powers vested in him by this Act;
- (o) surrender, assign or otherwise dispose of, with or without consideration, any onerous property belonging to that patient;
- (p) surrender or concur in surrendering any lease, and accept a new lease;
- (q) accept a surrender of any lease;
- (r) carry out and perform contracts entered into by that patient before the Public Curator was appointed as the committee of his estate or was authorized to manage it;

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- (s) apply in his discretion, and in such manner and to such extent as he thinks fit, any moneys belonging to that patient, whether arising from real or personal property, and whether income or capital, for the maintenance or benefit of that patient, or of the husband or wife of the patient, or for the maintenance, education, advancement or benefit of the children or grandchildren of the patient or of any relative of the patient or of any person wholly or partially dependent upon the patient;
 - (t) where the patient is a mortgagor or mortgagee of any land, agree to extend or vary the mortgage on such terms as the Public Curator thinks fit;
 - (u) on behalf of and in the name of the patient, enter into any scheme of family arrangement to which the patient is a necessary party;
 - (v) apply any moneys recoverable by the patient under any policy of insurance or any moneys belonging to the patient in the reinstatement or rebuilding of any property of that patient destroyed by fire or otherwise, either wholly or partially;
 - (w) exercise any power of sale or other power vested in that patient as mortgagee or lessor;
 - (x) carry on any trade or business of that patient and for that purpose expend moneys belonging to the patient;
 - (y) continue such acts of bounty or charity exercised or promised to be exercised by that patient as the Public Curator, having regard to the circumstances and the amount or value of the estate of that patient, considers proper and reasonable;
 - (z) discharge any mortgage or encumbrance on the property of that patient;
 - (aa) enter into any share farming agreement or agree to the variation of the terms of any share farming agreement whether entered into by that patient or by the Public Curator;
 - (bb) carry out all such work and do all such things with regard to the property of that patient as may be required to be carried out or done by the provisions of any Act, regulation or rule, or by any by-law of any competent authority having jurisdiction in respect of such property and, in particular, but without affecting the generality of the foregoing, erect fencing, install sewerage and eradicate noxious weeds;
 - (cc) continue investments in the name of that patient in the form in which they are at the time when the Public Curator is appointed the committee of the estate or becomes authorized to manage the estate of that patient and reinvest the same from time to time in similar investments;
 - (dd) exercise, as fully and effectually as that patient could do if he were not a patient, all rights of the patient as the holder of any shares, debentures, units or stock, whether debenture, inscribed or otherwise;
 - (ee) —
 - (i) exercise in whole or in part any rights, arising out of any investment of that patient, to acquire in the name of the patient any shares, debentures, units or stock (whether debenture, inscribed or otherwise) and for such purpose apply moneys belonging to the patient; and
 - (ii) sell or otherwise dispose of any of such rights;

- (ff) borrow money not exceeding \$5,000 or agree to the increase by a sum not exceeding \$5,000 in the amount of any overdraft, loan or advance obtained by that patient prior to his becoming a patient and secure the payment of such money or increase in overdraft, loan or advance by mortgage or charge of any property of that patient and enter into such covenants, provisions and agreements as may be agreed upon by the Public Curator and the lender;
- (gg) consent on behalf of that patient to a grant of administration being made to some other person and execute on behalf of that patient a release from filing and passing of accounts by an executor, administrator or trustee of any estate in which that patient has an interest;
- (hh) —
 - (i) require any person holding or controlling any property in respect of which that patient is beneficially interested as *cestui que* trust, beneficiary or next-of-kin to render to the Public Curator all such information as that patient could have required if he were not a patient; and
 - (ii) take all such proceedings to enforce such rights as that patient could have taken if he were not a patient.

(2) The Public Curator is hereby authorized and empowered to receive and give a valid discharge for the receipt of any legacy or other interests in estates in which the patient concerned may be interested in any place outside Queensland.

16. Certain powers exercisable with sanction of Court. The Public Curator, being appointed as the committee of the estate of a patient, or being under this Act authorized to manage the estate of a patient, may, with the sanction of an order of the Court, do any of the following things:—

- (a) sell, join in or consent to the sale of any freehold or leasehold property of the patient or in which the patient has a share or interest either by public auction or private contract in such manner and on such terms and conditions as the Public Curator thinks fit;
- (b) grant or concur in granting leases or sub-leases of any property of that patient for such terms and on such covenants and conditions as the Public Curator thinks fit;
- (c) make exchange or partition of any property belonging to that patient, and give or receive any money for equality of exchange or partition;
- (d) expend moneys belonging to the patient in the improvement, by way of building or otherwise, development and maintenance of the property of the patient or in the purchase of livestock, machinery, plant, implements and other chattels or in the purchase of a home for the patient, or for the wife, husband, or children of the patient, or for any person wholly or partially dependent upon the patient;
- (e) bring or defend any action, suit, or other proceeding in respect of any contract or transaction referred to in paragraph (m) of subclause (1) of clause 15 of this Schedule;
- (f) exercise any power, or give any consent required for the exercise of any power, where the power is vested in that patient for his own benefit or the power of consent is in the nature of a beneficial interest in that patient;

- (g) demand, receive and recover any moneys held on trust for the patient and require any person holding or entitled to deal with property in respect of which the patient is beneficially interested to deal with such property to the same extent as the patient could have done if he were not a patient;
- (h) exercise any power and carry out, perform, and do any duty, act, matter, or thing which the Court deems necessary to confer or impose upon the Public Curator or authorize him to do in relation to the estate of the patient or the management thereof.

The provisions of this clause 16 shall not derogate from any of the powers conferred upon the Public Curator by clause 15 of this Schedule.

17. Cases where value does not exceed \$10,000. Notwithstanding anything contained in clause 16 of this Schedule the Public Curator may, without the sanction of an order of the Court, exercise in relation to the estate of a patient any of the powers conferred upon him by paragraphs (a) to (g) inclusive of clause 16 of this Schedule if the value of the property in respect of which the power is to be exercised or of the share or interest of the patient therein as estimated by the Public Curator or if the amount of moneys to be expended at any one time does not exceed the sum of \$10,000.

18. Power of the Public Curator to execute mortgages for certain purposes. The Public Curator, being appointed as the committee of the estate of a patient, or being under this Act authorized to manage the estate of a patient, may, with the sanction of an order of the Court, mortgage or charge (with or without a power of sale, and on such terms as the Public Curator thinks fit) any property of that patient for the purpose of raising or securing or repaying with or without interest, money which is to be or which has been applied to all or any of the purposes following:—

- (a) the payment of the debts or engagements of the patient;
- (b) the payment of or provision for the expenses of the future maintenance of that patient or his family;
- (c) the payment of any debts or liabilities incurred by the Public Curator in the exercise of the powers conferred upon him by this Act with respect to the management of the estate of that patient;
- (d) the discharge of any mortgage or other encumbrance on any property of the patient;
- (e) the improvement or maintenance of the property of the patient.

The provisions of this clause 18 shall not derogate from any of the powers conferred upon the Public Curator by clause 15 of this Schedule.

19. Public Curator may under order of the Court exercise powers or give consent on behalf of patients. When a power is vested in any patient in the character of trustee or guardian, or as a director or other officer of a company, or the consent of any such person to the exercise of a power is necessary in the like character or as a check upon the undue exercise of the power, and it appears to the Court to be expedient that the power should be exercised or the consent given, the Public Curator, being appointed as the committee of the estate of that patient or being under this Act authorized to manage that estate, may, in the name and on behalf of the patient, and under an order of the Court made upon the application of any person interested, exercise the power or give the consent in such manner as the order directs.

20. Public Curator may execute assurance on behalf of patient. The Public Curator may, in the name and on behalf of any patient, execute and do all such assurances and things as the Public Curator may deem necessary for effectuating any of the powers conferred upon him by this Act or by any order of the Court; and all assurances and things so executed or done shall have the same force and effect as if executed or done by the patient had he not been a patient.

21. Certificate of appointment to be received in evidence. A certificate under the hand of the Public Curator, and sealed with his corporate seal, certifying that he has been appointed under this Act as the committee of the estate of any person, or that he is under this Act authorized to manage the estate of any person, and stating the date at which he was so appointed or authorized to manage such estate, and that such appointment or authority is still in force, shall, until the contrary is proved, be accepted by all courts, officers, and other persons as sufficient evidence of the facts so certified and stated.

22. Capital moneys to form part of common fund. All capital moneys coming to the hands of the Public Curator under the provisions of this Act shall form part of the common fund of the Public Curator, and shall be entitled to the guarantee which is afforded to that common fund.

23. Provisions of Public Curator Act to apply to estates of patients. Subject to this Act, all the provisions of the *Public Curator Act 1915-1973* and of every other relevant Act shall, with all necessary adaptations, apply and extend for the purposes of the management of the estate of any patient by the Public Curator.

24. Proceedings under Succession Acts and Maintenance Act. (1) The Public Curator may, in the name and on behalf of any patient, and whether such patient is possessed of any estate or not, make any application to the Supreme Court under Part V of *The Succession Acts 1867 to 1968* which that patient would be entitled to make if he were not a patient.

(2) The Public Curator may institute such proceedings for the maintenance of a patient, under *The Maintenance Act of 1965* or any other law, as the patient might institute if he were not a patient.

25. Powers of Public Curator in respect of partnership. Where any patient whose estate is being managed by the Public Curator is a member of a partnership, the Public Curator may, in the name of such patient, agree to any alteration of the conditions of such partnership and dissolve the partnership and exercise any other rights arising out of the partnership in the same manner in all respects as such patient could have done had he not been a patient, or do either of these things.

On such dissolution the Public Curator, in the name and on behalf of the patient, may join with the other partner or partners in disposing of the partnership property, as well real as personal, whether to such partner or partners or to any other persons, upon such terms and conditions and in such manner as the Public Curator thinks fit.

26. Public Curator exempt from personal liability. The Public Curator acting in pursuance of any provision of this Schedule or exercising any power conferred or carrying out any duty imposed upon him by this Schedule or by the Court shall not be officially or personally

liable for any injury, damage, or loss incurred in relation thereto, but such injury, damage, or loss shall be recovered from the estate of the patient.

27. Limitation of contractual powers where committee, etc., appointed.

(1) No person of whose estate the Public Curator or any other person has been appointed the committee, or whose estate the Public Curator is under this Act authorized to manage, shall be capable, without the leave of the Court, of making any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or of entering into any contract except for necessities; and every such transfer, lease, mortgage, or other disposition, and every contract other than for necessities, shall be voidable by that person or by the Public Curator or other committee on his behalf.

(2) The Court may by order give leave to any such person to make any transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the said Court is satisfied that such transfer, lease, mortgage, disposition, or contract is for the benefit of that person, and that he consents thereto with adequate understanding of the nature thereof.

(3) Nothing in this Schedule shall affect the law relating to the validity of wills or other testamentary dispositions.

(4) Nothing in this Schedule shall invalidate any transfer, lease, mortgage, disposition, or contract made or entered into by any such person if the other party thereto proves that he acted in good faith and for valuable consideration and without knowledge that any committee has been so appointed or that the Public Curator has under this Act been authorized to manage the estate.

28. Maintenance payable out of estate. (1) All expenses incurred by the Public Curator in respect of the maintenance of any patient, or the management of his estate, shall be charged against and payable out of that estate; and, in addition, there shall be payable in respect of all moneys forming part of that estate and coming under the control of the Public Curator such commissions and other charges as are prescribed by regulations made under the *Public Curator Act 1915-1973*.

(2) The amount of all deductions for expenses, commissions, and other charges shall be paid to the Public Curator's account.

(3) The expenses, commissions, and other charges aforesaid shall be payable out of the estate, although the patient dies or the estate otherwise ceases to be under the management of the Public Curator before payment thereof.

29. Public Curator may obtain information on oath. (1) The Public Curator shall have power, in the execution of his powers and duties under this Act, to summon persons to appear before him or before some person appointed in writing by him in that behalf, at such time and place as is set out in the summons, and the Public Curator or the person so appointed shall have power to administer oaths and take evidence as to any matters relating to the estate and affairs of the person of whose estate the Public Curator is the committee or whose estate he is under this Act authorized to manage, and to require the production of books and documents relating to those matters.

The Public Curator shall pay or tender to the person so summoned the same amount as such person would have been entitled to had he been summoned as a witness in proceedings before a magistrates court at the place to which such person has been summoned.

(2) Every person on whom any such summons is served by delivering it to him or by leaving it at his usual place of business or abode who without reasonable justification or excuse fails to appear according to the exigency of the summons or, being present, refuses to be sworn or to give evidence or to answer such questions as are put to him by the Public Curator or the person so appointed as aforesaid, or to produce any books or documents required by the summons to be produced, is guilty of an offence against this Act and liable to a penalty not exceeding \$200.

30. Public Curator may apply to Court for directions. Without restricting any other powers and authorities conferred by this Act, the Public Curator may apply to the Court, *ex parte*, for directions with respect to the exercise of any of his powers, authorities and discretions conferred upon him by this Act with respect to any patient, and the Court may, on such application, make such order in the premises as it thinks fit.

31. Saving of Part IIIA of Public Curator Act. Nothing in this Act shall be construed as derogating from or otherwise affecting the powers, duties, authorities and responsibilities of the Public Curator conferred or imposed upon him by the provisions of Part IIIA of the *Public Curator Act 1915-1973*.

32. Transfer of stock of patient. (1) Where any stock is standing in the name of or is vested in a patient beneficially entitled thereto, or is standing in the name of or vested in a committee of the estate of a patient in trust for him, or as part of his property, and the committee dies intestate or himself becomes mentally ill, or is out of the jurisdiction of or not amenable to the process of the Court, or it is uncertain whether the committee is living or dead, or he fails to transfer the stock, and to receive and pay over the dividends or income thereof to a new committee, for the space of fourteen days after a request in writing for that purpose made by the Public Curator or a new committee, then the Court may order some fit person to transfer the stock to the name of the Public Curator or a new committee or otherwise, and also to receive and pay over the dividends or income thereof, or such sum or sums of money and in such manner as may be ordered by the Court.

(2) Where any stock is standing in the name of or vested in a person residing out of Queensland, the Court upon proof to its satisfaction that a declaration or order to the effect that such person is a mentally ill person has been made according to the laws of the place where he is residing, and that his personal estate has been vested in a Curator or other person appointed for the management thereof according to the laws of that place, may order some fit person to make such transfer of the stock to the name of such Curator or other person appointed as aforesaid, or otherwise, and also to receive and pay over the dividends or income thereof as may be ordered by the Court.

(3) Where an order is made under this Act for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the company or society or association in whose books the transfer is to be made.

33. Proceedings for protection of property of patients. If any real or personal property of a patient is wrongfully held, detained, converted, or injured, or if any sum of money is due and owing to such patient by any person, (without limiting or otherwise affecting his right of proceeding under any other Act) the Public Curator may claim and recover possession of such property or damages for the conversion or injury thereof, or payment of the said sum by proceedings, instituted by way of originating summons, before a Judge who is hereby authorized and required, on proof to his satisfaction of the cause of the proceedings, to make an order requiring the person proceeded against to give up possession of such property or to pay reasonable damages, to be fixed by the order, for the conversion or injury thereof, or to pay the sum due; or the Judge may direct an action to be brought in respect of the matter of the proceedings.

The Judge may make such order as to costs as he thinks fit, and every order under this clause shall have the same effect and may be enforced in the same manner, as any judgment of the Court.

The above provisions shall extend to any money, documents or other property recoverable by the Public Curator pursuant to the provisions of clause 15 and paragraph (g) of clause 16 of this Schedule.

34. Distribution of property by Public Curator where value under \$2,000. (1) Where—

- (a) a patient has died; and
- (b) the Public Curator is holding any money or other property belonging to the patient; and
- (c) the amount of the money, or the value of the property as assessed by the Public Curator, or the total of the amount of the money and the value of the property as assessed by the Public Curator, does not exceed \$2,000,

the Public Curator may, without requiring the production of any probate or letters of administration, pay such money or deliver such property or pay such money and deliver such property, as the case requires, to a person—

- (d) who is the husband, wife, father, mother, child, brother, sister, nephew or niece of the deceased patient; or
- (e) who satisfies the Public Curator he is entitled to the property of the deceased patient under his will or under the law relating to the disposition of the property of deceased persons or that he is entitled to obtain probate of the will of the deceased patient or to take out letters of administration of his estate.

(2) The Public Curator shall thereupon be discharged from all further liability in respect of such money or other property.

(3) All persons to whom any such money or property is paid or delivered shall apply the same in due course of administration and, if the Public Curator thinks fit, he may require those persons to give sufficient security by bond or otherwise that the money or property will be so applied.

35. Court may order provision made out of estate where property sold, etc. (1) Where any property of a patient has been dealt with under this Schedule (whether by sale, exchange, charging or other dealing with property other than money, the removal of property from one place to another, the application of money in acquiring property, the transfer of money from one account to another or otherwise howsoever) and, under his will, or any codicil thereto, or intestacy, or by any disposition taking effect on his death, any other person would have taken an interest in his property but for such dealing, the Court may, in its discretion and notwithstanding anything contained in any other Act or law or rule or practice or process of law, on application by or on behalf of the other person or his personal representative, order that such provision as the Court thinks fit (not exceeding, in the opinion of the Court, in value the benefit that the other person would have taken but for the dealing) shall be made out of the estate of the deceased person for the other person or his estate.

(2) The provisions of subsections (2) to (10) of section 90 and of sections 92, 93 and 94 of *The Succession Acts 1867 to 1968* shall apply to any such application and any order made thereon as if such application was an application under Part V of the said Acts by a person entitled to make such an application.

36. Court may appoint committee other than Public Curator. (1) The Court shall not appoint any person other than the Public Curator as the committee of the estate of any person in pursuance of this Act unless it is proved to the satisfaction of the Court that there is some sufficient reason why such person should be so appointed in preference to the Public Curator.

(2) When any application is made to the Court to appoint any person other than the Public Curator as the committee of the estate of any person, notice of the application shall be given to the Public Curator by the person making the same.

Any such application shall be made to the Court within three months after the person the subject of the application has been first examined and found by a medical practitioner to be mentally ill and incapable of managing his estate, and during such period and until the appointment of a committee other than the Public Curator is made the Public Curator shall *ex officio* be the committee under this Act.

(3) The Public Curator shall be entitled to be heard on any such application, and the costs of the Public Curator (including the costs of obtaining such reports as the Public Curator deems necessary) shall be allowed to the Public Curator out of the estate of such person.

37. Power of committee other than Public Curator. (1) When any person other than the Public Curator has been appointed as the committee of an estate under this Act, that person shall have in respect of the estate such of the powers conferred on the Public Curator by clauses 14 to 20, both inclusive, and by clauses 24 and 25 of this Schedule as the Court in the order appointing the committee, or in any subsequent order or orders, directs; and in the exercise of such powers he shall be subject to any orders that may be made in the matter by the Court.

(2) On the application of the Public Curator or any relative of the patient, any such order may from time to time be varied or rescinded by the Court.

38. Person appointed as committee to give security to Public Curator.

(1) No person other than the Public Curator shall be appointed as the committee of the estate of any person in pursuance of this Act until he has given to the Public Curator such security as the Court directs and approves for the due management of the estate.

(2) Such security may be a bond, with or without a surety or sureties, or such other security as the Court directs and approves.

(3) The Court may at any time, on the application of the Public Curator, require such committee to give to the Public Curator further or other security for the due management of the estate.

(4) The Court may at any time give leave to the Public Curator to enforce any such security, and the Public Curator shall thereupon proceed by action or otherwise to enforce the same accordingly. All moneys so received by the Public Curator shall be deemed part of the estate of which such person is or was the committee, and all costs and expenses so incurred by the Public Curator shall be paid out of the said estate.

The Public Curator may commence or institute proceedings against such committee for any breach of duty, and may apply to the Court *ex parte* for an injunction to restrain any such breach or any threatened breach of duty.

39. Statement as to estate to be rendered to Public Curator. (1) It shall be the duty of every person, other than the Public Curator, who has been appointed the committee of the estate of any person in pursuance of this Act to render to the Public Curator, at such times and in such form as he shall prescribe, a statement showing the property comprised in the estate, and the manner in which that property has been managed and applied, and the condition of that property, and such other particulars relating to the said estate as may be prescribed or directed by the Public Curator.

(2) Every such statement shall be verified by the statutory declaration of the committee, and, where the Public Curator so directs, shall be supported by vouchers.

(3) If any committee fails or refuses to render any such statement verified as aforesaid, in the manner and at the times so prescribed, every member of such committee shall be liable to a penalty not exceeding \$600 for every such offence.

(4) The Public Curator may cause any such statement or the accounts relating thereto to be examined and reported upon by any person he may appoint in that behalf.

40. Percentage of moneys in hands of committee to be paid to Public Curator. (1) When any person other than the Public Curator is appointed the committee of any estate in pursuance of this Act, there shall be payable out of that estate by the committee thereof to the Public Curator, at such times as the Public Curator prescribes, a sum calculated at the rate of one

per centum or at such other rate as the Court may determine on all moneys collected by or coming under the control of the committee and forming part of the estate.

(2) All moneys so paid to the Public Curator shall form part of the Public Curator's account.

41. Interpretation and application of clauses 41 to 43. (1) In this clause and in clauses 42 and 43 of this Schedule—

- (a) "reciprocating State" means any State, country or territory outside Queensland which has been declared under subclause (2) of this clause to be a reciprocating State for the purposes of the said clauses 42 and 43 or either of them;
- (b) "persons who are mentally ill" (without derogating from the meaning of the expression elsewhere in this Act) includes persons of unsound mind and lunatics.

(2) (a) If at any time the Governor in Council is satisfied that the laws in force in any State, country or territory outside Queensland are such as to enable powers to be exercised in that State, country or territory in cases of patients residing in Queensland substantially similar to the powers conferred by either clause 42 or clause 43, or both such clauses, of this Schedule in cases of persons who are mentally ill and residing in that State, country or territory, the Governor in Council may by Proclamation declare that State, country or territory to be a reciprocating State for the purposes of either the said clause 42 or the said clause 43 or both such clauses, as the case may be, and thereupon that State, country or territory shall become a reciprocating State.

(b) Notwithstanding the repeal of the repealed Acts, every Proclamation in force immediately prior to the commencement of this Act and made under subsection (2) of section 40 of the Third Schedule to the repealed Acts shall be deemed to be a Proclamation under this clause for the purposes of clause 42 or clause 43 of this Schedule, or both such clauses, as the case may be.

42. Powers of Public Curator as to property in Queensland of patients in reciprocating State. (1) If the officer charged by the laws of a reciprocating State with the care, recovery, collection, preservation, and administration of the property and estates of persons who are mentally ill in that reciprocating State—

- (a) certifies in writing under his hand and seal to the Public Curator that any person is mentally ill and residing in that reciprocating State and that he is possessed of or entitled to or appears to be entitled to or interested in real or personal property in Queensland; and
- (b) by instrument in writing under his hand and seal authorizes the Public Curator to collect, recover, manage, sell or otherwise dispose of, and administer such property or to make inquiry respecting such property,

the Public Curator shall have and may exercise over and in respect of such property the same powers of collection, recovery, management, sale, disposition, administration, and inquiry as he would have had and may have exercised over such property if such mentally ill person had been resident in Queensland and a patient; and the provisions of this Schedule apply in respect of such property accordingly.

(2) Where the Public Curator has, pursuant to any such authority as is referred to in paragraph (b) of subclause (1) of this clause and in the exercise of the powers conferred upon him by that subclause, received any moneys or properties, the Public Curator may, after—

- (a) payment of all costs, charges and expenses incurred in the exercise of those powers pursuant to that authority; and
- (b) satisfying or providing for the following debts and claims of which he has notice, namely, debts of the patient named in such authority owing to persons resident in Queensland and the claims of persons so resident against that patient,

pay over or deliver the balance of such moneys or properties to the officer of the reciprocating State who signed such authority or his successor in office, without seeing to the application thereof and without incurring any liability in respect of such payment over or delivery, and shall duly account to that officer or his successor for that balance.

43. Order or declaration in lunacy in a reciprocating State to be effective in Queensland on being resealed. (1) When any order or declaration made by a court of competent jurisdiction under the laws of any reciprocating State in the exercise of its protective jurisdiction (or jurisdiction in lunacy or by whatever other name called) is produced to and a copy thereof deposited with the Registrar of the Supreme Court of Queensland, such order or declaration shall, subject to the payment of the prescribed duties or fees (if any) be sealed with the seal of the Court and shall have the like force and effect and have the same operation, and the Public Curator and every guardian, committee, or receiver acting thereunder shall perform the same duties and be subject to the same liabilities in Queensland as if such order or declaration had been originally made by the Court:

Provided that a guardian, committee, or receiver other than the Public Curator appointed under any such order shall not have or exercise any power or authority thereunder after the same has been so sealed until his appointment has been confirmed by the Court, which confirmation may be granted upon such terms as the Court thinks fit, or may be refused.

(2) This clause shall apply to such orders and declarations whether made before or after the commencement of this Act.

(3) This clause shall not be construed as in derogation of the provisions of clause 10 of this Schedule.

SIXTH SCHEDULE

[Section 72]

SUBJECT MATTERS FOR REGULATIONS

1. Persons administering Act. The functions, powers and duties of persons engaged in the administration of this Act.

2. Authorized persons. The appointment of authorized persons, including mode, purpose and circumstances of appointment, by whom appointed, and any qualifications or disqualifications with respect to appointment.

3. Reports by official visitors. Without limiting the subject matter in respect of matters prescribed pursuant to sections 12 and 13 of this Act, the reports of official visitors including their transmission or furnishing pursuant to this Act and requirements in respect of their making and content.

4. Tribunals. The carrying out of the objects and purposes of this Act in relation to Tribunals.

Without limiting the generality of the foregoing, the nature and subject matter of Tribunal proceedings, conferring on any Tribunal, chairman or other member ancillary powers in connexion with its or his functions under this Act, the functions and duties of officers appointed for the effectual operation of a Tribunal, and the conferring and imposing on Tribunals and members of such powers and duties as may be considered necessary or desirable for the purpose of the exercise by such Tribunals and members of their functions and of—

- (i) providing a safeguard against the abuse of the compulsory powers of detention conferred by this Act in relation to patients admitted to hospitals;
- (ii) providing, subject in any case to the patient's own welfare and the protection of others, a safeguard against the use of the compulsory powers of detention conferred by this Act if suitable treatment and care can be provided without compulsion; and
- (iii) providing assistance for the administration of this Act in the interests of patients as well as for the protection of other persons.

The procedure and practice of Tribunals including, without limiting the generality of the power to make regulations with respect thereto, fees to be allowed or charged and expenses to be paid, forms for matters and proceedings, the keeping of books, entries, records, documents and accounts, the transfer of proceedings from one Tribunal to another, representation and prohibition and limitation of representation before Tribunals, the presence at or exclusion from Tribunal hearings or proceedings of members of the public, the prohibition of publication of reports of Tribunal hearings or proceedings and of names of persons concerned in hearings or proceedings, the empowering of a Tribunal to have examinations made by specialists within the meaning of the *Medical Act 1939-1973* and authorizing and compelling the attendance of witnesses before such Tribunal and the administering of oaths to and the taking of affirmations and declarations of witnesses before Tribunals.

5. Administration of certain hospitals. The administration and good government of psychiatric hospitals, training centres and other places referred to in section 16 of this Act.

6. Hospital staffs. The functions, powers and duties of officers (medical officers and otherwise), nurses and employees in relation to the treatment and control of patients in hospitals.

7. Treatment of patients. Treatment and supervision of patients in hospitals and matters and procedures related and incidental thereto.

8. Training of nurses, etc. Appointment, training, examination and termination of appointment of student nurses and matters and procedures related and incidental thereto.

9. The nature of arrangements. The nature and making of arrangements pursuant to section 17 of this Act and the treatment of patients informally admitted.

10. Transfer, production, etc., of patients. The transfer, removal, discharge and conveyance of patients under and for the purposes of this Act, the production of any patient detained in a hospital under this Act before any court, tribunal or person as a party or witness to any proceeding or for examination, the assistance of members of the police force in relation to all or any of the foregoing, and procedures to be followed in relation to all or any of the matters referred to in this clause.

11. Patients absent without leave. Powers and procedures related and incidental to the power of persons referred to in section 47 of this Act to take into custody and otherwise deal with patients under that section.

12. Retaking of escaped patients. Powers and procedures related and incidental to the power of persons referred to in section 67 of this Act to retake and otherwise deal with patients under that section.

13. Legal custody. Prescribing in whose legal custody a patient or class of patient is or is deemed to be and any circumstances related or incidental thereto.

14. Charges for treatment. Providing charges for the treatment and control of classes of patients specified in relation to hospitals other than public hospitals and private hospitals.

15. Forms. Forms to be used under or for the purposes of this Act.

16. Proof of documents. The manner in which any application, recommendation, report, order, notice or other document under or for the purposes of this Act may be proved.

17. Records. The keeping, production and inspection of records under or for the purposes of this Act.

18. Offences. Offences against the regulations and penalties in respect thereof, provided that any such penalty shall not exceed \$200.

19. Fees and expenses. Fees and expenses payable or to be paid under this Act or in respect of functions or duties performed or carried out under this Act, and exemptions from payment of fees and expenses.

20. Traffic. The regulation, control and prohibition of traffic in or upon hospital grounds within the meaning of section 64 of this Act.

21. Matters prescribed. All matters required or permitted by this Act to be prescribed.

22. Generally. All matters that may be convenient for the administration of this Act or that may be necessary or expedient for carrying out or giving effect to this Act.