

## LUNACY (AMENDMENT) ACT.

Act No. 31, 1952.

An Act to amend the Lunacy Act, 1898-1949, in certain respects: and for purposes connected therewith. [Assented to, 23rd October, 1952.]

Elizabeth II,  
No. 31, 1952.

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Lunacy (Amendment) Act, 1952."

Short title  
and  
citation.

(2) The Lunacy Act of 1898, as amended by subsequent Acts and by this Act, may be cited as the Lunacy Act, 1898-1952.

**2.**

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Amendment  
of Act No.  
45, 1898.Conditions  
applicable  
to perform-  
ance or  
giving of  
certain  
operations  
or medical  
treatment  
upon or to  
patients.

2. The Lunacy Act, 1898-1949, is amended by inserting next after section one hundred and seventy-nine the following new section:—

179A. (1) (a) This section shall apply to leucotomy, electro convulsive therapy, electro narcosis therapy and insulin shock and such other operations or medical or therapeutic treatments to which the Governor by proclamation may apply the provisions of this section.

(b) The Governor may by proclamation declare that any operation or medical or therapeutic treatment therein specified shall be an operation or medical or therapeutic treatment in respect of which the provisions of this section shall apply.

(c) (i) The proclamation shall—

(a) be published in the Gazette.

(b) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session;

(c) take effect upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(ii) The day so appointed shall not be earlier than the day next following—

(a) the fifteenth sitting day after such proclamation has been laid before both Houses of Parliament if notice of motion for the disallowance of such proclamation is not given in either House of Parliament within fifteen sitting days after such proclamation has been laid before such House; or

(b) the day upon which a notice of motion for the disallowance of such proclamation duly given in either House of Parliament is disposed of by such House, or, when such a notice has been given in both such Houses, the later of such days.

(iii)

(iii) If either House of Parliament <sup>No. 31, 1952.</sup> passes a resolution of which notice has been given at any time within fifteen sitting days after the proclamation has been laid before such House disallowing the proclamation such proclamation shall not take effect.

(2) No patient shall be subjected to any operation or medical or therapeutic treatment to which this section applies—

(a) by the Superintendent or any member or members of the medical staff of any hospital for the insane or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, unless the Inspector-General has consented to the performance of such operation or the application of such treatment; or

(b) by any other legally qualified medical practitioner or practitioners unless the Inspector-General has consented to the performance of such operation or the application of such treatment by such practitioner or practitioners.

(3) The Inspector-General shall not give such consent unless—

(a) he is satisfied upon the report of the superintendent of any hospital for the insane that such operation or treatment is necessary or desirable for the safety or welfare of the patient proposed to be operated upon or treated, or is a reasonable and proper type of operation or treatment to be performed upon or applied to the patient; and

(b) in the case of leucotomy and any other operation or medical or therapeutic treatment in respect of which a Consultative Committee has been constituted as hereinafter provided the appropriate Consultative Committee has recommended the subjection of the patient to such operation or medical or therapeutic treatment.

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(4) No patient shall be subjected to any operation or medical or therapeutic treatment referred to in paragraph (b) of subsection three of this section if the person, on whom notice has been served by the Inspector-General as hereinafter provided, has within the time prescribed expressed his disapproval of such operation or medical or therapeutic treatment.

Such notice shall state the name of the patient proposed to be subjected to any such operation or medical or therapeutic treatment, the nature of such operation or treatment, and the time within which disapproval is to be expressed.

Such notice shall—

- (a) where the patient is married and not separated by order of a court or by agreement from his spouse, be served on the spouse;
- (b) where the patient is not married or is separated by order of a court or by agreement, be served on the parents or the surviving parent of such patient;
- (c) where there is no person on whom notice is required to be served under the foregoing provisions of paragraphs (a) and (b) of this subsection, or the Inspector-General is unable to ascertain particulars of the name and whereabouts of any person on whom notice is required to be so served, be served on such person as the Inspector-General considers to be the person in whose care, guardianship or custody the patient was prior to his admission to the hospital for the insane.

Where the Inspector-General has reason to believe that any disapproval expressed by any person in accordance with the foregoing provisions of this subsection has been unjustifiably or unreasonably expressed he shall refer the matter to the Master in Lunacy for inquiry and determination. Any person  
who

who appears to the Master in Lunacy to be interested in the matter may be heard in person or by counsel at any such inquiry. No. 31, 1952.

If the Master in Lunacy is of opinion that such disapproval has been expressed unjustifiably or unreasonably he may order that the patient be subjected to any such operation or medical or therapeutic treatment.

The provisions of section one hundred and fourteen of this Act shall apply, mutatis mutandis, to and in respect of an order made by the Master in Lunacy under this section.

(5) (a) There shall be constituted a Consultative Committee for the purpose of making recommendations to the Inspector-General relating to the subsection of patients to the operation of leucotomy.

(b) The Minister may in respect of any other operation or medical or therapeutic treatment to which the provisions of this section apply constitute a Consultative Committee for the purpose of making recommendations to the Inspector-General relating to the subsection of patients to such operation or medical or therapeutic treatment.

(c) Any Consultative Committee constituted pursuant to the provisions of this subsection shall consist of such legally qualified medical practitioners and other persons as the Minister appoints.

(6) Where in the opinion of the Superintendent of any hospital for the insane the delay incurred in obtaining the consent of the Inspector-General to the performance or application of any operation or medical or therapeutic treatment to which this section applies would endanger the life of any patient such Superintendent may—

(a) himself perform such operation or apply such treatment; or

(b) by writing under his hand consent to the performance of such operation upon or the application of such treatment to such patient.

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patient by any member or members of the medical staff of any hospital for the insane or of any incorporated hospital or separate institution within the meaning of the Public Hospitals Act, 1929, as amended by subsequent Acts, or by any other legally qualified medical practitioner or practitioners named in such consent.

Where the Superintendent of any hospital for the insane performs any operation or applies any treatment or consents to such performance or application in accordance with the provisions of this subsection he shall forthwith report in writing to the Inspector-General the circumstances of the case.

(7) Any consent given by the Inspector-General or of a Superintendent of any hospital for the insane under this section shall, for the protection of any legally qualified medical practitioner performing any operation or applying any treatment in accordance with such consent and of any person concerned with the performance of such operation or with the application of such treatment, have the same effect as if such consent had been given by the person operated upon or treated while he was of sound mind, or in the case of a minor, as if such consent had been given by his parents.

(8) No action claim or demand whatsoever shall lie or be made or allowed by or in favour of any person against Her Majesty, the Inspector-General or a Superintendent of any hospital for the insane for or in respect of any damage or loss or injury sustained or alleged to be sustained by reason of the enactment of this section or the giving of any consent by the Inspector-General or a Superintendent of any hospital for the insane or as a result of any operation or treatment performed or applied in accordance with any such consent.