

Mental Health Bill

Explanatory Memorandum

Outline

The aim of this Bill is to establish the legislative framework for the provision of services to the mentally ill well into the 21st century and beyond.

It takes account of the recommendations of the Consultative Council on Review of Mental Health Legislation and is designed to ensure that the most appropriate care is available in the least restrictive setting.

For the first time, the legislation will clearly set out goals which the Health Commission should seek to attain and identify the role of the Commission in connection with the provision of mental health services to the community.

The Bill, of necessity, concentrates on involuntary patients.

It recognizes that the classification of a person as an involuntary patient involves a curtailment of civil liberties, and takes the approach that such action should only be contemplated if absolutely necessary for the safety and well being of the person, or for the protection of the community.

Contrary to the *Mental Health Act* 1959, which will be repealed by the Bill, no attempt has been made to define "mental illness", but, rather, the Bill lays down a series of criteria which must be met before a person can be lawfully detained as an involuntary patient.

These are that—

- (a) the person appears to be mentally ill;
- (b) the person's mental illness requires immediately treatment and that treatment can be obtained by admission to and detention in a psychiatric service;
- (c) the person should be admitted to and detained as an involuntary patient for that person's health or safety or for the protection of members of the public;
- (d) the person has refused or is unlikely to voluntarily submit to necessary treatment for the mental illness; and
- (e) the person cannot receive adequate treatment for the mental illness in a manner less restrictive of that person's freedom of decision and action.

It should be noted that the Bill excludes, *per se*, a political, religious, or sexual belief or preference, or the fact that the person engages in immoral or illegal conduct, is intellectually disabled or takes drugs or alcohol, from the scope of "mental illness".

Under the Bill, a person admitted to a psychiatric service on the recommendation of a medical practitioner, may be detained on the order of an authorized psychiatrist not longer than 72 hours for the purpose of observation.

No treatment, other than emergency medical treatment, may be given during this period, but the authorized psychiatrist is empowered to examine the patient to determine whether the person should be detained as an involuntary patient.

In addition, provision is made in the Bill for the admission of a person found guilty of a criminal offence either for assessment, or as an involuntary patient, by order of a court, and for the transfer of prisoners by the Minister administering the Office of Corrections as security patients or as involuntary patients.

Section 54 of the *Mental Health Act* 1959 currently precludes any period during which a prisoner has been confined in an institution from being deducted from his or her sentence.

This situation will be reversed by the Bill which provides that any period of detention in a psychiatric service is to be treated as though it was a period of imprisonment, and the person had been of good behaviour.

Likewise, the Bill also provides for the automatic discharge of security status at the expiration of the sentence.

The Bill prohibits the opening of a letter written by a patient except certain security patients.

This is the opposite approach to that taken in section 79 of the *Mental Health Act* 1959 which, with some specified exceptions, permits the censoring of a patient's correspondence.

The Bill requires every patient admitted to a psychiatric service to be furnished with a statement of his or her rights and, *inter alia*, specifies that copies of the statement, as well as the Act, and any publications explaining the Act, are to be kept at a place accessible to patients.

Perhaps the most important innovation proposed in the Bill is the establishment of a Mental Health Review Tribunal.

The Tribunal will have a number of functions under the Act.

These include reviewing all patients, and the hearing of appeals against the detention of involuntary and security patients.

The Tribunal will sit in divisions and, under the Bill, will be required to review the case of each involuntary and security patient within one month, six months and twelve months of admission, and thence at least annually.

Whether as a result of a review or an appeal, the Tribunal will have the ability to order the discharge of an involuntary patient, or to recommend to the Minister the discharge of a person detained under a court order, or the return of an involuntary patient to prison, as the case may be.

The Tribunal may also make recommendations to the Minister regarding the fitness to plead, the detention, care or treatment, or the release of persons admitted under the relevant provisions as security patients.

Appeals against determinations of the Tribunal may be addressed to the Supreme Court.

While the Tribunal will play a major role in ensuring that persons are properly detained under the Act, it must be emphasized that it will be only one of the avenues available under the legislation for review of patient care.

An authorized psychiatrist, for example, may at any time discharge an involuntary patient who no longer meets the criteria for admission specified in the Act.

The chief psychiatrist will also have similar powers to make recommendations to the Minister with respect to patients detained by court order, prisoners and security patients as will have the Tribunal.

To ensure that the interests of no patient is overlooked, the Bill specifically requires that every patient, whether voluntary or involuntary, be examined at least once each year with respect to that patient's mental and general health.

Among other things, the Bill will restructure the Official Visitor scheme established under the *Mental Health Act* 1959 so that it more effectively represents the community interest.

Community Visitors are to be appointed on a regional basis and will have broad powers of inspection of all mental health services, including psychiatric services, in the region.

The functions of community visitors will range from inquiring into the adequacy of services for the assessment and treatment of patients to failures to comply with the provisions of the Act.

Any patient or resident of a mental health service will be entitled to be seen, and to be interviewed, by a panel of community visitors.

Unlike the current provisions in the *Mental Health Act* 1959, specific provision is made in the Bill for an annual general meeting of and for the tabling of an annual report of community visitors before both Houses of Parliament.

Both electroconvulsive therapy (E.C.T.) and psychosurgery have valid therapeutic application in appropriate cases but the Bill takes account of the fact that these are potentially controversial treatments and raise emotional issues within the community.

With this in mind, the Bill will regulate both the use of E.C.T. and other prescribed treatments, and the performance of psychosurgery.

The use of E.C.T. will be limited by the Bill to psychiatric services and premises licensed for the purpose by the Health Commission.

E.C.T. may only be administered with the informed consent of the patient, and clear criteria as to what constitutes informed consent are set out in the Bill.

However, E.C.T. may be given to an involuntary patient or a security patient incapable of giving informed consent in certain circumstances with the consent of the authorized psychiatrist but details must be reported within 7 days to the Mental Health Review Tribunal.

The performance of psychosurgery will be prohibited by the Bill unless—

- (a) the patient has given informed consent; and
- (b) the operation has been approved by the Psychosurgery Review Board to be constituted under the Act.

Where there is a conclusive presumption that a person is incapable of giving informed consent, or where there is a substantial doubt as to whether informed consent has been given, the Board will be required by the legislation to refer the question to the Supreme Court for determination.

Other matters dealt with in the Bill include the establishment of legislative guidelines for the application of bodily restraint and the use of seclusion, and the non-psychiatric treatment of patients.

The Bill also contains a number of provisions relating to the maintenance of banking accounts on behalf of patients of a psychiatric service.

A notable feature of the legislation is its commitment to the fostering and development of a comprehensive range of community care services outside the hospital system.

This will be achieved, in part, by empowering the Health Commission to enter into funding and service agreements with community support services registered with the Commission.

Such agreements may relate to a variety of matters including the purpose for which the funds may be used, the persons for whom and the types of services, facilities and amenities to be provided by, and the staffing of, the community support service.

Funding and service agreements are expected to play an increasingly important role in enabling patients to live as normal a life as possible within the community and are integral to the underlying theme of the Bill of providing services in the least restrictive environment.

Clause Notes

PART I.—PRELIMINARY

Clause 1 is the usual citation provision.

Clause 2 is the commencement clause and states that the several provisions of the Act shall come into operation on a day or the respective days to be fixed by proclamation published in the Government Gazette.

Clause 3 is the interpretation provision.

PART II.—OBJECTS, OBJECTIVES AND FUNCTIONS

Clause 4 expresses the objects of the Act as well as the intentions of the Parliament as to the manner in which the legislation is to be interpreted and administered.

Clause 5 sets out the objectives of the Health Commission under the Act.

Clause 6 identifies the functions of the Commission under the Act.

PART III.—ADMISSION OF PATIENTS

Division 1—Voluntary Patients

Clause 7 enables any person over 16 to apply to the authorized psychiatrist for admission to a psychiatric service as a voluntary patient. A person under 16 may be admitted on the application of a parent or guardian, provided that the person does not refuse to be admitted and the authorized psychiatrist is satisfied that the person is capable of making the decision. Appeals against non-admission may be made to the chief psychiatrist.

It should be noted that, unlike section 41 (4) of the *Mental Health Act 1959*, which permits a voluntary patient to be detained up to 3 days after application for discharge, the clause makes clear that a voluntary patient is free to leave and be discharged from a psychiatric service at any time.

Division 2—Involuntary Patients

Clause 8 prescribes the criteria under which a person may be admitted to and detained in a psychiatric service as an involuntary patient.

Clause 9 describes the procedure for the recommendation of involuntary patients. Among other things, the clause authorizes the transport to a psychiatric service by members of the police force and ambulance officers of a person whose admission to a psychiatric service has been recommended.

Clause 10 deals with emergency situations. It empowers a member of the police force to enter any premises, without the need for a warrant, and to use such force as is reasonably necessary for the purpose of apprehending a person who is apparently mentally ill and a danger to himself or others. The member may be accompanied by a medical practitioner but, in any event, is required by the clause to immediately take the apprehended person to a medical practitioner for examination.

Clause 11 relates to non-urgent situations. Under the clause, a magistrate may issue a warrant authorizing a member of the police force, accompanied by a medical practitioner,

to enter any premises with such assistance as is required, and to visit and examine any person who appears to be mentally ill, and because of that illness, is incapable of caring for herself or himself.

Clause 12 requires any person admitted as an involuntary patient to be examined without delay by the authorized psychiatrist to determine whether the person should be discharged, or detained for observation for a period not exceeding 72 hours. The clause prohibits any treatment during this period except emergency medical treatment.

Clause 13 requires the authorized psychiatrist to examine a person admitted for observation prior to the expiration of the period of an observation order. As a result of that examination, the authorized psychiatrist must either discharge the person, or order the person's detention as an involuntary patient.

Division 3—Persons Convicted of Criminal Offences

Clause 14 enables a court to refer to a psychiatric service a person convicted of a criminal offence, where it is satisfied that the person is suffering from a mental illness that requires her or his admission and detention for treatment, instead of passing sentence. The court will have the option of making a limited hospital order for up to 3 months, or a hospital order of unlimited duration. Under an unlimited hospital order, the person is admitted to the psychiatric service as an involuntary patient. At the expiration of a limited hospital order, and after considering a report from the authorized psychiatrist, the court may either make a hospital order of unlimited duration, or proceed to pass sentence.

Clause 15 provides for the transfer by the Minister administering the Office of Corrections of prisoners to a psychiatric service who appear to be mentally ill either under a hospital order of unlimited duration, or under a restricted hospital order.

Clause 16 has the effect of recognizing any period of detention of a prisoner in a psychiatric service as a period of imprisonment in a prison and as if the person had been of good behaviour.

Division 4—Repatriation Patients

Clause 17 is an enabling clause and empowers the Minister to enter into agreements with the Commonwealth with respect to the provision of mental health services to repatriation patients.

This clause will replace section 59 of the *Mental Health Act* 1959 which provides for the admission of ex-servicemen into repatriation mental hospitals.

Division 5—Patient's Rights

Clause 18 requires every patient admitted to a psychiatric service to be given a statement as to her or his rights and that a copy be sent or given to the nearest available relative.

Clause 19 requires copies of the Act, publications prepared by the Commission explaining the Act, copies of the statement to be given to patients, and the addresses of the Mental Health Review Tribunal, Public Advocate, the chief psychiatrist and the community visitors, to be kept at a place readily accessible to all patients in a psychiatric service.

Clause 20 forbids the opening of a letter written by a patient, except a letter written by a security patient subject to security conditions.

PART IV.—REVIEW, DISCHARGE, LEAVE, AND TRANSFER OF PATIENTS

Division 1—Establishment, Constitution and Procedure of the Tribunal

Clause 21 establishes the Mental Health Review Tribunal and provides that the provisions of Schedule 1 shall have effect with respect to members of the Tribunal.

Clause 22 defines the functions of the Tribunal. It particularly requires the Tribunal, in determining any review or appeal, to have regard primarily to the patient's current mental condition, and in every case, to consider the patient's medical and psychiatric history and social circumstances.

Clause 23 provides for the appointment of an executive officer and such other officers and employees as are necessary for the proper functioning of the Tribunal.

Clause 24 requires proceedings before the Tribunal to be open to the public, but enables proceedings to be closed in certain circumstances.

Clause 25 deals with proceedings of the Tribunal and, among other things, provides that the provisions of Schedule 2 shall have effect with respect to its procedure.

Clause 26 enables the Tribunal to appoint a legal practitioner or an approved interpreter or both to assist the Tribunal in proceedings.

Clause 27 requires the patient in respect of whom a hearing is conducted to appear before the Tribunal, and deals with representation on behalf of the patient, and other persons who have been given notice of the hearing, or who wish to be heard.

Clause 28 prohibits the publication or broadcasting of any material calculated to lead to the identification of any person concerned in proceedings before the Tribunal.

Clause 29 entitles a party to a proceeding to obtain a statement from the Tribunal of the reasons for its determination.

Clause 30 requires the executive officer to maintain a register of applications, determinations of the Tribunal, and the reasons for the determination, and provides for inspections of the register.

Division 2—Voluntary Patients

Clause 31 requires the Tribunal to review the cases of voluntary patients.

Clause 32 sets out the powers of the Tribunal with respect to such reviews.

Division 3—Involuntary Patients

Clause 33 entitles an involuntary patient, or any person who has a genuine concern for the care and protection of an involuntary patient, to appeal to the Tribunal against a detention order under section 13, or an unlimited hospital order under section 14 or 15.

Clause 34 requires the Tribunal to review the case of an involuntary patient within 1 month, 6 months and 12 months from the date of the detention order, or hospital order of unlimited duration, and thereafter at intervals not exceeding 12 months.

Clause 35 bars the Tribunal from hearing an appeal within 28 days of a review, or hearing a review within 28 days of an appeal.

Clause 36 lists those persons who are entitled to notice of the hearing of an appeal or review by the Tribunal.

Clause 37 sets out the powers of the Tribunal after hearing an appeal or review. It provides that where a person is detained under section 13 and the Tribunal is not satisfied

that such continued detention is necessary, it may order that the person be discharged either from the psychiatric service, or as an involuntary patient. Discharge from the service or from involuntary patient status may be recommended to the Minister where the patient is detained under section 14. If the person has been detained as an involuntary patient under section 15, the Tribunal may recommend that she or he be returned to prison.

Clause 38 empowers the authorized psychiatrist, where the authorized psychiatrist is satisfied that continued detention is not necessary, to discharge at any time a patient detained under section 13. The clause goes on to vest in the chief psychiatrist similar powers of recommendation as vested in the Tribunal under the previous clause.

Clause 39 authorizes the Minister to do all such things as are necessary to give effect to a recommendation under sections 37 or 38.

Clause 40 enables involuntary patients to be transferred between psychiatric services in certain specified circumstances.

Clause 41 permits the authorized psychiatrist to allow involuntary patients leave of absence.

Clause 42 permits the authorized psychiatrist to allow an involuntary patient to be absent from the psychiatric service for the purpose of receiving medical treatment.

Clause 43 has the effect of automatically discharging a person as an involuntary patient if she or he has been absent without leave of absence for 3 months, or has been on leave of absence for 6 months unless, in the latter case, the authorized psychiatrist or chief psychiatrist applies to the Tribunal for an order that the person not be discharged.

Clause 44 provides for the apprehension and return of an involuntary patient who is absent from a psychiatric service without leave by a member of the police force, the authorized psychiatrist or a person authorized by the authorized psychiatrist, or an authorized officer of the Commission.

Division 4—Security Patients

Clause 45 provides for appeals to the Mental Health Review Tribunal by a security patient, or by any person who has a genuine concern for the care and protection of a person detained as a security patient.

Clause 46 requires the Tribunal to undertake periodic reviews of security patients.

Clause 47 bars the Tribunal from hearing an appeal within 28 days of a review, or hearing a review within 28 days of an appeal.

Clause 48 lists those person who are entitled to be given notice of an appeal or review by the Tribunal.

Clause 49 empowers the Tribunal, after hearing an appeal or review to make a recommendation to the Minister in respect of a security patient—

- (a) who is subject to a determination that the person is unfit to plead, as to the fitness of the person to be tried;
- (b) who has been acquitted of an offence on account of insanity, as to the person's detention, care or treatment; discharge as a security patient; or the person's release; or
- (c) who is subject to a restricted hospital order under section 15, as to the person's continued detention, care or treatment in a hospital, prison or other place; discharge as a security patient; or the person's release.

Where the Minister receives a recommendation that a person is fit to be tried or that a person should be released the Minister is required to notify the Attorney-General and the Minister administering the Office of Corrections.

Clause 50 vests similar powers of recommendation in the chief psychiatrist as those exercisable by the Tribunal under the previous clause.

Clause 51 contains various provisions relating to the security, transport, and custody of security patients, and requires the Director-General of Corrections to be advised of the death of a security patient.

Clause 52 enables a security patient to request the chief psychiatrist or Mental Health Review Tribunal to recommend that she or he be transferred to a prison, and makes provision for such an order by the Minister.

Clause 53 permits a security patient to be transferred between psychiatric services by the chief psychiatrist in certain specified circumstances.

Clause 54 states that a security patient detained under section 15 ceases to be a security patient at the expiration of that person's sentence of imprisonment, and goes on to provide for the continued treatment of the person either as an involuntary or as a voluntary patient.

Clause 55 empowers the Minister to approve leave of absence for a security patient on the recommendation of the chief psychiatrist or the Tribunal. However, no such recommendation may be made unless the chief psychiatrist or Tribunal as the case may be is satisfied that the safety of the public will not be seriously endangered, and the Director-General of Corrections has been consulted.

Clause 56 deals with applications by a security patient for special leave of absence. Applications for special leave may be granted by the chief psychiatrist, or on appeal, by the Tribunal. Special leave of absence is not to exceed 24 hours.

Clause 57 provides for the apprehension of a security patient who is absent without leave by a member of the police force, the authorized psychiatrist, or person authorized by the authorized psychiatrist or by an authorized officer of the Commission for the purpose of returning the patient to the psychiatric service.

PART V.—CARE AND TREATMENT OF PATIENTS

Division 1—Psychosurgery

Clause 58 defines “psychosurgery” and “behaviour” for the purposes of the Division.

Clause 59 sets out the criteria constituting informed consent to the performance of psychosurgery.

Clause 60 establishes a Psychosurgery Review Board and provides that the provisions of Schedule 3 shall have effect with respect to the Board.

Clause 61 makes it an offence to perform, or to permit the performance of psychosurgery without consent having been obtained in accordance with the requirements of the Division. The clause goes on to specifically prohibit the performance of psychosurgery on any person who has not given informed consent to the operation except as otherwise provided.

Clause 62 requires any person who proposes to perform psychosurgery to apply for the consent of the Psychosurgery Review Board to the operation.

Clause 63 deals with the hearing of an application under the previous clause. Among other things, the clause requires notification of such a hearing to be given to the specified parties, that hearings be open to the public and that the person in respect of whom an application has been made is entitled to legal or other representation.

Clause 64 relates to various procedural matters with respect to hearings by the Board including the administration of oaths and the summoning of persons to appear before the Board.

Clause 65 prohibits the publication or broadcasting of any report of a hearing of the Board calculated to lead to the identification of a person involved.

Clause 66 specifies the circumstances under which the Board is required either to consent or to refuse its consent to an application. It goes on to provide that where there is a conclusive presumption that a person is incapable of giving informed consent, or a substantial doubt that the person has given informed consent, the Board is to refer the matter to the Supreme Court.

Clause 67 sets out the various matters as to which the Board must be satisfied before consenting to psychosurgery.

Clause 68 specifies the matters to be included in a consent of the Board and the persons to whom notice is to be given of such consent.

Clause 69 requires the Board to give reasons in writing for the refusal of consent and specifies the persons to whom notice of refusal is to be given.

Clause 70 deals with referrals to the Supreme Court. It requires a Judge of the Court to conduct a hearing as soon as practicable to determine whether the person is capable of giving, and has given, informed consent, or if the person is conclusively presumed to be incapable of giving informed consent, whether the Judge should consent on that person's behalf.

Clause 71 requires the Board to consent to an application where the Judge has found that the person has the capacity to give, and has given, informed consent, or where the Judge has consented to psychosurgery on the person's behalf.

Clause 72 provides that any person who performs psychosurgery with the consent of the Board shall report to the Board in writing within 3 months of the operation as to the performance and results of the operation.

Clause 73 requires the Board to ensure that there is a regular review of any person on whom psychosurgery has been performed for the purpose of advancing research into psychosurgery unless the person objects to such review.

Division 2—Electroconvulsive Therapy and Other Prescribed Treatments

Clause 74 defines "prescribed treatment" as meaning electro convulsive therapy (ECT) and any other prescribed psychiatric operation and treatment, and what constitutes informed consent to the performance of a prescribed treatment.

Clause 75 prohibits the performance of a prescribed treatment on a person without informed consent unless the following clause applies.

Clause 76 permits the authorized psychiatrist to consent to a prescribed treatment in certain circumstances on behalf of an involuntary patient or security patient incapable of giving informed consent.

Clause 77 requires the authorized psychiatrist within 7 days of giving a consent under the previous clause to send a written report to the Mental Health Review Tribunal as to the grounds on which the authorized psychiatrist was satisfied under that section. Details of such reports, and any comments of the Tribunal, are to be included by the Tribunal in its annual report.

Clause 78 prohibits the performance of a prescribed treatment except at a psychiatric service, or at a licensed premises.

Clause 79 enables the occupier of any premises to apply to the Health Commission for a licence to perform prescribed treatments on those premises. The Commission, after considering the various matters mentioned in the clause, may either issue a licence subject to conditions, limitations and restrictions as the Commission considers appropriate, or refuse to issue a licence.

Clause 80 describes the nature of a licence to be issued by the Commission and fixes a maximum period of validity of 3 years. The clause also empowers the Commission to cancel a licence in prescribed circumstances.

Clause 81 makes provision for the renewal of licences.

Clause 82 deals with the amendment of licences.

Clause 83 entitles any person aggrieved by a decision of the Commission to refuse to issue, renew or amend a licence, or to cancel a licence to appeal to a magistrates' court.

Clause 84 requires holders of licences to provide the Commission with an annual return of prescribed treatments performed.

Division 3—Restraint and Seclusion

Clause 85 prohibits the use of mechanical restraint of a patient except if it is necessary for the medical treatment of the patient, to prevent the patient causing injury to herself or himself or any other person, or to prevent the patient from persistently destroying property. Restraint may only be applied with the approval of the authorized psychiatrist or, in an emergency, authorized by the senior nurse and notified to the authorized psychiatrist without delay. The authorized psychiatrist is required by the provision to report monthly to the Mental Health Review Tribunal as to the form, and the reasons why mechanical restraint was used during the month.

Clause 86 prohibits the keeping of a patient in seclusion unless it is necessary for the protection, safety or wellbeing of the patient, or other persons with whom the patient would otherwise be in contact. As in the case of mechanical restraint, the use of seclusion must be approved by the authorized psychiatrist or, in an emergency, authorized by the senior nurse and notified to the authorized psychiatrist specifying the period of time during which seclusion was used and the reasons why it was used. The clause also contains a number of provisions safeguarding the welfare of a patient during any period of seclusion.

Division 4—Non-Psychiatric Treatment

Clause 87 excludes from the scope of the Division the performance of psychosurgery, or a prescribed treatment.

Clause 88 defines "non-psychiatric treatment" for the purpose of the Division, and what constitutes informed consent to such treatment.

Clause 89 prohibits the performance of non-psychiatric treatment without informed consent unless the following clause applies.

Clause 90 permits the performance of non-psychiatric treatment on a patient who is incapable of giving informed consent either with the consent of a guardian appointed under the proposed Guardianship and Administration Board Act with power to consent to health care that is in the best interests of the person, or, in any other case, with the consent of the authorized psychiatrist. Reports as to the non-psychiatric treatment performed, and the reasons why the authorized psychiatrist consented to such treatment, must be sent to the Mental Health Review Tribunal monthly by the authorized psychiatrist.

Clause 91 prohibits the sterilization, or the termination of the pregnancy of a patient, or the removal of non-regenerative tissue for the purpose of transplantation unless the

patient has given informed consent, or, if the patient is a represented person, the guardian, and the Guardianship and Administration Board has consented, or where, in an emergency, the performance of the medical procedure is necessary to save the life of that person.

Division 5—Annual Examination

Clause 92 requires every patient (including voluntary patients) to be examined at least once each year as to that patient's mental and general health, and that a report of such examination be sent by the authorized psychiatrist to the Mental Health Review Tribunal.

Division 6—Patient's Money

Clause 93 requires the chief executive officer of a psychiatric service to open a Patients' Trust Account, a Patients' Amenities Account and an Interest Account in the name of the service with any bank approved by the Treasurer.

Clause 94 requires the payment into the Patients' Trust Account of any money received from a patient to be held on behalf of the patient, or from any person to be held for the benefit, use or enjoyment of a patient and provides for the withdrawal of funds by a patient or on behalf of a patient.

Clause 95 provides for the investment of any money in the Patients' Trust Account not immediately required for use by patients.

Clause 96 requires the income, or capital gain, from any investment under the previous clause to be paid into the Interest Account and provides for the disbursement of funds from that account into patient's accounts at the prescribed rate of interest.

Clause 97 requires monies received for the purpose of providing goods and services or other amenities for patients, and any surplus from the Interest Account, to be paid into the Patients' Amenities Account, and provides for payments from that account for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of patients generally.

Clause 98 enables a ceiling to be fixed from time to time on the amounts of money which may be held by a psychiatric service on behalf of each patient. As it is not intended that psychiatric services should hold or manage large sums on behalf of individual patients, the chief executive officer is required to advise the patient, or the patient's representative, to invest monies over the prescribed amount in an appropriate manner.

PART VI.—ADMINISTRATION

Division 1—Proclamation of psychiatric hospitals and units

Clause 99 enables the Governor in Council to proclaim any premises provided by the State for the care and treatment of persons who are mentally ill, to be an approved psychiatric hospital, and the psychiatric unit of a general hospital to be an approved psychiatric unit. Any proclaimed psychiatric hospital or mental hospital under the *Mental Health Act 1959* is deemed to have been proclaimed as an approved psychiatric hospital or approved psychiatric unit as the case may be.

Division 2—Medical Staff

Clause 100 requires as many medical practitioners as are necessary for the purposes of the Act to be appointed or employed by the Commission. Such practitioners are to be employed on such conditions, and receive such remuneration as determined by the Public Service Board having regard to relevant determinations of the Hospitals Remuneration Tribunal, but will not be subject to the *Public Service Act 1974* except as otherwise provided

in the Bill. The clause goes on to state that the provisions of Schedule 4 shall have effect with respect to medical practitioners appointed or employed for the purposes of the Act.

Clause 101 provides for the appointment of an authorized psychiatrist for each approved psychiatric hospital.

Clause 102 provides for the appointment of a chief executive officer for each approved psychiatric hospital.

Division 3—Community Support Services

Clause 103 defines “approved services”, “community support service” and “funding and services agreement” for the purposes of the Division.

Clause 104 empowers the Commission to allocate funds to a community support service which has entered into a funding and services agreement with the Commission.

Clause 105 enables a person to apply for the registration of an association or organization which provides approved services to be registered as a community support service, and sets out the grounds on which an application may be refused.

Clause 106 vests in the Commission an ability to enter into a funding and services agreement with a community support service and sets out various matters which may be provided for in such agreements.

Clause 107 empowers the Governor in Council, on the recommendation of the Commission and the Minister, to appoint an administrator where a community support service is inefficiently or incompetently managed, has failed to provide an effective service or has breached or failed to comply with a funding and services agreement.

Clause 108 enables the Governor in Council to proclaim an association or organization which provides services designed specifically for persons who are mentally ill but which is not registered as a community support service to be a proclaimed service and requires a proclaimed service to operate subject to such conditions, and comply with any requirements, specified in the proclamation.

Division 4—The Chief Psychiatrist

Clause 109 requires the appointment by the Commission of a Chief Psychiatrist and sets out the functions of the Chief Psychiatrist.

Clause 110 enables the Chief Psychiatrist to delegate a power duty or function to another medical practitioner employed by the Commission.

Clause 111 vests in the Chief Psychiatrist power to visit and inspect any mental health service, to interview patients, to make various inquiries, and to inspect documents relating to patients, and requires the person in charge and members of the staff to provide such assistance as is required. The Chief Psychiatrist will also have an ability to order the person in charge of any mental health service to allow the person specified in the order to see a patient specified in the order.

Clause 112 provides for the investigation of complaints that a patient is being unlawfully or improperly treated in a private hospital for mental illness.

Division 5—Community Visitors

Clause 113 defines “mental health service” and “region” for the purposes of the Division.

Clause 114 enables the Governor in Council to appoint up to nine community visitors for each of the Health Commission’s regions and provides that Schedule 5 shall have effect with respect to community visitors.

Clause 115 describes the functions of a community visitor and provides that a community visitor shall have standing to initiate an appeal or review under the Act.

Clause 116 deems any member of the Commission, or person appointed by the Commission for the purpose of any investigation in connection with the administration of the Act, to be a community visitor.

Clause 117 deals with visits to mental health services by community visitors and among other things, requires every psychiatric service to be visited at least one each month.

Clause 118 vests in a community visitor an entitlement to inspect any part of a mental health service, to interview patients, to make various inquiries and to inspect documents, and requires the person in charge and members of the staff to provide such assistance as is required.

Clause 119 provides that any patient detained in, or a resident of, a mental health service may request the person in charge of the service to arrange for a patient to be seen and interviewed by a panel of community visitors. After interviewing such patient or resident, the panel may report to the Chief Psychiatrist, making such recommendations as it considers appropriate.

Clause 120 requires the person in charge of a mental health service to maintain a record of visits by community visitors.

Clause 121 requires the community visitors for a region to report twice a year to the District Health Council, and enables the Minister to require a panel of community visitors to report to the Minister on any specified matter. Similarly, a community visitor, or panel of community visitors, may submit a report at any time to the Minister where it considers any matter should be considered personally by the Minister.

Clause 122 requires the Minister to convene an annual general meeting of community visitors and provides for the preparation and tabling of an annual report in both Houses of Parliament.

PART VII.—GENERAL

Division 1—Miscellaneous

Clause 123 empowers the Mental Health Review Tribunal, where a question of law arises in proceedings before that body, to reserve the question in the form of a special case stated for the opinion of the Supreme Court.

Clause 124 provides for appeals to the Supreme Court by persons aggrieved by a determination of the Tribunal.

Clause 125 authorizes the judges of the Supreme Court to make rules with respect to special cases stated, and appeals.

Clause 126 deals with the amendment of incorrect or defective documents relating to the admission of an involuntary patient. It provides that such a document may be amended within 14 days of the admission by the person who signed the document, but such amendment has no force or effect unless approved the Chief Psychiatrist. Where a document which is incorrect or defective is not amended to the satisfaction of the Chief Psychiatrist

within 14 days of a direction requiring the amendment, the Chief Psychiatrist may order the patient be discharged. The Mental Health Review Tribunal and the Supreme Court will also have the capacity to amend a document where in any proceedings it appears that the document is incorrect or defective.

Clause 127 indemnifies from civil or criminal proceedings any person who does anything in good faith and with reasonable care in relying on a document apparently given or made in accordance with the requirements of the Act.

Clause 128 requires a medical practitioner who signs any recommendation or certificate in connection with the admission of a patient to specify the facts on which the opinion is based that the person is mentally ill, and to distinguish these facts from facts communicated by any other person to the medical practitioner. The clause prohibits the admission of any person to a psychiatric service on a recommendation or certificate which purports to be based only on facts communicated by any other person.

Clause 129 requires that a person be seen and personally examined by the medical practitioner who signs a recommendation or certificate in connection with the admission of that person to a psychiatric service.

Clause 130 invalidates any recommendation or certificate signed by a medical practitioner who is a relative or guardian of the person by whom the request statement is made.

Clause 131 makes it an offence for a medical practitioner to falsely state or certify anything in a recommendation or certificate in connection with the admission of a person to a psychiatric service or for a person who is not a medical practitioner to sign such a recommendation or certificate.

Clause 132 enables a medical practitioner, who otherwise is not entitled to receive payment for making a recommendation for involuntary admission of a patient, to apply to the Commission for payment of the prescribed fee.

Clause 133 authorizes the Commission to make special payments and grants to self-help groups.

Clause 134 contains the provisions which are to apply with respect to the private treatment of a patient admitted to a psychiatric service.

Clause 135 creates an offence of insulting members of the Mental Health Review Tribunal or Psychosurgery Review Board, repeatedly interrupting the proceedings of the Tribunal or Board, creating a disturbance, or doing any act or thing which would constitute a contempt of court.

Clause 136 empowers the Tribunal or Board to make orders as to costs.

Clause 137 contains various machinery provisions with respect to the giving of notice under the Act.

Clause 138 makes clear that a hearing or determination of the Mental Health Review Tribunal or Psychosurgery Review Board is not invalidated or affected only by the failure to give notice to various persons.

Clause 139 provides for judicial recognition of the signature of the President, executive officer or member of the Tribunal, or chairperson or member of the Board.

Clause 140 requires the Tribunal to keep proper accounts and records of its transactions and affairs, and provides for the audit of its financial statements by the Auditor-General. The clause further requires the Tribunal to submit an annual report to the Minister and provides for the tabling of the report and audited financial statement in both Houses of Parliament.

Clause 141 imposes similar requirements with respect to the Psychosurgery Review Board.

Clause 142 is the general penalty provision and fixes a maximum penalty of 20 penalty units where no other penalty is provided.

Clause 143 deals with liability where the person charged with an offence under the Act is a body corporate.

Division 2—Regulations

Clause 144 contains various heads of power to make regulations under the Act.

Division 3—Repeals and Transitional

Clause 145 has the effect of repealing the *Mental Health Act 1959* and the other provisions listed in Schedule 6, and also contains the usual transitional provisions necessary as a result of the repeal of that Act, and the commencement of both the new Act and the Intellectually Disabled Persons Services Act.