
MENTAL HEALTH ACT 1977

ANALYSIS

- | | |
|--|---|
| <ol style="list-style-type: none">1. Short title, citation, and commencement.2. Interpretation.3. Special institutions.4. Nature of hospital orders and guardianship orders.5. Hospital orders in respect of neglected children, &c.6. Limitations on making of hospital orders for special institutions.7. Repeal of provisions relating to indeterminate sentences.8. Power to transfer prisoners to special institutions.9. Effect on transfer direction of termination of sentence.10. Effect on transfer direction of termination of criminal proceedings. | <ol style="list-style-type: none">11. Effect on transfer direction of termination of detention as civil prisoner.12. Retention of prisoners in institutions after termination of sentence, &c.13. Application to Tribunal by persons continuing to be detained in special institutions after expiration of sentence, &c.14. Transfers from special institutions at direction of Tribunal.15. Consequential amendments.16. Amendment of <i>Criminal Code</i>, s. 382. |
|--|---|





MENTAL HEALTH

No. 124 of 1977

AN ACT to amend the Mental Health Act 1963 so as to provide for the establishment of an institution for the accommodation and treatment of patients who, having become subject to criminal proceedings, need to be detained under conditions of special security and, in connection therewith, to amend the Criminal Code.

[14 December 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Mental Health Act 1977*.

Short title,
citation, and
commencement.

(2) The *Mental Health Act 1963**, as subsequently amended, is in this Act referred to as the Principal Act.

* No. 63 of 1963. Subsequently amended by No. 55 of 1965, Nos. 24 and 36 of 1967, and No. 77 of 1968.

(3) This Act shall commence on a day to be fixed by proclamation.

Interpretation.

2 Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1), after the definition of “ Commission ”, the following definition:—

“ ‘ controlling authority ’ means—

(a) when used in relation to a hospital, the hospital authority thereof; and

(b) when used in relation to a special institution, the controlling authority thereof pursuant to section 6A;”;

(b) by inserting after the definition of “ hospital order ” in that subsection the following definition:—

“ ‘ institution ’ means a hospital or a special institution;”;

(c) by inserting in that subsection, after the definition of “ restriction order ”, the following definition:—

“ ‘ special institution ’ means a place declared to be a special institution under section 6A;”.

3 After section 6 of the Principal Act the following section is inserted:—

Special institutions.

“ 6A—(1) Where the Minister is satisfied that a place is suitable for the accommodation and medical treatment of persons who may become liable to be detained under this Act and who, in the interests of their own health or safety or for the protection of other persons, need to be so detained in conditions of special security, he may, by order, declare that place to be a special institution for the purposes of this Act.

“(2) A place that is a prison or part of a prison may be declared a special institution under this section.

“(3) Where a prison or part of a prison is a special institution the superintendent of the prison shall be the controlling authority for that special institution; but, subject to the foregoing provisions of this subsection, the provisions of section 6 (other than subsection (1) thereof) apply in relation to a special institution as if the references therein to a hospital and the hospital authority thereof were references respectively to a special institution and the controlling authority thereof.

“(4) For the purposes of this Act, the staff of a special institution that is or forms part of a prison shall be deemed to include the officers employed in the management of the prison.

“(5) A person who is being detained in a special institution that is or forms part of a prison shall for the purposes of the Prison Regulations be deemed to be detained in that prison, but shall, for any other purpose, be deemed not to be confined or to be detained in that prison.

“(6) The Attorney-General may give directions, in writing, to the superintendent of a prison modifying or excluding the operation of any of the provisions of the Prison Regulations in their application to persons who are liable to be detained under this Act in a special institution that is or forms part of that prison; and those regulations have effect subject to any such direction.

“(7) Notwithstanding any law to the contrary, the superintendent of a prison, the whole or any part of which is a special institution, shall ensure that, as far as possible, effect is given to the directions or requirements of the responsible medical officer with respect to the treatment of a patient liable to be detained in that institution, and no person has, because the institution is, or forms part of, a prison, any right, power, or duty to prevent or interfere with the carrying out of those directions or requirements that he would not have if that special institution was not, or did not form part of, that prison.

“(8) Section 9 of the *Prison Act 1977* applies in respect of the functions of the superintendent of a prison under this Act as it applies to the functions referred to in that section.

“(9) In this section—

‘prison’ means a prison to which section 6 (2) of the *Prison Act 1977* applies;

‘Prison Regulations’ means the regulations for the time being in force under section 43 of the *Prison Act 1977*.”.

4 Section 48 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

“(1A) A hospital order is an order authorizing the detention of the person to whom it relates in the institution specified in the order, and a guardianship order is an order placing the person to whom it relates under the guardianship of the Board or the person named in the order.”.

Nature of
hospital orders
and
guardianship
orders.

Hospital orders
in respect of
neglected
children, &c.

5 Section 50 of the Principal Act is amended by adding at the end thereof the following subsection:—

“(3) A hospital order shall not be made under this section authorizing the detention of a person in a special institution.”.

Limitations on
making of
hospital orders
for special
institutions.

6 Section 51 of the Principal Act is amended—

(a) by omitting from subsection (1) (a) (ii) the words “ a hospital ” and substituting therefor the words “ an institution ”;

(b) by inserting after subsection (2) the following subsection:—

“(2A) A court shall not make a hospital order authorizing the person to whom it relates to be admitted to a special institution unless both of the medical practitioners whose evidence is taken into account under subsection (1) (a) have given evidence orally before the court, and the court is satisfied, on their evidence, that it is desirable, in the interests of the health and safety of the patient, or for the protection of other persons, that he be detained in conditions of special security.”; and

(c) by omitting subsection (3) and substituting therefor the following subsection:—

“(3) A hospital order authorizing the detention of a person in a hospital shall not be made unless the court is satisfied that arrangements have been made for his admission to that hospital within a period of 28 days beginning with the date of the making of the order.”.

Repeal of
provisions
relating to
indeterminate
sentences.

Power to
transfer
prisoners to
special
institutions.

7 Section 56 of the Principal Act is repealed.

8 Section 59 of the Principal Act is amended—

(a) by omitting from subsection (1) the word “ hospital ” and substituting therefor the word “ institution ”;

(b) by omitting from subsection (2) the words “ a hospital ” and substituting therefor the words “ an institution ”;

(c) by omitting from subsection (6) the words “ a hospital ” and substituting therefor the words “ an institution ”;

(d) by omitting from subsection (7) the word “ hospital ” and substituting therefor the word “ institution ”; and

(e) by omitting from subsection (8) the word “ hospital ” and substituting therefor the word “ institution ”.

9 Section 60 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

Effect on transfer direction of termination of sentence.

“(3) A transfer direction made under this section in respect of a person serving a sentence of imprisonment ceases to have effect on the expiration of the sentence; and, where that direction so ceases to have effect, he continues to be liable to be detained under this Act as provided in section 63.”

10 Section 61 of the Principal Act is amended—

Effect on transfer direction of termination of criminal proceedings.

- (a) by omitting from subsection (8) all the words following “Act as” and substituting the words “provided in section 63.”; and
- (b) by omitting subsection (9).

11 Section 62 of the Principal Act is amended—

Effect on transfer direction of termination of detention as civil prisoner.

- (a) by omitting from subsection (3) the word “hospital” and substituting therefor the words “an institution”;
- (b) by omitting from subsection (4) all the words following the words “liable to be detained” and substituting therefor the words “under this Act as provided in section 63.”; and
- (c) by omitting subsection (5).

12 After section 62 of the Principal Act the following section is inserted:—

“63—(1) Where, on a transfer direction ceasing to have effect, a patient remains liable to be detained under this Act as provided in this section, he continues to be so liable as if, on the date on which the transfer direction ceased to have effect, he had been admitted, in pursuance of an application for admission for treatment, to the institution in which he was last liable to be detained under the direction; and the provisions of this Act apply in respect of him accordingly.

Retention of prisoners in institutions after termination of sentence, &c.

“(2) Where, in any particular case, the institution referred to in subsection (1) is a special institution, the provisions of this Act have effect in relation to the patient for the purposes of this section as if that institution were a hospital and the controlling authority of the institution the hospital authority thereof.

“(3) Where in a case to which this section applies the patient had attained the age of 25 years before the transfer direction ceased to have effect or will attain that age before the expiration of a period of one month after it ceased to have effect, section 33 has effect in relation to him as if he had attained that age on the expiration of that period of one month.”.

Application to
Tribunal by
persons
continuing to
be detained in
special
institutions
after expiration
of sentence, &c.

13 Section 76 of the Principal Act is amended by inserting after subsection (1) the following subsection:—

“(1A) Where application is made to the Tribunal by or in respect of a patient who is liable to be detained in a special institution as provided in section 63, and the Tribunal is satisfied that it is not necessary, in the interests of his health or safety or for the protection of other persons, for him to be detained in conditions of special security, it may, if it does not direct him to be discharged, direct that he be transferred from the special institution to a hospital nominated by the Medical Commissioner.”.

14 After section 76 of the Principal Act the following section is inserted:—

Transfers from
special
institutions at
direction of
Tribunal.

“76A—(1) Where under section 76 (1A) the Tribunal directs a patient to be transferred from a special institution to a hospital nominated by the Medical Commissioner, the Medical Commissioner or a person authorized by him in that behalf shall issue a certificate directing that the patient be transferred from the special institution to the hospital specified in the certificate.

“(2) A certificate issued under subsection (1) is sufficient authority for an officer on the staff of the special institution or the hospital to which the patient is to be transferred or a person authorized by the controlling authority of the special institution to convey the patient to that hospital within a period of 28 days beginning on the date of the direction of the Tribunal or within such longer period as the chairman of the Tribunal may approve and is endorsed on the certificate.

“(3) Where a patient is transferred under this section the application for admission for treatment that is deemed to have effect in relation to him under section 63, has effect as if it were an application for admission for treatment to the hospital to which he is transferred and as if he had been admitted to that hospital at the time at which that application was first deemed to have effect.

“(4) A direction of the Tribunal referred to in subsection (1) (and any certificate issued pursuant thereto) ceases to be of any effect if, before the patient is transferred to a hospital pursuant to the direction, he absents himself without leave or is taken into legal custody otherwise than under this Act.

“(5) If, where such a direction is given in respect of a patient by the Tribunal as is referred to in subsection (1), the patient is not transferred to a hospital under this section during the relevant period and the direction of the Tribunal still remains in effect at the end of that period, the patient ceases, at the end of that period, to be liable to be detained in pursuance of the application referred to in subsection (3).

“(6) For the purposes of subsection (5), the ‘relevant period’ means the period within which the patient may be transferred to a hospital pursuant to the certificate issued under subsection (1).”.

15—(1) Each provision of the Principal Act specified in the first column of Schedule I is amended by omitting therefrom the expression specified against that provision in the second column of that Schedule and substituting therefor the expression so specified in the third column of that Schedule. Consequential amendments.

(2) Unless the contrary intention appears, where in a provision specified in the first column of Schedule I there occurs more than once an expression specified against that provision in the second column of that Schedule, the substitution required to be made for that expression by subsection (1) shall be made in each case in which the expression occurs.

16—(1) Each provision of section 382 of the *Criminal Code* (which relates to the treatment of accused persons found to be insane or incapable of understanding the proceedings to which they are subject) that is specified in the first column of Schedule II is amended by omitting therefrom the expression specified against that provision in the second column of that Schedule and substituting therefor the expression so specified in the third column of that Schedule. Amendment of Criminal Code, s. 382.

(2) Section 382 of the *Criminal Code* is amended by omitting subsection (7F) and substituting therefor the following subsections:—

“(7F) Where a person in respect of whom an order is in force under this section is discharged under section 350, the order ceases to have effect but, subject to this section, he continues to be liable

to be detained under the *Mental Health Act 1963* as provided in section 63 of that Act as if that order were a transfer direction.

“(7G) Sections 33 and 63 (3) of the *Mental Health Act 1963* do not apply to a person who continues to be liable to be detained under subsection (7F).

“(7H) Where a person is liable to be detained by virtue of subsection (7F) the power to grant him leave of absence shall be exercised only in accordance with the recommendations of the Tribunal and an order for his discharge shall not be made except at the direction of the Tribunal.”.

SCHEDULE I

(Section 14)

CONSEQUENTIAL AMENDMENTS OF MENTAL HEALTH ACT 1963

Provision	Omission	Substitution
53 (2)	a hospital	an institution
	that hospital	that institution
	the hospital	the institution
53 (4)	to the hospital	to the institution
	for the hospital authority	for the controlling authority
53 (5)	hospital	institution
53 (6)	hospital	institution
53 (7)	to hospital	to an institution
53 (8)	in a hospital	in an institution
54 (1)	to hospital	to an institution
54 (3)	into the hospital	into the institution
	other hospital	other institution
54 (4)	if the hospital	if the institution
	for the hospital	for the institution
54 (5)	to the hospital	to the institution
55 (4)	to a hospital	to an institution
61 (4)	a hospital	an institution
61 (5)	a hospital	an institution
61 (6)	hospital	an institution
61 (7)	a hospital	an institution
	the hospital	the institution
	hospital authority of that	controlling authority of that
	hospital	institution
64 (1)	to hospital	to an institution
65 (1)	in a hospital	in an institution
	hospital authority	controlling authority

Provision	Omission	Substitution
65 (3)	a hospital hospital authority that hospital	an institution controlling authority that institution
65 (4)	a hospital	an institution
65 (5)	in a hospital that hospital	in an institution that institution
66 (2)	to a hospital	to an institution
66 (4)	hospital	institution
66 (6)	a hospital	an institution
67 (1)	to a hospital	to an institution
67 (2)	hospital	institution
68 (2)	hospital	an institution
68 (4)	hospital	an institution
69 (1)	hospital	an institution
69 (3)	hospital	an institution
70 (4)	hospital	an institution
70 (6)	hospital	institution
73 (1)	to a hospital in a hospital	to an institution in an institution
74 (1)	a hospital the hospital	an institution the institution
79 (a)	hospital authority of the hospital	controlling authority of the institution
79 (b)	hospital authority	controlling authority
87 (4)	hospital authority of the hospital	controlling authority of the institution
90 (4)	a hospital that hospital	an institution that institution
104 (1) (b)	a hospital	an institution
104 (2)	a hospital	an institution
104 (4)	a hospital that hospital	an institution that institution
105 (1) (a)	a hospital	an institution
105 (2) (b)	hospital	institution
106 (1)	a hospital that hospital the hospital	an institution that institution the institution
106 (2)	hospital authority of a hospital	controlling authority of an institution
107 (1)	a hospital that hospital	an institution that institution
107 (5)	hospital authority the hospital	controlling authority the institution
108	a hospital hospital authority the hospital	an institution controlling authority the institution

Provision	Omission	Substitution
109 (1)	a hospital that hospital	an institution that institution
109 (3)	hospital authority of the hospital	controlling authority of the institution
109 (4)	hospital authority of the hospital	controlling authority of the institution
109 (5) (ea)	hospital authority	controlling authority
109 (8)	a hospital hospital authority	an institution controlling authority

SCHEDULE II

(Section 15)

AMENDMENTS TO SECTION 382 OF THE CRIMINAL CODE

Provision	Omission	Substitution
Subsection (2)	a hospital	an institution
Subsection (3)	hospital	an institution
Subsection (4)	a hospital hospital authority the hospital	an institution controlling authority the institution
Subsection (5)	to a hospital	to an institution
Subsection (6)	a hospital	an institution