

Mental Health (Amendment) Bill

No.

TABLE OF PROVISIONS

Clause

1. Purpose.
2. Commencement.
3. Principal Act.
4. Amendment of Part 3—Admission of Patients.
5. Amendment of section 14.
6. Amendment of section 15.
7. Amendment of sections 16 and 18.
8. Amendment of Part 4—Review etc. of patients.
9. New section 38 substituted.
10. Amendment of sections 39–45.
11. New section 46 substituted.
12. Amendment of sections 48–51.
13. Amendment of Part 5.
14. New Division 6 of Part 5 substituted.
15. Amendment of sections 94 and 96.
16. Repeal of section 103.
17. Amendment of Part 6.
18. New section 106A inserted.
19. Amendment of sections 108–11J.
20. New sections 116 and 116A substituted.
21. Amendment of section 142.
22. New section 145 inserted.
23. Amendment of Schedule 5.

By Authority Jean Gordon Government Printer Melbourne

LEGISLATIVE COUNCIL

Read 1° 22 April 1988

(Brought from the Legislative Assembly)

A BILL

for

An Act to amend the *Mental Health Act* 1986, and for other purposes.

Mental Health (Amendment) Act 1988

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

1. The purpose of this Act is to make certain amendments to the
5 *Mental Health Act* 1986.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Principal Act.

3. In this Act, the *Mental Health Act* 1986 is called the Principal
10 Act.

No. 59/1986 as
amended by Nos.
110/1986,
48/1987 and
74/1987.

Amendment of Part 3—Admission of patients.

4. (1) In section 3 of the Principal Act after the definition of “Chief
15 psychiatrist” insert—

“**Community treatment order**” means an order requiring
treatment for mental illness of a person who is at large in

the community but does not apply to a person who is in a prison or a psychiatric in-patient service.’

(2) In section 3 of the Principal Act, after the definition of “Psychosurgery Review Board” insert—

‘ “Public Advocate” means the Public Advocate appointed under the *Guardianship and Administration Board Act* 1986. 5

(3) In section 7 of the Principal Act—

(a) in sub-section (1), omit “who has attained the age of 16 years”; and

(b) sub-section (2) is repealed. 10

(4) In section 8 (1) of the Principal Act—

(a) in paragraph (b), after “treatment” (where twice occurring) insert “or care”; and

(b) in paragraph (c), omit “to”; and

(c) in paragraph (d), after “treatment” insert “or care”; and 15

(d) in paragraph (e), after “treatment” insert “or care”.

(5) After section 12 (1) (a) of the Principal Act insert—

“(aa) if that medical practitioner considers—

(i) that the person requires any treatment immediately; and 20

(ii) that the person is not capable of consenting to that treatment; and

(iii) that the treatment required is of such a nature that it would not be in the best interests of the person to await the examination by the authorised psychiatrist required under paragraph (b)”. 25

the medical practitioner may on behalf of the person consent to the treatment being carried out until the authorised psychiatrist examines the person; and”.

(6) After section 13 (1) of the Principal Act insert— 30

“(1A) Sections 9 and 12 apply in relation to the admission of a person to a general hospital under sub-section (1) as if a reference in those sections to a psychiatric in-patient service were a reference to a general hospital.”

Amendment of section 14. 35

5. (1) In section 14 (2) (a) of the Principal Act for “treat” substitute “supervise the treatment of”.

(2) In section 14 (2) (b) of the Principal Act, after “treatment” insert “or care”.

(3) In section 14 of the Principal Act, for sub-sections (3), (4) and (5) substitute—

“**(3)** A person who is subject to a community treatment order—

- 5 (a) is deemed to be an involuntary patient detained under section 12; and
 (b) if the person no longer satisfies the criteria specified in section 8, must be discharged under section 37; and
10 (c) the provisions of this Act, other than sections 40, 41, 42 and 43 apply accordingly.

(3A) The Board may vary or revoke, or discharge a person from, a community treatment order.”.

(4) The authorised psychiatrist may—

- 15 (a) vary a community treatment order; or
 (b) revoke a community treatment order if he or she is satisfied on reasonable grounds that the person who is subject to a community treatment order—
 (i) has failed to comply with the order; or
20 (ii) is no longer suitable for a community treatment order and requires in-patient treatment or care.”.

(4A) If the authorised psychiatrist revokes a community treatment order to which a person is subject—

- 25 (a) the person is deemed to be an involuntary patient who is absent from a psychiatric in-patient service without leave; and
 (b) the authorised psychiatrist may authorise any of the persons referred to in section 43 (1) to apprehend the person for the purpose of returning the person to a psychiatric in-patient service.

30 **(5)** If a community treatment order is revoked the authorised psychiatrist must make reasonable efforts to inform the person—

- (a) that the order has been revoked; and
 (b) that the person must return to a psychiatric in-patient service as an in-patient.”.

35 **Amendment of section 15.**

6. (1) After section 15 (3) of the Principal Act insert—

- 40 “**(3A)** If a person to whom a hospital order under sub-section (3) (a) applies is discharged in accordance with section 36 (2) or 37 (2) before the expiry of the order, the persons named in the hospital order in accordance with sub-section (3B) must forthwith apply to the court for sentence to be passed in accordance with sub-section (4) (b).

(3B) A court, when making a hospital order, may include in the order the names of a person or persons who shall be responsible for taking the person to whom the order applies—

- (a) to the psychiatric in-patient service named in the order; and
- (b) from the psychiatric in-patient service to the court for the purposes of sub-section (3A) and (4) (b).”

5

(2) After section 15 (4) of the Principal Act insert—

“(5) If, on the trial of a person for a criminal offence, the person is found guilty and the court has not received a report under sub-section (2) but believes that a hospital order may be appropriate and is satisfied, by the production of a certificate of a psychiatrist and such other evidence as the court may require, that—

10

- (a) the person appears to be suffering from a mental illness that requires treatment; and
- (b) the treatment can be obtained by admission to and detention in a psychiatric in-patient service; and
- (c) the person should be admitted as an involuntary patient for his or her health or safety or for the protection of members of the public—

15

the court may make an assessment order authorising the taking of the person to a specified psychiatric in-patient service for a period not exceeding 72 hours to enable the person to be assessed for suitability for a hospital order.

20

(6) The court must not make an assessment order under sub-section (5) unless the authorised psychiatrist or a person on his or her behalf has advised the court that the psychiatric in-patient service has the facilities to undertake the assessment.

25

(7) If at any time during the currency of the assessment order, the assessment has been completed or the psychiatric in-patient service no longer has the facilities to undertake the assessment, the authorised psychiatrist may cause the person sent for assessment to be returned to the court.

30

(8) A person who is subject to an assessment order is deemed to be an involuntary patient detained under section 12 at the psychiatric in-patient service named in the order.”

35

Amendment of sections 16 and 18.

7. (1) In section 16 of the Principal Act—

- (a) for “Minister administering the Office of Corrections” (wherever occurring) substitute “Director-General of Corrections”; and
- (b) in sub-section (2) (a), for “Minister” substitute “Director-General”.

40

(c) in sub-section 2 (b), for “Minister” substitute “Director-General”.

(2) In section 18 (1) of the Principal Act, for “a printed statement” substitute “the appropriate prescribed printed statement”.

5 Amendment of Part 4—Review, etc. of patients.

8. (1) In section 31 (1) of the Principal Act, for “14” substitute “7”.

(2) In section 36 of the Principal Act—

10 (a) in sub-section (2), for “recommend to the Minister” substitute “order”; and

(b) in sub-section (3), for “recommend to the Minister” substitute “order”.

(3) In section 37 of the Principal Act—

15 (a) in sub-section (2), for “recommend to the Minister” substitute “order”; and

(b) in sub-section (3), for “recommend to the Minister” substitute “order”.

New section 38 substituted.

9. For section 38 of the Principal Act substitute—

20 Discharge of involuntary patients.

“38. If—

(a) the Board exercises its power under section 36 (3); or

(b) the chief psychiatrist exercises his or her power under section 37 (3)—

25 to discharge a person as an involuntary patient, the Board or the chief psychiatrist, as the case may be, must immediately notify the Director-General of Corrections and the person is discharged as an involuntary patient upon being placed in the custody of officers of the Office of Corrections.”.

30 Amendment of sections 39–45.

10. (1) in section 39 of the Principal Act—

(a) in sub-section (1) (a), omit “and that the patient does not disagree with the proposed transfer”; and

35 (b) in sub-section (2), omit “and that the patient does not disagree with the proposed transfer”.

(2) In section 44 of the Principal Act, for “recommend” substitute “order”.

(3) In section 45 of the Principal Act, for “recommend” substitute “order”.

New section 46 substituted.

11. For section 46 of the Principal Act substitute—

Discharge of security patients.

5

“46. If—

(a) the Board exercises its power under section 44; or

(b) the chief psychiatrist exercises his or her power under section 45—

to discharge a person as a security patient, the Board or the chief psychiatrist, as the case may be, must immediately notify the Director-General of Corrections and the person is discharged as a security patient upon being placed in the custody of officers of the Office of Corrections.”.

10

Amendment of sections 48–51.

15

12. (1) Section 48 of the Principal Act is repealed.

(2) In section 49 (1) of the Principal Act, omit “and that the patient does not disagree with the proposed transfer”.

(3) In section 50 of the Principal Act, omit “security” (wherever occurring).

20

(4) In section 51 of the Principal Act—

(a) in sub-section (1)—

(i) for “The Minister may on the recommendation of the chief psychiatrist or the Board” substitute “The chief psychiatrist or the Board may”; and

25

(ii) for “Minister” (where secondly occurring) substitute “chief psychiatrist or the Board (as the case may be)”; and

(b) in sub-section (2), for “a recommendation” substitute “an order”; and

30

(c) in sub-section (3), for “The Minister may on the recommendation of the chief psychiatrist or the Board” substitute “The chief psychiatrist or the Board may”.

Amendment of Part 5.

13. (1) In section 54 (2) (a) of the Principal Act—

35

(a) in sub-paragraph (iii), for “and” substitute “or”; and

(b) after sub-paragraph (iii) insert—

“(iv) behaviour manifested as a result of a disorder of the basal ganglia”.

(2) In section 55 (2) (l) of the Principal Act omit “except as otherwise provided in section 61.”.

(3) In section 58 of the Principal Act—

5 (a) in sub-section (1), for “Any person who proposes” substitute “A psychiatrist who seeks to arrange for a neurosurgeon”; and

(b) in sub-section (2) (a), after “performed” insert “and the name and qualifications of the person whom it is proposed will perform the psychosurgery”.

10 (4) In section 64 of the Principal Act for paragraphs (b), (c), (d) and (e) substitute—

“(b) is not satisfied as to the matters specified in section 65, the Psychosurgery Review Board must refuse to give its consent.”.

15 (5) Sections 68 and 69 of the Principal Act are repealed.

(6) In section 70 of the Principal Act, for sub-section (1) substitute—

“(1) A person who performs psychosurgery must make a written report to the Psychosurgery Review Board on the results of the operation—

20 (a) within three months after the completion of the psychosurgery; and

(b) after three months and within 12 months after the completion of the psychosurgery.”.

25 (7) In section 81 (3) of the Principal Act, after “report” insert “of the use of prescribed forms of mechanical restraint”.

(8) In section 84 of the Principal Act for sub-section (1) substitute—

“(1) A person who—

(a) causes to be performed; or

(b) permits the performance of; or

30 (c) performs—

non-psychiatric treatment on any patient without obtaining—

(d) informed consent; or

(e) if section 12 (1) applies, the consent of the medical practitioner; or

35 (f) if section 85 applies, consent in accordance with that section—

is guilty of an offence against this Act.”.

(9) In section 85 of the Principal Act—

40 (a) in sub-section (2), after “report” insert “in respect of any reportable non-psychiatric treatment”; and

(b) after sub-section (2) insert—

“(3) The Board may issue guidelines which specify reportable non-psychiatric treatment for the purposes of this section.”.

New Division 6 of Part 5 substituted.

5

14. For Division 6 of Part 5 of the Principal Act substitute—

Division 6—Patient’s money

Patients Trust Account.

“88. (1) The senior officer of a psychiatric in-patient service must maintain an account to be known as the Patients Trust Account with—

10

- (a) a bank; or
- (b) a financial institution approved by the Chief General Manager.

(2) There must be paid into the Patients Trust Account of a psychiatric in-patient service—

15

- (a) money held or received by the senior officer of the psychiatric in-patient service from or on behalf of a patient of the service; and
- (b) money held or received by the senior officer from a person to be held for the benefit, use or enjoyment of a specified patient of the psychiatric in-patient service; and
- (c) money held or received by the senior officer to be held for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of patients generally; and
- (d) interest and capital gains earned from the investment of money in the account; and
- (e) money held on behalf of any patient in the psychiatric in-patient service at the commencement of this section, being money earned before 1 July 1986 on funds held in trust for patients of a psychiatric hospital or mental hospital under the *Mental Health Act 1959*.

20

25

30

(3) There may be paid out of the Patients Trust Account of a psychiatric in-patient service—

- (a) amounts payable to or on behalf of patients of the psychiatric in-patient service in accordance with section 91; and
- (b) amounts payable in accordance with section 92; and
- (c) any expenses necessarily incurred in making or as a result of any investment, and any loss incurred on the realisation of any investment of money in the Account.

35

40

(4) Money referred to in sub-section (2) (e) is held in the Patients Trust Account for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of patients generally.”.

Investment.

5 “89. Money standing to the credit of the Patients Trust Account of a psychiatric in-patient service that is not immediately required for use by patients of the psychiatric in-patient service may be invested in any manner in which trust funds may be invested under section 4 (1) of the *Trustee Act 1958*.”

10 **Financial management information system.**

“90. The senior officer of a psychiatric in-patient service must maintain the following accounts relating to money in the Patients Trust Account:

- 15 (a) An account for each patient of the psychiatric in-patient service for whom or on whose behalf any money is held in the Patients Trust Account;
- (b) A patients amenities account;
- (c) An interest account;
- 20 (d) Any other accounts that the senior officer considers desirable.”

Patient’s money.

“91. (1) Any money held in the Patients Trust Account of a psychiatric in-patient service for or on behalf of a patient of the psychiatric in-patient service—

- 25 (a) may be withdrawn and paid to the patient if the patient so requests for any purpose the patient determines;
- (b) may be withdrawn on behalf of the patient if the senior officer of the service—
- 30 (i) believes on reasonable grounds that the withdrawal of the money is necessary for the benefit, use or enjoyment of the patient; and
- (ii) has discussed the proposal to withdraw the money with the patient and the patient does not object.

35 (2) If the amount held in a Patients Trust Account for or on behalf of a patient exceeds the amount prescribed for the purposes of this section, the senior officer of the psychiatric in-patient service must withdraw the amount of the excess and pay it to the patient or the patient’s representative for use or investment as the patient or patient’s representative determines.

40 (3) A patient of a psychiatric in-patient service is entitled to interest on any money held by or through the psychiatric in-patient service on

the patient's behalf at any time during the period beginning on 1 July 1986 and ending on 30 September 1987.

(4) A patient of a psychiatric in-patient service is entitled to interest payable annually on money held by or on behalf of the patient in the Patients Trust Account at any time on or after 1 October 1987. 5

(5) Interest for the purposes of sub-section (3) and (4) shall be calculated in accordance with the regulations—

(a) at the rate of 75 per centum per annum of the gross amount of interest earned by the investment of money in the Patients Trust Account during the period to which the calculation relates; or 10

(b) at the prescribed rate—

whichever is the greater.”

Patients' amenities.

‘92. (1) Any money held in the Patients Trust Account of a psychiatric in-patient service for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of patients generally, may be withdrawn by the senior officer as he or she thinks fit for any such purpose or for the benefit, use or enjoyment of any patient at the psychiatric in-patient service. 15 20

(2) In sub-section (1), “patient” includes a person who is or has, at any time since 1 October 1987 been, a patient.’

Interest.

‘93. Money received from the investment of any part of a Patients Trust Account must be applied in the following order: 25

(a) in payment of expenses and losses of investment referred to in section 88 (3) (d);

(b) As interest on patient's money in accordance with section 91 (3);

(c) As interest on patient's money in accordance with section 91 (4); 30

(d) As money received to be held for the purpose of patient's amenities referred to in section 88 (2) (c).”.

Amendment of sections 94 and 96.

15. (1) After section 94 (3) of the Principal Act insert— 35

“(4) The Governor in Council may by proclamation published in the *Government Gazette*—

(a) revoke a proclamation made under sub-section (1) or (2);
or

(b) declare that a deemed proclamation under sub-section (3) is revoked.

5 (5) A proclamation under sub-section (4) may include directions in respect of the Patients Trust Account of a psychiatric in-patient service to which the proclamation relates for the purposes of ensuring the equitable management of funds in that account for the benefit of patients.”.

(2) In section 96 (1) of the Principal Act for “approved psychiatric hospital” substitute “psychiatric in-patient service”.

10 Repeal of section 103.

16. Section 103 of the Principal Act is repealed.

Amendment of Part 6.

17. In section 106 (4) of the Principal Act, after “patient” insert “, other than a patient in a psychiatric in-patient service,”.

15 New section 106A inserted.

18. After section 106 of the Principal Act, insert in Division 4 of Part 6—

Reportable deaths.

20 ‘106A. The authorised psychiatrist of each psychiatric in-patient service and the person in charge of any other “psychiatric service” within the meaning of section 106 must report to the chief psychiatrist the death of any patient which is a “reportable death” within the meaning of the *Coroners Act 1985*.

Penalty: 2 penalty units.’.

25 Amendment of sections 108–115.

19. The Principal Act is amended as follows:

(a) In section 108 (1), for “Minister” substitute “Public Advocate”;

(b) In section 111, sub-section (3) is repealed;

30 (c) In section 113, for sub-section (1) substitute—

“(1) A person who is receiving treatment or other services from a mental health service, or a person on behalf of such a person, may request the person in charge of the service to arrange for the person receiving treatment or other services to be seen by a community visitor.”.

35 (d) At the end of section 113 (2), insert “Penalty: 2 penalty units”;

(e) In section 113 (3)—

(i) for “panel of community visitors” substitute “community visitor”; and

(ii) after “chief psychiatrist” insert “and the Public Advocate”;

5

(f) At the end of section 114, insert “Penalty: 2 penalty units”;

(g) After section 115 (1) insert—

“(1A) The community visitors for a region must at least twice a year submit a joint report to the Public Advocate on visits made by them to mental health services since the last report under this section.”

10

New sections 116 and 116A substituted.

20. For section 116 of the Principal Act substitute—

Community (Psychiatric Services) Visitors Board.

“116. (1) There is established a Board to be known as the Community (Psychiatric Services) Visitors Board.

15

(2) The Community (Psychiatric Services) Visitors Board consists of—

(a) the Public Advocate; and

(b) two community visitors elected by community visitors in accordance with the regulations.

20

(3) The functions of the Board are—

(a) to represent community visitors; and

(b) to prepare and circulate publications explaining the role of community visitors; and

25

(c) to supervise the training of community visitors; and

(d) to prepare an annual report.”

Annual report of visitors.

“116A. (1) The Community (Psychiatric Services) Visitors Board must as soon as practicable after the end of each financial year and not later than the following 31 October submit to the Minister a report on the activities of community visitors during the financial year.

30

(2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after the annual report has been received by the Minister.”

35

Amendment of section 142.

21. In section 142 (1) of the Principal Act, for paragraph (c) substitute—

- 5 “(c) prescribing scales of fees or charges for the accommodation or care of or for services rendered to any patient in any psychiatric in-patient service; and”.

New section 145 inserted.

22. After section 144 of the Principal Act insert—

Protection against breach of trust.

10 “145. (1) A cause of action does not lie in respect of any breach of trust or fiduciary duty by reason of any failure to pay to, or credit the account of, a patient in a relevant hospital any money earned on the investment of money held in trust by or on behalf of that relevant hospital for that patient.

15 (2) In sub-section (1), “relevant hospital” means any psychiatric hospital or mental hospital under the *Mental Health Act 1959* or any similar institution under any corresponding previous enactment.”.

Amendment of Schedule 5.

23. In Schedule 5 of the Principal Act—

- 20 (a) in clause 1 (3), for “Minister” substitute “Public Advocate”;
and
(b) in clause 2 (2), for “Minister” substitute “Public Advocate”;
and
(c) in clause 2, sub-clause (4) is repealed; and
25 (d) in clause 2 (5), paragraph (e) is repealed.

