



## ANALYSIS

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1961, No. 40

## An Act to amend the Mental Health Act 1911

[18 October 1961]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Mental Health Amendment Act 1961, and shall be read together with and deemed part of the Mental Health Act 1911\* (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-two.

## PART I

### INFORMAL ADMISSION TO MENTAL HOSPITAL IN CERTAIN CASES

**2. Interpretation**—For the purposes of this Part of this Act,—

“Mentally infirm person” means any person who, by reason of mental infirmity arising from age or from deterioration or disease of or injury to the brain, requires care and treatment:

“Mentally subnormal person” means any person within the meaning of Class III or Class IV or Class V of the definition of the term “mentally defective person” in section 2 of the principal Act.

#### *Voluntary Patients*

**3. Admission or enrolment of voluntary inpatients or outpatients**—(1) Notwithstanding anything in the principal Act, it shall be lawful for the Superintendent of any institution, on a request made in the prescribed form by any person who is not less than sixteen years of age, and who in the opinion of the Superintendent is able to understand the nature and effect of the request,—

(a) To admit that person to the institution for care and treatment as a voluntary inpatient; or

(b) To enrol him as a voluntary outpatient of the institution and from time to time to provide treatment for him there as an outpatient.

(2) The Superintendent shall not have power to detain any voluntary outpatient.

(3) A voluntary inpatient is not liable to be detained in the institution; except that he may be so detained—

(a) For a period not exceeding twenty-four hours after the receipt by the Superintendent of a notification in writing from the inpatient of his intention to leave the institution; or

\*1957 Reprint, Vol. 9, p. 593

Amendments: 1958, No. 15; 1959, No. 75

- (b) In any case where the Superintendent forms an opinion under subsection (5) of this section, for a period not exceeding four days after the dispatch of the communication referred to in that subsection; and
- (c) In any case where an application for a reception order is made in respect of the inpatient, until the application is finally determined.

(4) The Superintendent shall refuse to admit or enrol any person under this section if he is of opinion that the case is not a proper one for care or treatment at the institution, or that the person ought more properly to be received under a reception order made by a Magistrate under the principal Act.

(5) If at any time the Director or the Superintendent is of opinion—

- (a) That any voluntary inpatient shows pronounced and sustained mental defect; and
- (b) That he is likely to insist unreasonably on leaving the institution; and
- (c) That his leaving will be to the serious detriment of himself or of the public—

the Superintendent shall communicate that opinion in writing (or by telegraph, if necessary) to some known relative or friend (if any) of the inpatient so that the relative or friend may make other arrangements for the care of the inpatient or apply for a reception order under the principal Act.

(6) If there is no known relative or friend, or if other arrangements are not made for the care of the inpatient and application for a reception order in respect of the inpatient is not made by the known relative or friend within three days after the dispatch of the communication, the Superintendent may make such an application forthwith.

**4. Discharge of voluntary inpatient—**(1) A voluntary inpatient shall be discharged or allowed to leave the institution—

- (a) On the order of the Minister or of the Director or of the Superintendent of the institution; or
- (b) As soon as practicable after the receipt by the Superintendent of a notification in writing from the inpatient of his intention to leave the institution, addressed to the Superintendent, and in any case not later than twenty-four hours after the receipt of the notification.

(2) Notwithstanding anything in paragraph (b) of subsection (1) of this section, if on receiving any notification under that paragraph the Superintendent is of opinion that for the safety of the inpatient or of other persons he should not be discharged, the Superintendent shall forthwith (unless pursuant to section 3 of this Act an application for a reception order has already been made in respect of the inpatient) apply for a reception order under the principal Act, and shall at the same time notify some known relative or friend (if any) of the inpatient that he is making the application.

(3) The fact that any application for a reception order has been forwarded to a Magistrate shall be sufficient authority for the Superintendent to detain the inpatient until the application is finally determined.

*Mentally Infirm Persons and Mentally Subnormal Persons*

**5. Admission of mentally infirm persons—**(1) Notwithstanding anything in the principal Act, any person who is not less than twenty-one years of age may apply to the Superintendent of any institution in the prescribed form for the admission of any mentally infirm person to the institution for care and treatment.

(2) The application shall be accompanied by a recommendation in the prescribed form signed by a medical practitioner and bearing a date not earlier than seven days before the date of the application.

(3) On receipt of the application and recommendation the Superintendent may, if he thinks fit, admit the mentally infirm person to the institution for care and treatment.

(4) A person admitted under this section is not liable to be detained in the institution; except that he may be so detained—

(a) In any case where an application for the person's discharge is made in accordance with paragraph (b) of subsection (1) of section 7 of this Act, until the Superintendent is satisfied that adequate and satisfactory arrangements have been made for the care of the person after discharge; and

(b) In any case where an application for a reception order is made in respect of the person, until that application is finally determined.

**6. Admission of mentally subnormal persons—**(1) Notwithstanding anything in the principal Act, any parent or guardian, or any person not less than twenty-one years of age

who has been acting in the place of a parent, of any mentally subnormal person (whether or not the mentally subnormal person is under the age of twenty-one years) may apply to the Superintendent of any institution in the prescribed form for the admission of that person to the institution for care, treatment, training, and occupation.

(2) The application shall be accompanied by a recommendation in the prescribed form signed by a medical practitioner and bearing a date not earlier than seven days before the date of the application.

(3) On receipt of the application and recommendation the Superintendent may, if he thinks fit, admit the mentally subnormal person to the institution for care, treatment, training, and occupation.

(4) A person admitted under this section is not liable to be detained in the institution; except that he may be so detained—

(a) In any case where an application for the person's discharge is made in accordance with paragraph (b) of subsection (1) of section 7 of this Act, until the Superintendent is satisfied that adequate and satisfactory arrangements have been made for the care of the person after discharge; and

(b) In any case where an application for a reception order is made in respect of the person, until that application is finally determined.

(5) Where it appears to the Superintendent that any person so admitted has not been psychologically examined by a psychologist in the employment of the Crown or of any university, or by any other psychologist approved by the Director, or that any such examination so made was inadequate, the Superintendent may make arrangements for the person to be psychologically examined. The Superintendent shall have regard to the result of any such examination, together with any other relevant matters, in determining whether or not the person requires further care, treatment, training, or occupation in the institution.

(6) Notwithstanding anything in this Act or the principal Act, any mentally subnormal person may from time to time, with the approval of the Superintendent of any institution, attend the institution as a voluntary outpatient for training and occupation.

**7. Discharge of mentally infirm person or mentally subnormal person—**(1) A mentally infirm person or mentally subnormal person admitted to any institution pursuant to section 5 or section 6 of this Act shall be discharged—

- (a) When the Superintendent is of opinion that he is fit to be discharged; or
- (b) As soon as practicable after the receipt by the Superintendent of an application for such discharge made in writing by any parent or guardian, or any person not less than twenty-one years of age who has been acting in the place of a parent, of the mentally infirm or mentally subnormal person, or by any other person who is not less than twenty-one years of age (and in any case not later than twenty-four hours after the receipt of the application), if on any such application the Superintendent is satisfied that adequate and satisfactory arrangements have been made for the care, after discharge, of the mentally infirm or mentally subnormal person.

(2) Notwithstanding anything in paragraph (b) of subsection (1) of this section, if on any application being made under that paragraph the Superintendent is of opinion that the discharge of the mentally infirm or mentally subnormal person will be to the serious detriment of that person or of the public he shall state his reasons for that opinion to the applicant. If the applicant still insists on the discharge of the person the Superintendent may forthwith apply for a reception order under the principal Act.

(3) The fact that an application for a reception order in respect of any mentally infirm person or mentally subnormal person admitted pursuant to section 5 or section 6 of this Act has been forwarded to a Magistrate shall be sufficient authority for the Superintendent to detain the person until the application is finally determined.

**8. Administration of estates—**(1) If on the admission to any institution of any mentally infirm person or mentally subnormal person pursuant to section 5 or section 6 of this Act, or at any later time while he remains in an institution, the Superintendent is of opinion that the person is unable to manage his own affairs, the Superintendent shall sign a certificate to that effect and send it forthwith to the Public Trustee or, if the person is a Maori within the meaning of the Maori Affairs Act 1953, to the Maori Trustee.

(2) A copy of the certificate shall at the same time be sent to the Director.

(3) On sending any such certificate, the Superintendent shall forthwith notify some known relative or friend (if any) of the person to whom it relates, or the person who applied for his admission, of the sending and effect of the certificate.

(4) Upon the signing of the certificate the provisions of Part VIII of the principal Act, or, as the case may require, Part X of the Maori Affairs Act 1953, shall apply to the person to whom the certificate relates and to his estate as if that person were a patient lawfully detained under a reception order made under the principal Act.

(5) On the discharge of the person to whom the certificate relates the Superintendent shall send notice of the discharge to the Public Trustee or, as the case may require, to the Maori Trustee, and shall state in the notice whether or not the person is able to manage his own affairs.

(6) If the person to whom the certificate relates is under the age of twenty-one years, and before he attains that age he is discharged and the provisions of Part VIII of the principal Act, or, as the case may require, Part X of the Maori Affairs Act 1953, cease to apply to him and to his estate, the Public Trustee or, as the case may require, the Maori Trustee, may pay or deliver or return the person's assets to him or to his guardian or any of his guardians. In any such case the receipt of the person (notwithstanding his infancy) or of the guardian shall be a complete discharge to the Public Trustee or the Maori Trustee for the assets so paid, delivered or returned.

### *Minors*

**9. Admission of minors—**(1) Notwithstanding anything in the principal Act, any parent or guardian, or any person not less than twenty-one years of age who has been acting in the place of a parent, of any person under the age of twenty-one years who is suffering from any form of mental disorder and by reason of his age or mental condition cannot be admitted to an institution as a voluntary inpatient may apply to the Superintendent of any institution in the prescribed form for the admission of that person to the institution for care, treatment, training, and occupation.

(2) The application shall be accompanied by a recommendation in the prescribed form signed by a medical practitioner and bearing a date not earlier than seven days before the date of the application.

(3) On receipt of the application and recommendation the Superintendent may, if he thinks fit, admit the person to the institution for care, treatment, training, and occupation.

(4) A person admitted under this section is not liable to be detained in the institution; except that he may be so detained—

(a) In any case where an application for the person's discharge is made in accordance with paragraph (b) of subsection (1) of section 7 of this Act, until the Superintendent is satisfied that adequate and satisfactory arrangements have been made for the care of the person after discharge; and

(b) In any case where an application for a reception order is made in respect of the person, until that application is finally determined.

(5) The provisions of section 8 of this Act shall apply to any person admitted under this section.

**10. Discharge of person under twenty-one**—The provisions of section 7 of this Act shall apply, with the necessary modifications, to the discharge of any person under the age of twenty-one years who is admitted under section 9 of this Act.

**11. Discharge on attaining twenty-one**—Every person admitted under section 9 of this Act shall be discharged on attaining the age of twenty-one years unless on or before that date he becomes an inmate of any institution pursuant to any other provision of this Part of this Act or of the principal Act.

**12. Superintendent may estimate age**—In the absence of evidence of the actual age of any person admitted under section 9 of this Act, his age shall be deemed for the purposes of this Part of this Act to be that (if any) stated in the application for his admission. If his age is not so stated or is not otherwise known, the Superintendent shall estimate his age on his admission to the institution. Where his age is so estimated he shall be deemed to attain the age of twenty-one years on the thirty-first day of December in the year in which, according to that estimate, he should attain that age.

### *General Provisions*

**13. Foregoing provisions not to affect other procedures for admission**—Nothing in any provision of this Part of this Act relating to the admission of any person into any institution shall prevent his admission or reception and detention pursuant to any other provision of this Part of this Act or of the principal Act that is applicable to him.

**14. Notice of admission under this Part**—(1) Within seven days after the admission of any person to any institution pursuant to any of the provisions of this Part of this Act, the Superintendent shall send to the Director a notice of the admission and a statement of the mental and bodily condition of that person.

(2) If any person admitted as a voluntary inpatient is not ordinarily resident in New Zealand, there shall be sent with the notice of admission a statement of the provision made by him or on his behalf for his maintenance while he is a voluntary inpatient.

**15. Education of mentally defective children**—Nothing in this Part of this Act shall affect the provisions of the Education Act 1914. Any child who is admitted to an institution under this Part of this Act as a minor or as a mentally subnormal person may be sent to any school or special class under the Education Act 1914.

**16. Consequential amendments and repeals**—(1) The principal Act is hereby amended in the manner indicated in the Schedule to this Act.

(2) Subsection (6A) of section 6 of the Mental Health Amendment Act 1935 (as inserted by section 43 of the Statutes Amendment Act 1939) is hereby amended as follows:

- (a) By omitting the words “in which he has been detained as a patient”, and substituting the words “of which he has been an inmate”;
- (b) By omitting the words “as a patient”, and substituting the words “as an inmate”;
- (c) By omitting the words “such patient”, and substituting the words “the inmate”.

(3) Section 8 of the Mental Health Amendment Act 1935 is hereby amended as follows:

- (a) By omitting from subsection (1) the word “patient”, and substituting the word “inmate”;

- (b) By omitting from subsection (3) the word "patients", and substituting the word "inmates".
- (4) All references in any enactment or in any document to a voluntary boarder or a boarder within the meaning of the principal Act shall hereafter be read as references to a voluntary inpatient within the meaning of this Part of this Act.
- (5) The following enactments are hereby repealed, namely:
  - (a) Parts III and V of the principal Act:
  - (b) Section 2 and subsection (2) of section 7 of the Mental Health Amendment Act 1950, and so much of the First Schedule to that Act as relates to sections 25 and 26, subsections (2), (3), and (6) of section 39, and paragraph (a) of section 40 of the principal Act:
  - (c) Section 2 of the Mental Health Amendment Act 1958.

## PART II

### MISCELLANEOUS PROVISIONS

**17. Fresh inquiry or discharge where reception order believed to be irregularly made—**(1) Section 14 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

"(3A) If the Attorney-General has reason to believe that any reception order that is valid on the face of it has in fact been irregularly made, he may direct that a fresh inquiry be made under section 5 of this Act, or he may, if he thinks fit, make an order for the discharge of the person detained thereunder, and he shall be discharged accordingly."

(2) The said section 14 is hereby further amended by inserting in subsection (5), after the word "If", the words "the Attorney-General or".

**18. Notice of admission under principal Act—**The principal Act is hereby amended by repealing section 66, and substituting the following section:

"66. (1) Within seven days after the admission of a patient to any institution the Superintendent shall send to the Director a notice of the admission together with a copy of the order or other authority on which the patient was admitted and copies of all medical certificates and other documents that accompanied the said order or authority.

“(2) The Superintendent shall send with the notice of admission a statement of the mental and bodily condition of the patient.”

**19. Inquiry by Judge as to condition of patient under charge of an offence**—Section 86 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Where the person is in custody under section 32 of this Act, or, following an order made under that section, is detained by order of the Minister of Justice under section 34 of this Act, and it appears to the satisfaction of the Judge, on such examination and evidence as aforesaid, that the person is capable of being tried or committed for trial on the charge or indictment against him, the Judge shall have the same powers as the Minister of Justice has, under section 35 of this Act, to direct that the person be brought before a Court under that section:

“Provided that, if in the circumstances of the case the Judge considers that the interests of justice so require, he may (whether or not the person is capable of being tried or committed for trial) direct that the charge or indictment be dismissed. On giving any such direction the Judge may order that the person be discharged from detention under this Act; but if it appears to the Judge that the further detention of the person is necessary either for his own good or in the public interest he shall order that the person be further detained in an institution under this Act, and the last-mentioned order shall have the same effect as a reception order.”

**20. Powers of Public Trustee**—Section 88 of the principal Act is hereby amended by inserting in paragraph (d) of subsection (2), after the word “affairs”, the words “or, if it does not so appear from that notice, on the receipt by the Public Trustee of a certificate from the Superintendent of the institution from which the person was discharged that he is able to manage his own affairs”.

**21. Power of Supreme Court to appoint trustee company as committee**—Section 115 of the principal Act is hereby amended by adding to subsection (1) the following proviso:

“Provided that this subsection shall not apply for the purposes of an application for the appointment of a trustee

company, within the meaning of the Trustee Companies Act 1960, as the committee of the estate of any person if—

- “(a) The application for the appointment of the trustee company is made within twenty-eight days after the Public Trustee’s authority to administer the estate commences pursuant to this Act, and the application is prosecuted with all due diligence; or
- “(b) The Public Trustee has not become authorised by this Act to administer the estate.”

**22. Admission to licensed short-stay homes for intellectually handicapped persons—**(1) Section 3 of the Mental Health Amendment Act 1954 is hereby amended by omitting from the proviso to subsection (2) (as added by subsection (2) of section 11 of the Mental Health Amendment Act 1957) the words “under the age of eighteen years”, and also the words “until he attains that age”.

(2) The said section 3 is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) Notwithstanding anything in paragraph (a) of the proviso to subsection (2) of this section, the Director may from time to time, in the special circumstances of any particular case, grant his approval under that proviso although facilities for such training as aforesaid are available in the locality in which the usual place of residence of the person to whom the approval relates is situated.”

**23. Changing names of Auckland and Nelson Mental Hospitals—**(1) The public institution heretofore known as the Auckland Mental Hospital shall hereafter be known as the Oakley Hospital.

(2) The public institution heretofore known as the Nelson Mental Hospital shall hereafter be known as the Braemar Hospital and Training School.

(3) All references in any enactment or document to the Auckland Mental Hospital shall hereafter be read as references to the Oakley Hospital; and all such references to the Nelson Mental Hospital shall hereafter be read as references to the Braemar Hospital and Training School.

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## SCHEDULE

Section 16 (1)

## CONSEQUENTIAL AMENDMENTS TO PRINCIPAL ACT

Section Affected	Amendment
Section 2 .....	<p>By repealing the definition of the term "boarder".</p> <p>By inserting, before the definition of the term "institution", the following definition:</p> <p style="padding-left: 40px;">" 'Inmate' means any patient or any person admitted to an institution pursuant to Part I of the Mental Health Amendment Act 1961."</p> <p>By inserting in the definition of the term "institution", after the word "detention", the words "or care and treatment".</p> <p>By inserting in the definition of the term "licensed institution", after the word "detention", the words "or care and treatment".</p> <p>By repealing the definition of the term "patient", and substituting the following definition:</p> <p style="padding-left: 40px;">" 'Patient' means a person lawfully detained pursuant to any reception order or any other order made under this Act, or pursuant to any authority to detain any person conferred by any provision of this Act:".</p>
Section 45 (1) .....	By inserting, after the word "detention", the words "or care and treatment".
Section 45 (2) .....	By omitting the words "there detained", and substituting the words "kept there"; and by omitting the words "received and detained as aforesaid", and substituting the words "kept there".
Section 61 (1) .....	By omitting the words "patients or boarders", in both places where those words occur, and substituting in each case the word "inmates".
Section 61 (2) .....	By omitting the words "patients and boarders", and substituting the words "mentally defective persons".
Section 62 (1) .....	By omitting the words "patients or boarders", in both places where those words occur, and substituting in each case the words "mentally defective persons".
Section 62 (3) .....	By omitting the words "patients and boarders", and substituting the words "mentally defective persons".
Sections 67 and 68	By omitting the words "patient or boarder", wherever those words occur in these sections, and substituting in each case the word "inmate".
Section 71 (3) .....	By inserting in paragraph (a), after the word "detained", the words "or being"; by omitting from the said paragraph (a) the word

SCHEDULE—*continued*

Section Affected	Amendment
Section 71 (3)— <i>continued</i>	"boarders", and substituting the words "other inmates"; by omitting from paragraph (c) the words "patients or boarders for the time being detained in", and substituting the words "inmates of"; and by omitting from paragraph (d) the words "patients or boarders", and substituting the word "inmates".
Section 72 (1) .....	By omitting from paragraph (b) the words "person detained therein", and substituting the word "inmate".
Section 74 .....	By omitting the words "patient or boarder in", and substituting the words "inmate of".
Section 75 (1) .....	By omitting the words "patient or boarder detained in", and substituting the words "inmate of"; and by omitting the words "the patient or boarder", in both places where those words occur, and substituting in each case the words "the inmate".
Section 75 (2) .....	By omitting the words "patient or boarder", and substituting the word "inmate".
Section 76 (1) .....	By omitting the words "a patient or boarder", and substituting the words "an inmate".
Section 76 (2) .....	By omitting the words "patient or boarder", and substituting the word "inmate".
Section 76 (3) and (4)	By omitting the words "a patient or boarder", wherever those words occur in these subsections, and substituting in each case the words "an inmate".
Section 79 (1) .....	By omitting the words "or boarder".
Section 79 (2) (as substituted by section 4 of the Mental Health Amendment Act 1951)	By omitting the words "or boarder"; and by omitting the words "in the case of a patient".
Section 79 (3), (6), and (7)	By omitting the words "or boarder", wherever those words occur in these subsections.
Section 80 (2) (as substituted by section 3 (1) of the Mental Health Amend- ment Act 1951)	By omitting the words "patient or boarder", and substituting the word "inmate".
Section 81 (1) .....	By omitting the word "patient", and substituting the word "inmate"; and by omitting the words "in which he is detained".
Section 81 (2), (3), and (4)	By omitting the word "patient", wherever that word occurs in each of these subsections, and substituting in each case the word "inmate".

SCHEDULE—*continued*

Section Affected	Amendment
Section 82 (1) .....	By omitting from the proviso the word "patient", wherever that word occurs, and substituting in each case the word "inmate"; and by omitting from the proviso the words "in which he is detained", and substituting the words "of which he is an inmate".
Section 82 (2) .....	By omitting the words "a patient", and substituting the words "an inmate".
Section 83 .....	By omitting from subsection (1) the words "the patient was detained", and substituting the words "the inmate was admitted or detained"; and by omitting the word "patient", wherever that word occurs in subsections (1) and (2), and substituting in each case the word "inmate".
Section 86 (1) and (2) .....	By inserting after the word "detained", in each of these subsections, the words "or kept".
Section 86 (3) .....	By inserting, after the words "his detention", the words "or treatment"; and by inserting, after the words "is detained", the words "or kept".
Section 86 (4) .....	By inserting, after the word "detained", the words "or treated".
Section 122 (6) .....	By omitting from paragraph (c) the words "person lawfully detained", and substituting the word "inmate".
Section 123 (3) .....	By omitting the words "a patient or boarder", and substituting the words "an inmate".
Section 129 .....	By omitting the words "patient or patients", and substituting the words "inmate or inmates"; and by omitting the words "each patient", and substituting the words "each inmate".
Section 136A (as inserted by section 7 (1) of the Mental Health Amendment Act 1950)	By omitting from subsection (1) the words "detained in", and substituting the words "an inmate of"; by omitting from paragraph (a) of subsection (1) the words "person so detained", and substituting the word "inmate"; by omitting from subsection (3) the words "person detained as aforesaid", and substituting the word "inmate"; by omitting from subsection (3) the words "detained in", and substituting the words "he is an inmate of", and by omitting from subsection (4) the words "person detained as aforesaid", and substituting the word "inmate".

This Act is administered in the Department of Health.