



Republic of Namibia
Annotated Statutes

Mental Health Act 18 of 1973 (RSA)

(RSA GG 3837)

brought into force in South Africa and South West Africa
on 27 March 1975 by RSA Proc. R.76/1975 (RSA GG 4627)
(see section 78 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 78 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Health) Transfer Proclamation, AG 14 of 1977, dated 1 December 1977. However, it should be noted that section 1 of the Act defines “Minister” as “the Minister of Health, except in Chapter 4, where it means the Minister of Prisons in sections 28 and 30 to 41 inclusive, and the Minister of Justice in section 29”. It is not clear what effect this split of administrative responsibility had on the transfer of the administration of the Act to South West Africa. The Executive Powers (Prisons) Transfer Proclamation, AG 6 of 1977, dated 31 October 1977 – repealed after independence by the Prisons Act 17 of 1998 (GG 1894) – and the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979, may also be relevant. None of the amendments to the Act in South Africa after the earliest date of transfer and prior to Namibian independence were applicable to South West Africa because none were made expressly so applicable.

as amended by

Mental Health Amendment Act 48 of 1976 (RSA) (RSA GG 5074)

came into force on date of publication: 7 April 1976

Health Laws Amendment Act 36 of 1977 (RSA) (RSA GG 5481)

came into force on date of publication: 30 March 1977

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)

The Act is also amended by the Criminal Procedure Act 25 of 2004 (GG 3358),
but that Act is not yet in force so the amendments made by it are not reflected here.

ACT

To provide for the reception, detention and treatment of persons who are mentally ill; and to provide for incidental matters.

(English text signed by the State President)

(Assented to 26th March, 1973)

Mental Health Act 18 of 1973 (RSA)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:

[The statement above normally appears below the ARRANGEMENT OF SECTIONS, but it appears above the ARRANGEMENT OF SECTIONS in the Government Gazette publishing this Act.]

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CHAPTER 1

DEFINITIONS AND INTRODUCTORY

Definitions

Mental Health Act 18 of 1973 (RSA)

1. In this Act, unless the context otherwise indicates -

“child” means any person under the age of eighteen years: Provided that any person detained in an institution who is over the age of sixteen years may, with the approval of the Minister, be treated therein as a child up to an age recommended by the hospital board concerned;

“court”, in relation to a patient, means the provincial or local division of the Supreme Court established under the Supreme Court Act, 1959 (Act No. 59 of 1959), which has jurisdiction in the area in which the patient is at the relevant time;

“hospital board” means a board established under section 47;

“hospital prison for psychopaths” means a building or any portion of a building, whether part of a prison or not, which has been set aside and equipped by the Department of Prisons as an institution for the detention of prisoners who have been certified as psychopaths;

“institution” means a state psychiatric hospital or a provincial hospital or a halfway house at which provision has been made for the detention or treatment of persons who are mentally ill, and includes any other place designated by the Minister as a place for the reception and detention of two or more persons suffering from mental illness and in respect of which a licence has been granted under this Act;

“judge” means a judge of the court;

“licensed institution” means an institution licensed under the provisions of section 46;

“magistrate” includes an additional magistrate, an assistant magistrate and a Commissioner;

[definition of “magistrate” amended by AG 3 of 1979]

“Master” means the Master of the Supreme Court as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

“medical practitioner” means a person registered as a medical practitioner under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928);

[Medical practitioners are now registered under the Medical and Dental Act 10 of 2004.]

“mental illness” means any disorder or disability of the mind, and includes any mental disease, any arrested or incomplete development of the mind and any psychopathic disorder, and “mentally ill” has a corresponding meaning;

“Minister” means the Minister of Health, except in Chapter 4, where it means the Minister of Prisons in sections 28 and 30 to 41 inclusive, and the Minister of Justice in section 29;

“near relative”, in relation to a patient, means a descendant, ancestor, brother or sister of the patient;

“official *curator ad litem*” means the official *curator ad litem* referred to in section 17;

“patient” means a person mentally ill to such a degree that it is necessary that he be detained, supervised, controlled and treated, and includes a person who is suspected of being or is alleged to be mentally ill to such a degree;

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“police official” means any member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), and any member of the Railways and Harbours Police Force appointed under section 57(1) of the Railways and Harbours Control and Management (Consolidation) Act, 1957 (Act No. 70 of 1957);

[The Police Act 7 of 1958 has been replaced by the Police Act 19 of 1990. The Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 was repealed in South Africa by the South African Transport Services Act 65 of 1981, which was made expressly applicable to South West Africa.]

“prescribed” means prescribed under this Act;

“President’s patient” means a person detained by order of any court of law or other competent authority at any place pending the signification of the decision of the State President;

“prison” means a prison established under section 20 of the Prisons Act, 1959 (Act No. 8 of 1959);

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998, which was replaced in turn by the Correctional Service Act 9 of 2012.]

“province” includes the territory of South West Africa;

“psychiatrist” means a person registered as a psychiatrist under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928);

[Psychiatrists are now registered under the Medical and Dental Act 10 of 2004.]

“psychopathic disorder” means a persistent disorder or disability of the mind (whether or not subnormality of intelligence is present) which has existed in the patient from an age prior to that of eighteen years and which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient, and “psychopath” has a corresponding meaning;

“reception order” means an order issued under section 9(3);

“registered clinical psychologist” means a clinical psychologist registered as a psychologist under the Medical, Dental and Pharmacy Act, 1928 (Act No. 13 of 1928);

[Clinical psychologists are now registered under the Social Work and Psychology Act 6 of 2004.]

“registered nurse” means a person registered as a nurse under section 12 of the Nursing Act, 1957 (Act No. 69 of 1957);

[Nurses are now registered under the Nursing Act 8 of 2004.]

“registered social worker” means a person registered as a social worker under section 33 of the National Welfare Act, 1965 (Act No. 79 of 1965);

[Social workers are now registered under the Social Work and Psychology Act 6 of 2004.]

“regulation” means a regulation made under this Act;

“Republic” includes the territory of South West Africa;

“Secretary” means the Secretary for Health;

“superintendent” means the medical practitioner who is in charge of an institution, and includes any medical practitioner who has been appointed deputy to the superintendent;

“this Act” includes the regulations;

“urgency application” means an application made under section 12.

Mentally ill persons to be detained only under this Act

2. No person who suffers from or is alleged to suffer from mental illness shall by reason of such illness be received or detained at any place otherwise than in accordance with the provisions of this Act.

CHAPTER 2

VOLUNTARY PATIENTS, PATIENTS BY CONSENT AND OUT-PATIENTS

Voluntary patients

3. (1) Any person may on a written application voluntarily submit himself to treatment as a patient at an institution, and if the superintendent of the institution in question is satisfied -

- (a) that such person understands the meaning and effect of the application; and
- (b) that such person should be so treated,

he may receive, accommodate and treat such person as a patient at the institution in question.

(2) If the person concerned is a minor and is not capable of making the application referred to, the application shall be made by his guardian, and if the person concerned is a minor who is capable of making the application, the application shall be made by him and his guardian.

(3) The superintendent shall, when a patient under this section is received at the institution, inform him of his rights under section 5 relating to his discharge from the institution.

Patients by consent

4. (1) If the superintendent is not under paragraph (a) of section 3(1) satisfied that the person concerned understands the meaning and effect of the application, he may receive, accommodate and treat such person as a patient at the institution -

- (a) if he is satisfied that such person is in fact not opposed to being so received, accommodated and treated; and
- (b) if the application is made, in the case of a minor, by his guardian, or, in the case of a person who is not a minor, by the husband or wife of that person, or, if such person is not married or, if married, if the husband or wife of that person is not available, by a near relative of such person who is at least eighteen years of age: Provided that if the superintendent is satisfied that no guardian, husband, wife or near relative, as the case may be, is available, the application may be made by a medical practitioner, a registered clinical psychologist, a registered social worker, a registered nurse or a member of any other class of persons designated by the Minister by notice in the *Gazette*.

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(2) The superintendent shall within seven days after the admission of a patient under subsection (1) forward to the magistrate of the district in which the institution in question is situated a copy of the relevant application and a report on the condition of the patient.

- (3) A magistrate of the district in question may -
- (a) informally visit the patient concerned;
 - (b) at any time investigate the circumstances under which the patient was admitted to the institution or is being or was detained therein;
 - (c) report his findings under paragraph (a) or (b) to the Secretary.

Discharge of voluntary patients and patients by consent

5. A patient admitted under section 3 or 4 shall be discharged from the institution -
- (a) in the case of a patient admitted under section 3 -
 - (i) if he is not a minor, within four days after his request for his discharge;
 - (ii) if he is a minor over the age of eighteen years, within four days after his or his guardian's request for his discharge; or
 - (iii) if he is a minor under the age of eighteen years, within four days after his guardian's request for his discharge;
 - (b) in the case of a patient admitted under section 4, within four days after the request for his discharge by the person who made the application under paragraph (b) of section 4(1): Provided that where the patient concerned is a minor over the age of eighteen years and has, in the opinion of the superintendent, recovered sufficiently to understand the meaning and effect of a discharge from the institution, such patient shall, as regards the discharge from the institution, be dealt with as if he had been admitted as a patient under section 3;
 - (c) if the superintendent or the medical practitioner of the patient certifies in writing that he is fit to be thus discharged; or
 - (d) if the court or a judge or magistrate or the Secretary directs that he be thus discharged.

Provisions of sections 8 and 12 may be applied with reference to patients under section 3 or 4

6. An application under section 8 or 12 may at any time be made in respect of a patient referred to in section 3 or 4.

Out-patients

7. The superintendent of an institution, other than a licensed institution, may provide for the treatment at such institution or elsewhere of any person -

- (a) who, in the opinion of the superintendent, is likely to benefit from such treatment;

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- (b) who voluntarily submits to such treatment; and
- (c) who is not detained or accommodated in any institution.

CHAPTER 3

RECEPTION ORDER, CASES OF URGENCY, MENTALLY ILL PERSONS
WHO ARE DANGEROUS, OFFICIAL *Curator ad Litem*, POWERS OF
JUDGE OF SUPREME COURT**Application for reception order**

8. (1) Any person over the age of eighteen years (in this section referred to as the applicant) who believes that any other person is suffering from mental illness to such a degree that he should be committed to an institution, may in the prescribed form apply to the magistrate of the district in which such other person is, for an order that he be received and detained at an institution.

- (2) (a) Such application shall -
 - (i) set out the grounds on which the applicant believes that the person in respect of whom the application is being made is mentally ill to such a degree that he should be committed to an institution;
 - (ii) state the degree in which the applicant is related by consanguinity or affinity, as the case may be, to the person in respect of whom the application is being made, and if the applicant is not the husband or wife or a near relative of such person, the reason why the application is being made by the applicant instead of by the husband or wife or a near relative; and
 - (iii) state that the applicant has, within the seven days immediately preceding the date on which the application is signed, personally seen the person in respect of whom the application is being made.
- (b) The matters referred to in paragraph (a) shall be verified by the applicant by affidavit or solemn declaration, and no stamp duty shall be payable in respect of such an affidavit or solemn declaration.

(3) The application shall be handed to the magistrate within seven days after the date on which it is signed by the applicant and may be accompanied by a medical certificate in the prescribed form which is dated not earlier than seven days before the date on which the application is signed by the applicant and which relates to the mental condition of the person in respect of whom the application is being made.

Magistrate may issue reception order

9. (1) The magistrate shall consider the application and may, in his discretion, examine the person in respect of whom the application is made at the place of abode of such person or elsewhere, and he shall, whether or not he makes such examination, call to his assistance two medical practitioners (of whom one shall, if practicable, be the district surgeon) who are not prohibited under section 23 from giving a certificate, and such medical practitioners shall either jointly or separately examine the person concerned and record the result of their examination in the form of a certificate which shall be dated: Provided that if only one medical practitioner is available, the magistrate may call such medical practitioner to his assistance and such medical practitioner shall thereupon act in the manner hereinbefore set out.

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- (2) (a) The magistrate may make such additional enquiry into the mental condition of the person concerned as he may deem necessary and may summon any person to appear before him as a witness to testify with regard to the mental condition of such person.
- (b) Any person summoned under paragraph (a) and who without sufficient cause fails to appear before the magistrate, shall be guilty of an offence.

(3) If the magistrate, upon consideration of all the evidence relating to the mental condition of the person concerned, including his own observations with regard to such condition, is satisfied that such person is mentally ill to such a degree that he should be detained as a patient, he may issue an order in the prescribed form authorizing the patient to be received, detained and treated at an institution specified in the order, or directing that the patient be received and detained as a single patient under section 10(1): Provided that in the case of a child who is capable of being taught to manage himself and his affairs to some extent but appears by reason of mental illness to be permanently incapable of receiving proper benefit from the education and training in a special school as defined in the Coloured Persons Education Act, 1963 (Act No. 47 of 1963), the Educational Services Act, 1967 (Act No. 41 of 1967), the Coloured Persons in South West Africa Education Act, 1972 (Act No. 63 of 1972), the Bastards of Rehoboth Education Act, 1972 (Act No. 85 of 1972), and the Nama in South West Africa Education Act, 1972 (Act No. 86 of 1972), or in an ordinary school at which special classes have been instituted for the education and training of children who by reason of mental or behaviour aberrations are unable to benefit sufficiently from the instruction and training given in the ordinary classes at such school, such child shall be received only at an institution in which separate accommodation is provided for such children and in which reasonable provision is made for their care and instruction.

[None of the acts cited in subsection (3) are still in force in Namibia.
Special schools now fall under the Education Act 16 of 2001.]

(4) The magistrate shall not issue a reception order by virtue of a medical certificate referred to in subsection (1) or (7) if a period longer than fourteen days has elapsed since any examination to which any such certificate relates.

(5) The patient shall, after the issue of a reception order, be removed to the institution or place of detention as a single patient as soon as possible, and the magistrate may, pending the removal of the patient to the institution or place of detention as a single patient, as the case may be, but subject to the provisions of subsection (6), issue such order as he may deem fit for the interim care, control and detention of the patient.

(6) A patient shall not be detained in a prison or police cell unless it is impossible to remove him immediately to the institution or place of detention as a single patient and it appears to the magistrate that the patient cannot be otherwise controlled.

(7) If the application referred to in section 8(1) is under section 8(3) accompanied by a medical certificate, the magistrate may, notwithstanding anything to the contrary in this section contained but subject to the provisions of section 23, at his discretion accept such medical certificate in lieu of a medical certificate referred to in subsection (1) of this section as if the certifying medical practitioner had been called to his assistance under the said subsection (1).

(8) All proceedings relating to the issue of a reception order shall be conducted in private.

Detention under reception order of patient in single care

10. (1) A magistrate may, in any reception order issued by him in respect of any patient, direct that the patient concerned be received and detained as a single patient in the dwelling of some householder and not in an institution.

(2) Such a reception order shall not be issued unless the certifying medical practitioner or practitioners, as the case may be, certify that it would be safe and convenient to receive and detain the patient as a single patient instead of in an institution.

(3) Before such a reception order is issued, the magistrate or such person as the magistrate may appoint for the purpose, shall examine the proposed householder and satisfy himself that the householder is a proper person to have charge of the patient and that his dwelling and its surroundings are suitable for the reception and detention of the patient.

(4) The provisions of this Chapter relating to the reception and detention of a patient at an institution shall, in so far as such provisions can be applied with reference to a single patient, apply with reference to the reception and detention of such a patient.

(5) Any regulation relating to the discharge, escape, transfer or death of a patient detained in an institution, shall apply also with reference to a single patient.

(6) A single patient shall as often as is prescribed or as may be directed by a person authorized thereto by any regulation, be visited by a medical practitioner designated by the person so authorized.

Period of validity of reception order and removal from interim place of detention

11. (1) A reception order shall authorize the detention of the patient for a period not exceeding forty-two days.

(2) If the patient is detained at a place determined under section 9(5) pending his removal to the institution or place of detention as a single patient, as the case may be, the magistrate may at any time during the continuance of the reception order by way of endorsement on the order authorize the removal of the patient from the place so determined to the institution or place of detention as a single patient.

Procedure in cases of urgency

12. (1) In cases of urgency where it is expedient for the welfare of a patient or is in the public interest that the patient be forthwith placed under care and treatment in an institution, an application in the prescribed form may be made by any person over the age of eighteen years to the superintendent of the institution for the reception of the patient therein.

(2) The provisions of section 8(2) shall *mutatis mutandis* apply with reference to an application made under this section, except that the reference to seven days in paragraph (a)(iii) of that section shall be construed as a reference to two days.

(3) An urgency application -

(a) shall be accompanied by a medical certificate in the prescribed form relating to the mental condition of the patient, and by a statement that the matter is one of urgency;

(b) if it is not signed by the husband or wife or a near relative of the patient, shall state -

- (i) the reason why it is not so signed: Provided that where the application is signed by a medical practitioner, a registered clinical psychologist, a registered social worker or a registered nurse, a statement by the person so signing the application to the effect that no husband, wife or near relative was available or willing to sign the application, shall be deemed to be sufficient compliance with the requirements of this subparagraph;
- (ii) the connection between the patient and the person signing the application.

(4) A patient may be received, detained and treated under an urgency application if it appears from the medical certificate accompanying it that the certifying medical practitioner has personally examined the patient not more than two days before the date of his reception.

(5) The superintendent of the institution to which a patient is admitted under an urgency application shall forthwith notify the magistrate of the district in which the institution is situated of such admission, and the magistrate shall thereupon, on production to him of a certified copy of the relevant urgency application and medical certificate, proceed in the same manner as if the application had been one made to him for the issue of a reception order: Provided that where the medical certificate was given by a person disqualified under section 23 from giving the certificate, the superintendent shall cause the patient to be examined by two medical practitioners not so disqualified, who shall either jointly or separately examine the patient and record the result of their examination in the form of a certificate which shall be dated, and the superintendent shall lay such certificate before the magistrate concerned, who shall then proceed in the same manner as if the application had been one made to him for the issue of a reception order.

(6) If the medical practitioner signing the medical certificate accompanying the urgency application is not prohibited under section 23 from giving the certificate, the magistrate may, in his discretion, accept the certificate as if it had been given by the medical practitioner concerned after having been called in by the magistrate under section 9(1), and such certificate shall thereupon for the purposes of this Act be deemed to have been given under that section.

(7) If the magistrate after enquiry refuses to issue a reception order, he shall forthwith give notice of his refusal to the superintendent concerned, whereupon the further detention under this section of the patient concerned shall be unlawful.

(8) No person shall by virtue of an urgency application be detained in an institution for a period longer than ten days: Provided that the magistrate may, on the application of the superintendent or the medical practitioner in charge of the patient, extend the said period to no more than twenty-one days.

Medical practitioner shall report mentally ill person who is dangerous

13. If a medical practitioner is of the opinion that any person examined or treated by him is mentally ill to such a degree that he is a danger to others, he shall forthwith in writing report his opinion to the magistrate of the district in which such person is, or, if the magistrate is not readily available, to a police official who shall forthwith lay the said report before the magistrate concerned.

Duty of police official in certain circumstances

- 14.** (1) If a police official reasonably believes that any person -
- (a) not wandering at large is mentally ill and -

- (i) is being neglected or ill-treated by any person having the care or custody of him; or
 - (ii) is not under safe and proper supervision, care or control; or
- (b) is mentally ill and is wandering at large and is unable to take care of himself,

such police official shall forthwith apply for a reception order in respect of such person or cause such an application to be made.

(2) If a police official reasonably believes that a person is mentally ill and is a danger to himself or to others, such police official shall apprehend and detain such person and forthwith report the matter to a magistrate of the district in which such person is.

Magistrate may require certain persons to be brought before him

- 15.** (1) Any magistrate may -
- (a) on sworn information that a person within the district of such magistrate is wandering at large and is unable to take care of himself, or is a danger to others, and that he is believed to be mentally ill; or
 - (b) on receipt of a report under section 13 or 14(2),

require a police official to bring or to apprehend and bring such person before a magistrate of the district in question and, whether or not the magistrate so requires such person to be brought before a magistrate, deal with him, as the circumstances may require, as a person in respect of whom an application had been made for a reception order or as a person in respect of whom an urgency application had been made under this Chapter, and the person giving the sworn information under paragraph (a) and the person making the report under paragraph (b) shall for the purposes of this Chapter be deemed to have signed the application for a reception order or the urgency application, as the case may be.

(2) Any magistrate to whom an application is made for a reception order may, at his discretion, at any time before the issue of the reception order, require a police official to bring or to apprehend and bring the person in respect of whom the application is made, before a magistrate of the district in question for the purposes of being examined and of being dealt with in accordance with the provisions of this Chapter.

Magistrate may give directions as to detention of person in custody

16. (1) Whenever any person in respect of whom an application for a reception order has been made to a magistrate is brought before a magistrate under this Act, the magistrate may, pending the determination of the application, make such order as he thinks fit for the interim care, control and detention of such person in any institution or other place for a period not exceeding twenty-one days.

(2) Where a magistrate receives a report under section 13 or 14(2) and the patient concerned is being detained in a place other than an institution, the magistrate shall forthwith take steps to have the patient examined by a psychiatrist or other medical practitioner.

(3) Where a patient in respect of whom an urgency application has been made under section 12(1) cannot immediately be removed to an institution, or where the magistrate is of the opinion that a patient referred to in section 13 or 14(2) should be dealt with under an urgency application and such patient cannot immediately be removed to an institution, the magistrate

may, pending the removal of the patient to an institution, make such order as he thinks fit for the interim care, control and detention of the patient.

(4) Unless the magistrate is of the opinion that there is a sound reason for doing so, no order referred to in subsection (1) or (3) shall be made for the detention of the person concerned in a prison or police cell.

(5) The magistrate shall take steps for the removal to an institution as soon as possible of a patient referred to in subsection (3).

Official *curator ad litem*

17. An attorney-general shall, within the area for which he has been appointed, be the official *curator ad litem* of any patient detained under a reception order issued by a magistrate or further detained under the order of a judge under section 19, if the institution where the patient is being detained or the place where the patient is being detained as a single patient is situated within such area.

Magistrate and superintendent to transmit to official *curator ad litem* medical reports on patient

18. (1) Where a patient is being detained as a single patient under a reception order, the district surgeon or such medical practitioner as may be in attendance upon the patient shall, on a date not less than two days and not more than eight days after the date of the reception order, examine the patient with regard to his mental condition, and without delay submit his report on such condition to the magistrate concerned, whereupon the magistrate shall, on a date not later than ten days after the date of the reception order, transmit the said report, together with any medical certificate on which the reception order was issued, to the official *curator ad litem*.

(2) Where a patient is being detained at an institution under a reception order, the superintendent of the institution shall, on the admission of the patient to the institution, examine the patient with regard to his mental condition or have the patient so examined, and, within seven days after the admission of the patient to the institution, transmit the report on such condition, together with any medical certificate on which the reception order was issued, to the official *curator ad litem*.

(3) The official *curator ad litem* shall examine any certificate and report received under subsection (1) or (2) and may, if he considers it necessary, require any further report on the mental condition of the patient to be furnished to him, and the official *curator ad litem* shall as soon as possible transmit any such certificate and report or further report to the registrar of the court in whose area of jurisdiction the place is situated in which the patient is being detained, and the registrar shall without delay lay such certificate and report before a judge in chambers for consideration under section 19.

Powers of judge on considering certificate and report

19. (1) A judge in chambers may, after considering the certificate and report submitted to him under section 18 -

- (a) if satisfied that an order for the further detention of the patient should be made, make such an order for such period as he may deem necessary;
- (b) direct that a summons be issued and served on the patient and the official *curator ad litem* to appear at a place specified in the summons to show cause why the patient should not be declared a mentally ill person and why his detention should

not be confirmed or, if necessary, why a curator should not be specially appointed for the care of his person and for the care or administration of his property;

- (c) direct that any summons or other process be issued and that the proceedings in the matter be continued, free from any stamp duty or office fees, and that the service of any such summons or process be made in such manner as he may deem expedient;
- (d) direct that the patient be discharged immediately;
- (e) then or at any subsequent time appoint a *curator bonis* for the temporary care or custody of any property of the patient and, where it appears to the judge desirable that temporary provision be made for the maintenance or other necessary purposes or requirements of the patient or any member of his family out of any cash or available securities belonging to him and in the possession of his banker or any other person, authorize such banker or other person to pay to the *curator bonis* such amounts of money as may be deemed necessary, and give directions with regard to the application thereof for the benefit of the patient or for the relief of his family, and generally give such directions as may appear necessary and proper.

(2) The registrar of the court shall transmit any order made or direction given by a judge under paragraph (a) or, as the case may be, paragraph (d) of subsection (1) to the person who has charge of the patient.

(3) Any proceedings under this section with regard to a patient shall be conducted in private, and where an enquiry is held by a judge and the person concerned is detained at an institution, the enquiry shall, in so far as it is practicable, be held at the institution.

Person detained may apply to court for enquiry into reasons for detention

20. (1) Any person detained under the order of a magistrate or further detained under the order of a judge, including a person detained under the provisions of section 12, 14, 15, 16 or 27, may directly or through a *curator ad litem* apply to the court for an enquiry into the reasons and grounds for his detention, and the court may make such order as it deems fit.

(2) If the person concerned is detained at an institution, the enquiry shall, in so far as is practicable, be held at the institution.

Enquiry into mental condition on behalf of person alleged to be mentally ill

21. (1) No provision of this Act shall be construed as preventing any relative or guardian of any person alleged to be mentally ill to such a degree that he should be detained, or any friend of such a person if there is no relative or guardian of such person readily available, from applying directly by petition to the court for an enquiry into the mental condition of such person, whether or not a reception order has previously been issued, and the court may make such order as it deems fit.

(2) If the person concerned is detained at an institution, the enquiry shall, in so far as is practicable, be held at the institution.

Particulars to be contained in medical certificate

22. A medical practitioner giving a certificate under this Chapter -

- (a) shall, in addition to the facts stated therein relating to the mental illness of the patient and established at the time of the examination, also state therein if he is able to do so -
 - (i) any further facts observed by the medical practitioner on any other occasion that are indicative of mental illness on the part of the patient, and the approximate date of that occasion;
 - (ii) any information communicated to him by other persons indicating mental illness in respect of the patient, together with the names and addresses of such persons;
 - (iii) the type of mental illness from which the patient is suffering;
 - (iv) what, in his opinion, the factors are that caused the mental illness;
 - (v) whether, in his opinion, the patient has homicidal or suicidal tendencies or is in any other way a danger to others or to himself;
 - (vi) what treatment, if any, has been applied in respect of the mental condition of the patient;
 - (vii) what the physical health and condition of the patient is like, with special reference to the presence or absence of any communicable disease and recent injury;
- (b) shall, in such certificate, state that he is not prohibited under this Act from signing the certificate and that he is a duly registered medical practitioner.

Persons prohibited from signing medical certificate

23. (1) Except in a case of urgency under section 12, a medical certificate shall not be given under this Chapter by -

- (a) the applicant for the reception order;
- (b) the superintendent, a medical practitioner or the licensee of the institution to which a patient is to be admitted under a reception order, if issued;
- (c) the householder of the dwelling to which a patient is to be admitted under a reception order, if issued;
- (d) the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or the partner, principal or assistant of any person referred to in paragraph (a), (b) or (c) or of the patient or the guardian or trustee of the patient;
- (e) the Secretary or a member of a hospital board.

(2) A medical certificate shall not be given under this Chapter by the husband, wife, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law or the partner, principal or assistant of the other medical practitioner giving such a certificate.

Secretary may order removal to institution of patient detained or mentally ill

24. (1) The Secretary may, at any time after a reception order has been issued for the detention of a patient or the court has ordered the detention of a person as mentally ill, in the prescribed form authorize the removal of such patient or person to some other institution or place, to be detained there until discharged or removed to some other institution or place.

(2) In the case of a patient dealt with under a reception order, if the order of removal under subsection (1) is issued prior to the grant of an order by a judge for the further detention of the patient, notice of the issue of the order of removal shall forthwith be sent by the magistrate to the official *curator ad litem*.

Periodical report on mental condition of patient

25. (1) (a) When a patient is detained in an institution or other place, the superintendent or person in charge thereof shall, except in the case of a patient detained in an institution under the control of the State and who is not in the medical care of the superintendent of such institution, transmit in the prescribed form annually for the first three years and thereafter in the fifth year and then every three years, a report to the Secretary as to the mental condition of the patient.

(b) In the case of a patient detained in an institution under the control of the State and who is not in the medical care of the superintendent of the institution, the superintendent shall arrange for the reports contemplated in paragraph (a) to be submitted to him.

(2) In each year in which the report is to be transmitted under subsection (1), it shall be transmitted in the month corresponding to that in which the patient was admitted.

(3) The Secretary or the superintendent, as the case may be, if he is not satisfied with any report submitted to him under this section, may call for such further information as he may deem necessary or he may himself visit and examine the patient with regard to his mental condition or he may request some other medical practitioner so to examine the patient.

(4) The Secretary or, as the case may be, the superintendent may, after considering any report or further information submitted to him under this section, or after any visit and examination thereunder, order the discharge of the patient or give such other directions as he may think fit.

Amendment of application for reception order or of reception order or certificate

26. (1) If an application for a reception order or a reception order is, before the reception of the patient or within thirty days thereafter, found to be incorrect or deficient in any respect, a magistrate having jurisdiction may permit the application to be amended or, as the case may be, amend the reception order.

(2) If a medical certificate given under this Chapter is found to be incorrect or deficient in any respect, it may, before the reception of the patient or within thirty days thereafter, with the consent of a magistrate having jurisdiction, be amended by the certifying medical practitioner.

(3) An application, order or certificate amended under this section shall have effect as if the amendment had been contained therein when it was originally signed or issued, as the case may be.

Patients certified to be dangerous

27. If any person in respect of whom a reception order has been issued under this Chapter, or a President's patient, is certified by two medical practitioners, of whom one shall be a psychiatrist, to be dangerous, the patient shall, if possible, be removed to and detained at a maximum security hospital or a hospital prison for psychopaths, and any order by any court of law directing that a President's patient be detained in a mental hospital or a prison shall, if the patient is so certified to be dangerous, be construed as directing that the patient be detained at a maximum security hospital or a hospital prison for psychopaths, respectively.

CHAPTER 4

STATE PRESIDENT'S DECISION PATIENTS AND MENTALLY ILL PRISONERS

Minister may order removal of State President's decision patient to institution or other place

28. (1) When an order committing a President's patient to a prison is issued, the officer in charge of the prison shall forthwith transmit a copy of the order to the Secretary, who shall without delay transmit a copy thereof to the Minister together with his observations thereon.

(2) The Minister shall direct that such patient be removed to and detained at an institution or other place specified by the Minister, whereupon such patient shall be removed to and be received at such institution or other place.

(3) Subject to the provisions of this Act relating to discharge, a patient removed or committed under the provisions of this section or any other law to an institution or other place, shall be detained therein or in any other institution or place to which he may be transferred.

Discharge of State President's decision patient or termination of detention as such

29. (1) (a) Where any person is with reference to a charge of murder or culpable homicide or a charge involving serious violence, detained as a President's patient under the provisions of section 27, 28 or 29 of the Mental Disorders Act, 1916 (Act No. 38 of 1916), a judge in chambers may at any time after the order of detention, on written application being made to him by the official *curator ad litem* for a recommendation to the State President that such person be discharged either absolutely or conditionally or that he cease to be treated as a President's patient, make such recommendation as he may think fit.

[paragraph (a) substituted by Act 48 of 1976]

(b) Such application shall be accompanied by a report by the superintendent of the institution or the person in charge of the place where the patient is being detained and by the reports of two medical practitioners, and either the said superintendent or one of the said two medical practitioners shall be a psychiatrist.

(c) The reports referred to in paragraph (b) shall contain a detailed history of the patient and information as to his mental condition, and shall state whether there is a likelihood of the patient committing serious acts of violence if he is not detained.

(d) A judge may, when considering an application under this section, call for such further information as he may consider necessary and may summon any psychiatrist to his assistance.

(2) The State President may on receipt of the recommendation by a judge under subsection (1) authorize the Minister to order that the patient be discharged either absolutely or conditionally or that he cease to be treated as a President's patient.

(3) No order for the discharge of a President's patient referred to in subsection (1) and no order that he cease to be treated as such, shall be made except on the authority of the State President under subsection (2).

(4) The Minister may order the discharge of a President's patient either absolutely or conditionally or that he cease to be treated as such -

- (a) on receipt of authority for such an order under subsection (2);
- (b) in the case of a President's patient detained as such in respect of a charge not referred to in subsection (1)(a), after obtaining a report from the hospital board concerned and a report from the official *curator ad litem*.

(5) It shall be the function of the official *curator ad litem* to decide for the purposes of subsections (1)(a) and (4)(b) whether any charge with reference to which a person is detained as a President's patient, involves or does not involve serious violence.

(6) On receipt of the order of the Minister under subsection (4) that a President's patient shall cease to be treated as such, the superintendent of the institution or the person in charge of the place in which the patient is being detained shall forthwith transmit a report as to the condition of the patient to the official *curator ad litem* who shall without delay transmit the report, together with such other documents as may be deemed necessary, to the registrar of the court for submission to a judge in chambers.

(7) The judge may thereupon order the further detention of the person concerned as a patient under Chapter 3, or may make such other order under section 19 as he may think fit.

Convicted prisoner who is mentally ill

30. (1) Whenever it appears to the Minister that a convicted prisoner in a prison is mentally ill to such a degree that he should be detained in an institution or in a hospital prison for psychopaths and the prisoner is not under sentence of death, he may order the magistrate of the district in which the prison is situated to cause the mental condition of the prisoner to be enquired into.

(2) Whenever it appears to the officer in charge of the prison in which a convicted prisoner is in custody that the prisoner is mentally ill to the degree referred to in subsection (1) and the prisoner is not under sentence of death, he shall report the matter to the magistrate of the district in which the prison is situated.

(3) The magistrate shall on receipt of such order or report, forthwith direct two medical practitioners, of whom one shall, if practicable, be a psychiatrist, to examine the prisoner and to enquire into his mental condition, and such medical practitioners shall in writing certify their finding on the question whether or not the prisoner is mentally ill to the degree referred to: Provided that -

- (a) if only one medical practitioner is available, the magistrate may direct that such medical practitioner carry out the examination and enquiry alone;
- (b) if any such medical practitioner has, within the period of fourteen days immediately preceding the receipt of the order or report in question, examined the prisoner and

enquired into his mental condition, such examination and enquiry shall for the purposes of this section be deemed to have been carried out in pursuance of a direction under this subsection.

(4) If any such medical practitioner certifies that he is doubtful whether the prisoner is mentally ill to the degree referred to, the magistrate may direct that the prisoner be removed for observation to an institution, other than a licensed institution, or to a hospital prison for psychopaths, as the case may be.

(5) A prisoner shall, while he is detained in an institution or a hospital prison for psychopaths under subsection (4), be deemed to be in the lawful custody of the person in charge of the prison in which he was detained immediately prior to his removal.

(6) If the unserved portion of the sentence of imprisonment of any prisoner will expire within two months after the date on which the need for an enquiry into his mental condition arises under subsection (1) or (2), the said subsections shall not apply and the magistrate concerned shall deal with the matter under section 8, and the person in charge of the prison in which the prisoner is in custody shall for the purposes of that section act as the applicant for a reception order.

(7) Whenever it appears to the Secretary or to the officer in charge of a prison in which a prisoner under sentence of death is in custody that the prisoner is mentally ill to the degree referred to in subsection (1), he shall immediately report the matter to the Secretary for Justice.

[Subsections (1) and (2) both refer to "sentence of death". Article 6 of the Namibian Constitution states: "No Court or Tribunal shall have the power to impose a sentence of death upon any person."]

Procedure where prisoner removed for observation is found to be mentally ill

31. (1) If the magistrate is satisfied that a prisoner removed under section 30(4) for observation is mentally ill to the degree referred to in section 30(1), he shall, pending a direction under subsection (2) of this section, make an order for the further detention of the prisoner in the institution or hospital prison in question.

(2) When an order is made under subsection (1), the Minister shall direct either that the prisoner be detained in the institution or hospital prison in question or that he be removed to an institution or hospital prison for psychopaths specified by the Minister.

(3) The magistrate making the order under subsection (1) shall without delay transmit to the Secretary a copy of the order, together with a copy of any medical certificate referred to in section 30(4) and of any report relating to the prisoner by the superintendent of the institution or the person in charge of the hospital prison in question, as the case may be, and of the warrant under which the prisoner was detained in prison.

(4) A prisoner shall, subject to the provisions of section 34 of the Prisons Act, 1959 (Act No. 8 of 1959), be detained in the institution or hospital prison referred to in subsection (2) or in any other institution or hospital prison to which he may be transferred.

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998, which was replaced in turn by the Correctional Service Act 9 of 2012.]

Prisoner certified mentally ill

32. (1) When a prisoner is under section 30 certified to be mentally ill to the degree referred to in subsection (1) of that section, the magistrate shall in writing direct that the

prisoner be kept in custody as a mentally ill person in the prison in which he is being detained, until the Minister issues instructions under subsection (3) of this section as to his disposal.

(2) The magistrate giving such direction shall without delay transmit to the Secretary a copy of the direction, together with a copy of any medical certificate on which the direction is based and of the warrant under which the prisoner was detained in prison.

(3) The Minister shall direct that the prisoner concerned be removed to an institution or hospital prison for psychopaths specified by the Minister, whereupon the prisoner shall be removed to and be received at such institution or hospital prison, as the case may be.

(4) A prisoner shall, subject to the provisions of section 34 of the Prisons Act, 1959 (Act No. 8 of 1959), be detained in the institution or hospital prison referred to in subsection (3) or in any other institution or hospital prison to which he may be transferred.

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998, which was replaced in turn by the Correctional Service Act 9 of 2012.]

Procedure on recovery of mentally ill prisoner

33. If two medical practitioners certify in writing that a mentally ill prisoner in respect of whom a direction has been issued that he be detained in an institution or prison hospital for psychopaths, has recovered to such an extent that his detention in the institution or prison hospital for psychopaths is no longer necessary, such prisoner shall be dealt with under the provisions of section 34 of the Prisons Act, 1959 (Act No. 8 of 1959).

[The Prisons Act 8 of 1959 was replaced by the Prisons Act 17 of 1998, which was replaced in turn by the Correctional Service Act 9 of 2012.]

Procedure on expiry of sentence of mentally ill prisoner

34. (1) A mentally ill prisoner shall, upon the expiry of the sentence of imprisonment to which he is subject, cease to be a prisoner.

(2) The warrant under which the prisoner was detained immediately prior to the expiry of the sentence of imprisonment shall be authority for his detention after such expiry pending the issue of an order by a judge under this section.

(3) If one month before the expiry of his sentence of imprisonment such prisoner is still mentally ill to such a degree that it is necessary that he be detained in an institution or hospital prison for psychopaths, the superintendent or other custodian of the prisoner shall without delay transmit a report as to his mental condition, together with such other documents as may be deemed necessary, to the official *curator ad litem* who shall without delay transmit the report and documents to the registrar of the court for the consideration of a judge in chambers.

(4) The judge may thereupon order the further detention of such person as a patient under Chapter 3, or may make such other order under section 19 as he may think fit.

Periodical report on mental condition of State President's decision patient and mentally ill prisoner

35. (1) The superintendent of an institution or the person in charge of any other place in which a President's patient or a mentally ill prisoner is being detained under this Chapter, shall at the intervals referred to in section 25 report to the Secretary on the mental condition of the patient or prisoner, and the Secretary shall transmit the report to the Minister together with his observations thereon.

(2) The Minister shall on receipt of such report and observations take into consideration the condition, history and circumstances of the patient or prisoner for the purposes of discharging any function under this Chapter.

Transfer of State President's decision patient and mentally ill prisoner

36. The Minister may from time to time order the transfer of a President's patient or a mentally ill prisoner detained in any institution or other place, to any other institution or place, and such patient or prisoner shall be received and detained in the institution or other place to which he is so transferred.

Discharge of mentally ill prisoner

37. (1) The State President may discharge a mentally ill prisoner either absolutely or conditionally.

(2) The discharge of a mentally ill prisoner who has been convicted of murder, culpable homicide or an offence involving serious violence, shall not be ordered under subsection (1) unless a report on the advisability of such discharge has been obtained from the hospital board concerned and from the official *curator ad litem*.

Conditional discharge of State President's decision patient and mentally ill prisoner

38. Where a President's patient or a mentally ill prisoner is conditionally discharged under this Chapter -

- (a) a report on his condition shall be made to the Minister by such persons at such times and containing such particulars as may be required by the order of discharge or by regulation;
- (b) and any condition of the discharge appears to the Minister not to have been complied with, or the conditional discharge is revoked, the Minister may direct that such patient or prisoner be taken into custody and removed to an institution or place specified in the direction, whereupon such patient or prisoner shall be received and detained at such institution or place as if he had been removed thereto under the provisions of this Chapter.

Medical practitioner must base certificate or report on personal examination

39. A medical practitioner giving a certificate or making a report under this Chapter, shall state therein that he is a duly registered medical practitioner and that the opinion expressed therein has been formed after personal examination or observation of the patient by such medical practitioner.

Application of sections 30 to 38

40. The provisions of sections 30 to 38 inclusive shall, in so far as those provisions can be applied, *mutatis mutandis* apply with reference to any person detained in -

- (a) a rehabilitation centre established or deemed to have been established under section 18 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), or under section 3 of the Coloured Persons Rehabilitation Centres Law, 1971, of the Coloured Persons Representative Council of the Republic of South Africa (Law No. 1 of 1971);

Mental Health Act 18 of 1973 (RSA)

- (b) a rehabilitation centre registered under section 21 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971, or under section 6 of the Coloured Persons Rehabilitation Centres Law, 1971; or
- (c) a reform school established or deemed to have been established under section 39 of the Children's Act, 1960 (Act No. 33 of 1960), or established under section 37 of the Children's Ordinance, 1961 (Ordinance No. 31 of 1961 of South West Africa).

[The Coloured Persons Rehabilitation Centres Law 1 of 1971 did not apply to South West Africa. The Children's Act 33 of 1960 – which was made applicable to South West Africa by the Children's Amendment Act 74 of 1973 with effect from 1 January 1977 by RSA Proc. 264/ 1976 (RSA GG 5360) – replaced the Children's Ordinance 31 of 1961.]

Saving of authority of Minister to make order under this Chapter

41. No provision of this Act shall be construed as preventing the Minister, if he thinks fit, from issuing any order with reference to any person for whose safe custody the Minister is by law authorized to issue an order.

CHAPTER 5

PATIENTS FROM OTHER STATES

Patient admitted from another State

42. (1) The Minister may, subject to the provisions of the Aliens Act, 1937 (Act No. 1 of 1937), the Admission of Persons to the Republic Regulation Act, 1972 (Act No. 59 of 1972), and such conditions as he may determine, on the written application of the government of any State, in consultation with the Minister of Finance authorize in writing the admission of a patient from such State into the Republic for the purposes of detention and treatment in respect of mental health specified in the application.

[The provisions of the Aliens Act 1 of 1937 on immigration and Act 59 of 1972 (which was re-named the Admission of Persons to Namibia Regulation Act) have been replaced by the Immigration Control Act 7 of 1993.]

(2) The authority of the Minister under subsection (1) for the admission of a patient into the Republic shall be subject to the production, at the time of such admission, of a warrant purporting to have been signed by a person authorized to sign such warrant in the State in question and which states that the patient is mentally ill and is to be detained and treated at an institution.

(3) The patient may under such warrant be detained at an institution for a period not exceeding sixty days with effect from the date of the warrant.

(4) The superintendent of the institution to which the patient is admitted shall, on admission of the patient to the institution, transmit the warrant, together with any documents in support of the facts on which the warrant was issued, to the official *curator ad litem*, whereupon the provisions of this Act shall apply with reference to such patient as if a reception order had been issued in respect of him under Chapter 3.

CHAPTER 6

PATIENTS IN PRIVATE DWELLINGS

Where no remuneration is paid for maintenance and care

43. (1) If a patient suffering from mental illness is residing in a private dwelling with relatives or other persons who receive no compensation for the maintenance and care of the patient, and the illness has continued for a period of six months and is of such a nature that it requires the compulsory confinement of the patient in the dwelling or any restraint or coercion, the person who has charge of the patient shall give notice of those facts to the magistrate of the district in which such dwelling is situated, and shall transmit to him a certificate, signed by at least one medical practitioner, as to the condition of the patient and stating the reasons (if any) which render it desirable that the patient shall remain under private care, whereupon the magistrate shall transmit the certificate and reasons, together with his remarks thereon, to the Secretary, who shall forward the same to the Minister.

(2) The Minister, if satisfied as to the facts of the certificate, may order that the patient be detained in the dwelling in question for a further period not exceeding six months.

(3) At the expiry of that further period, if the mental illness still continues, the necessary steps shall be taken by the person having charge of the patient to obtain a reception order under Chapter 3.

Where a charge is made for maintenance and care

44. (1) A patient may, on the authority of a certificate issued by two medical practitioners subject to the provisions of sections 22(h) and 23, for payment be received and be taken care of in a private dwelling for a period not exceeding six months after his mental illness has become apparent.

(2) Such certificate shall, within twenty-four hours after the admission of the patient to such private dwelling, be sent to the magistrate by the person receiving the patient, and the magistrate shall send a copy thereof together with a report on the case to the Secretary.

(3) No such patient shall be treated under this section for a period exceeding six months, unless the provisions of Chapter 3 relating to the issue of a reception order and a further detention order by a judge have been complied with.

(4) Except on the authority of a licence issued under this Act, no person shall permit more than one mentally ill person at the same time to reside in a private dwelling or to be under his care or charge in a private dwelling.

Visitation of patients detained under this Chapter

45. (1) Any magistrate, on receipt of any report or information that a patient of whom charge is being taken under this Chapter, is being wrongly or cruelly treated or is being neglected in any manner, may visit the patient in the private dwelling where he is being detained and make such investigation and enquiry as he may deem necessary, and the magistrate may thereafter take such steps as he may consider expedient.

(2) The Minister may by regulation prescribe the times at which patients of whom charge is being taken under this Chapter may be visited otherwise than under subsection (1), and by whom such visits may be made.

(3) The magistrate shall, after inspection by himself or by a medical practitioner appointed by him for this purpose, report monthly to the Secretary whether the person in charge of such dwelling is a fit and proper person to have the care of the patient.

CHAPTER 7

LICENSED INSTITUTIONS

Licensed institutions for reception of mentally ill persons

46. (1) On payment of such fee (if any) as the Minister, in consultation with the Minister of Finance, may prescribe and subject to such terms and conditions as he thinks fit, the Minister may issue a licence to any number of persons to keep an institution for the reception and detention under this Act of mentally ill persons.

(2) The particulars which shall be furnished by any applicant for such a licence shall be as prescribed by regulation.

(3) (a) A licence shall specify the class of mentally ill persons and the number of persons of each sex that may be received and detained in an institution at the same time.

(b) Any condition which is prescribed by regulation shall be deemed to be incorporated in the licence, unless any such condition is in respect of any particular licence amended or varied by the Minister under paragraph (c).

(c) The Minister may from time to time amend a licence with regard to the class of persons and the number of persons of each sex that may be received and detained in the institution, or amend or vary any condition of the licence.

(4) A licence may from time to time be renewed by the Minister or may be revoked by the Minister if the licensee fails to comply with any condition thereof or contravenes any provision of this Act.

(5) (a) A licensed institution may be visited at any time of the day or night by the Secretary or by any person delegated thereto by the Minister.

(b) Such a visit shall take place at least once in every year.

CHAPTER 8

HOSPITAL BOARDS

Establishment and constitution of hospital boards

47. (1) (a) The Minister may in respect of any institution establish a hospital board which shall consist of at least three and not more than five members appointed by the Minister.

(b) The establishment of such a board and the names of the members thereof shall be published by notice in the *Gazette*.

(c) Where practicable, one of the members shall be a medical practitioner and one shall be an advocate or attorney duly admitted to practise as such.

(d) The Minister shall designate a member of the board as chairman thereof.

(2) The appointment of a member of the board shall be for a period of three years, and a member shall be eligible for reappointment: Provided that if the number of members of the

board is increased to four or five during the of office of the serving members of the board, the period of office of the additional member or members shall on the same date as that of the serving members.

[subsection (2) substituted by Act 36 of 1977]

- (3) (a) A member of the board shall vacate his office -
- (i) if he becomes insolvent or makes an arrangement with his creditors;
 - (ii) if he is convicted of an offence and sentenced to imprisonment without the option of a fine;
 - (iii) if he is absent from three consecutive meetings of the board without the leave of the board.
- (b) A member may terminate his appointment as a member by giving written notice of one month to the Minister.
- (c) In the event of the death, incapacity or resignation of a member, the Minister shall appoint a person to fill the vacancy for the remainder of the period for which such member was appointed, and if such member was appointed by virtue of a qualification referred to in subsection (1)(c), the person appointed by the Minister to fill the vacancy shall, where practicable, be likewise qualified.
- (d) The Minister may appoint any person to act as substitute for any member who may be absent on leave.

Remuneration of members

48. A member of the board who is not an officer or employee in the public service shall, out of moneys appropriated by Parliament, be paid such remuneration and allowances as the Minister may from time to time determine in consultation with the Minister of Finance.

Visits by board

49. (1) The board shall visit any institution in respect of which it has been appointed at least once in every two months, and shall afford every patient therein an opportunity of making in person any representations he may wish to make to the board.

(2) The board shall investigate any reasonable complaint or grievance made to it by a patient.

Reports by board

50. The board shall report to the Minister the result of any visit to an institution, and shall from time to time comment on and make such suggestions with regard to the welfare of the patients in any institution with reference to which the board has been established, as it may deem fit.

Meetings of board

51. (1) (a) The board shall meet for the despatch of business whenever it is necessary, but at least once in every two months, and due notice of every meeting shall be given by the chairman thereof.

- (b) The superintendent of the institution concerned shall at each meeting present a report showing -
 - (i) the number of patients admitted to the institution since the date of the last meeting of the board;
 - (ii) the number of patients discharged from the institution since that date;
 - (iii) the number of patients that have died since that date;
 - (iv) the number of patients that have been transferred to any other institution since that date;
 - (v) a return of orders made since that date for the seclusion of patients.
- (c) Such superintendent may bring any matter to the notice of the board affecting the interests of any patient.
- (2) The superintendent shall attend every meeting of the board in an advisory capacity.
- (3) Two members of the board shall form a quorum.

Minutes of proceedings of board

52. (1) Minutes of the proceedings of each meeting shall be kept and regularly entered in a book for the purpose, and shall be submitted to the next ordinary meeting, and, if passed thereat as correct, shall be confirmed by the signature of the member presiding thereat.

(2) Minutes so signed shall, without further proof, be evidence in any court of law of the proceedings of the meeting of which they purport to be minutes.

Discharge by board of patient from institution

53. (1) The board may, by resolution duly adopted and recorded after proper enquiry, conditionally or unconditionally discharge any patient, other than a mentally ill prisoner and a President's patient, detained in an institution, whether such patient has recovered or has not recovered from his mental illness.

(2) When any resolution adopted by the board under this section is in conflict with the written report to the board of the superintendent of the institution in which the patient is detained, the board shall report the reasons for its resolution to the Minister.

- (3) A resolution referred to in subsection (2) shall not be put into effect unless -
 - (a) it is the unanimous resolution of the board; and
 - (b) it has been confirmed by the Minister, whose decision in this regard shall be final.

Board not to have authority over officers of institution

54. The board shall have no authority over the superintendent or any other officer of an institution.

CARE AND ADMINISTRATION OF PROPERTY OF MENTALLY ILL PERSONS

Notice of reception orders to be sent to Master of the Supreme Court

55. (1) A magistrate who issues a reception order under this Act shall without delay give notice of the order to the Master.

(2) The magistrate shall immediately make full enquiry as to the property or estate of the patient, and at the conclusion of the enquiry transmit to the Master a report as to the result thereof.

Appointment of curator of property of patient and conditions of appointment

56. (1) The court, if satisfied that any person detained as or declared to be mentally ill or detained as a mentally ill prisoner or a President's patient is incapable of managing his own affairs, may appoint a curator to perform or exercise on his behalf any particular act in respect of his property or to take care of or administer his property or to carry on any business or undertaking of such person: Provided that if the estimated value of the property does not exceed five thousand rand in respect of the *corpus* thereof or one thousand rand per annum in respect of income, a judge in chambers or the Master may exercise the powers conferred upon the court by this subsection.

(2) The Master may, pending the appointment of a curator under subsection (1), appoint a *curator bonis* to take the estate of the person concerned into his custody and, if expressly directed by the Master to do so, to carry on, subject to any law which may be applicable, any business or undertaking of the person concerned, and the Master may at any time cancel any such appointment.

When duties of Master and curator cease

57. (1) The powers, duties and functions of the Master and the curator shall not cease until the patient is discharged as provided by this Act and it appears from the certificate of the superintendent of the institution in which he was detained or, in the case of a patient detained elsewhere than in an institution, of the person in whose medical care he was, that he is capable of managing his own affairs: Provided that the curator shall be discharged from office only after he has completed his duties to the satisfaction of the Master.

(2) A certificate issued under subsection (1) shall be sent to the Master by the superintendent of the institution or the person in charge of the place in which the patient was detained.

(3) A curator (including a *curator bonis* appointed under section 56(2)), shall find security to the satisfaction of the Master and, unless the court directs otherwise, such security shall be given at the expense of the estate.

(4) When the court has made an order appointing a curator under section 56(1), a copy of the order shall be lodged with the Master without delay.

(5) The Master shall issue to the curator concerned a certificate that he has been so appointed and that he is authorized as such to have the custody and administration of the estate of the patient.

(6) When any patient for the care and administration of whose estate a curator has been appointed, dies intestate, or when such patient has left a will but there is no executor or none

willing to act, such curator shall continue the administration of the estate of such patient and distribute the assets thereof as if he had been appointed an executor.

(7) On the death of a curator the Master shall have power to appoint a new curator.

Appointment of curator of property without appointment of curator of person

58. Where upon an enquiry the court is of the opinion that the person to whom the enquiry relates is mentally ill to such a degree that he is incapable of managing his affairs but that he is capable of managing himself and is not a danger to himself or to others, the court may make such order as it thinks fit for the care and administration of the property of such person, including provision for his maintenance, but it shall not be necessary, unless the court thinks proper to do so, to make any order as to the custody of his person.

Order in case of partnership if member thereof declared mentally ill

59. When any person being a member of a partnership is declared mentally ill by the court, the court may, by the same or by any subsequent order, dissolve the partnership or make such order as in the circumstances may seem just.

Act not to be taken to limit power of court to declare persons mentally ill or to appoint curators

60. (1) Nothing in this Act contained shall be construed as limiting any power which the court may by law have to declare any person mentally ill or to appoint a curator to the person or property of any patient.

(2) When it is necessary for any court in connection with proceedings under this Chapter to examine a patient detained in an institution, the examination shall, as far as in the circumstances is practicable, take place at the institution.

CHAPTER 10

OFFENCES AND PENALTIES

Unauthorized detention of patients

61. (1) Any person who, except under the provisions of this Act, receives or detains a patient at any place, or for payment takes charge of a patient or receives a patient for the purpose of accommodating him or detains a patient, shall be guilty of an offence.

(2) The superintendent of a licensed institution shall be guilty of an offence if he receives or detains or permits to be received or detained in the institution concerned a greater number of patients than he is authorized to receive or detain therein under the licence.

False statements, entries and wilful obstruction

62. Any person shall be guilty of an offence if he -

- (a) makes any wilful misstatement of any material fact in any petition, application, statement of particulars, report or reception order under this Act, or when being examined at any enquiry held under this Act;

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- (b) makes a wilful misstatement of any material fact in any medical certificate or other certificate or in any statement or report on the physical or mental condition of any person under this Act;
- (c) knowingly makes in any book, statement or return, any false entry as to any matter with regard to which he is by this Act required to make an entry;
- (d) wilfully obstructs any magistrate or the Secretary or any curator, member of a hospital board, medical practitioner, police official or any person specially authorized by the Minister or under any order of court, in the exercise of any power under this Act.

Ill-treatment of patient by nurses or other persons in charge of patient

63. Any person employed in an institution or other place at which a patient is being detained or any person having the care or charge of a patient, who ill-treats or wilfully neglects the patient, shall be guilty of an offence.

Offences in connection with escape of person detained

64. Any person who incites any person to escape or entices any person from a place where he is detained under this Act, or who assists any such person in escaping or attempting to escape from any such place, or who secretes any such person, and any person working or employed at or in connection with any such place who permits any such person to escape or to attempt to escape from such place or who connives at any such escape or attempt to escape, shall be guilty of an offence.

Employment of male person in personal custody of female patient

65. (1) No male person shall in any institution be employed to take personal custody of any female patient or to restrain personally any female patient, except under the continual supervision of a female nurse and then only on the instructions of the superintendent of the institution, who shall report such employment to the Secretary.

- (2) (a) This section shall not be construed as prohibiting or as imposing a penalty in respect of the employment of a male person in any case of urgency which, in the opinion of the superintendent of the institution, makes such employment necessary.
- (b) Any such employment shall be reported to the Secretary immediately.

Carnal intercourse with female patient

66. (1) Any person who has carnal intercourse with a female person who is detained under the provisions of this Act or who is under care or control as a mentally ill person, shall be guilty of an offence.

(2) A female person shall, for the purposes of this section, be deemed to be detained in an institution, dwelling or other place, although she is absent therefrom on leave or otherwise or has escaped therefrom, until she is duly discharged therefrom or ceases to be under care or control as a mentally ill person.

(3) It shall be a sufficient defence to any charge under this section if the accused proves that he at the time of the commission of the act in question did not know and had no reasonable cause to believe or to suspect that the female was so detained or was under care or control as a mentally ill person.

- (4) The consent of the female shall not be a defence to any such charge.

Prohibition of sketches and photographs and of publication thereof and of false information

66A. Any person -

- (a) not being a member of the Newspaper Press Union of South Africa, who, without the authority in writing of the Secretary -
- (i) sketches or photographs or causes to be false in sketched or photographed any institution, portion of an institution, patient or group of patients, whether within or outside any institution; or
- (ii) publishes or causes to be published in any manner whatsoever any sketch or photograph of any patient or group of patients, whether such sketch or photograph was made or taken before or after the issue of a reception order in respect of the patient or in respect of any patient of the group of patients, or of any institution or portion of an institution; or
- (a) who publishes or causes to be published in any manner whatsoever any false information concerning the detention, treatment, behaviour or experience in an institution of any patient or any person who was a patient, or concerning the administration of any institution, knowing the same to be false, or without taking reasonable steps to verify such information (the onus of proving that reasonable steps were taken to verify such information being upon the accused),

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

[section 66A inserted by Act 48 of 1976]

Penalties

67. (1) Any person who contravenes any provision of this Act in respect of which no penalty is expressly provided shall on conviction be liable to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding three months.

(2) Any person who contravenes any provision of sections 61 to 66 inclusive, shall on conviction be liable to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding two years or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

(3) Where it is necessary that a patient be examined in connection with a prosecution under this Act, the examination and enquiry shall, where practicable, take place at the place where the patient is detained.

CHAPTER 11

GENERAL

No liability in respect of act done in good faith under this Act

68. (1) A person who in good faith and with reasonable care performs any act under any provision of this Act shall not be civilly or criminally liable in respect thereof.

(2) In any proceedings against any person in respect of any such act the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff.

(3) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No such proceedings shall be commenced after the expiry of three months after the act complained of, or, in the case of a continuance of the cause of action, after the expiry of three months with effect from the termination thereof: Provided that in estimating the said period of three months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person wronged was lawfully under detention as a mentally ill person or was ignorant of the facts which constitute the cause of action.

(5) Nothing in this section shall be construed as depriving any person of any defence which he would have independently of this section.

Mechanical means of restraint

69. (1) Mechanical means of bodily restraint shall not be applied to any patient unless the restraint is necessary for the purposes of surgical or medical treatment or to prevent the patient from injuring himself or others, and in every such case -

- (a) a medical certificate describing the mechanical means used and stating the ground on which the certificate is founded, shall be obtained and signed as soon as possible;
- (b) the said certificate shall be signed, in the case of a patient in an institution or other place of detention, by a medical officer thereof, and in the case of a single or private patient, by the medical practitioner attending on him;
- (c) a full record of restraint by mechanical means shall be kept from day to day;
- (d) a copy of the certificate and record under this section shall be sent to the Secretary at the end of every quarter.

(2) For the purposes of this section "mechanical means" shall be such instrument as the Minister may by regulation determine.

Escaped patients

70. (1) If any person escapes while being conveyed to any institution or other place in accordance with this Act, or if any person lawfully detained in an institution or other place for patients escapes, he may be retaken at any time after his escape by the superintendent of such institution or the person in charge of such other place or by any officer or employee attached to such institution or other place or by any person assisting such superintendent, person in charge, officer or employee, or by the appointed escort of such escaped person or by any police official, and be conveyed to and be received and detained in such institution or other place.

(2) If the person so escaping is considered dangerous or potentially dangerous or is a prisoner or a President's patient, the person in charge of the institution or any person in charge of the patient shall forthwith notify the police.

Expenses in connection with the detention and treatment of any person in an institution

71. The maintenance and other expenses necessarily incurred in connection with the compulsory detention and treatment of any patient detained in single care or in any institution under the provisions of this Act, other than a person in respect of whom the provisions of section 42 or 72 apply, shall be defrayed out of moneys appropriated by Parliament for the purpose.

Procedure when person on board ship or aircraft becomes mentally ill and lands in Republic

72. (1) If it appears on oath to any magistrate within two months after the arrival at any seaport or airport in the Republic of any sea-vessel or aircraft that a passenger on or an officer or member of the crew of such sea-vessel or aircraft is mentally ill and has become or is likely to become a public charge as an inmate of an institution or other place for the reception of patients, the magistrate shall require the owner, charterer, agent, master or pilot in command of the sea-vessel or aircraft in question to execute, with two sufficient sureties jointly and severally, a bond in such sum as the magistrate may determine, not exceeding one thousand rand, providing that there shall be paid to the magistrate the maintenance and other expenses of such passenger, officer or member in connection with his detention in such institution or other place at such rates and for such period as may be determined by the magistrate.

(2) Such owner, charterer, agent, master or pilot may be given the option, subject to the approval of the magistrate, of returning the passenger, officer or member concerned to the place where he boarded the sea-vessel or aircraft in question, in which case he shall be liable for the maintenance and other expenses aforesaid of the patient only for so long as he was a public charge.

(3) The sureties shall prove to the satisfaction of the magistrate that they are resident in the Republic and that they individually possess assets of which the value is at least three times the amount of the bond.

(4) No bond shall be required if the passenger, officer or member concerned is, at the date of the arrival of the sea-vessel or aircraft in the Republic, domiciled in the Republic, but the burden of proving such domicile shall be upon the owner, charterer, agent, master or pilot concerned.

(5) If the owner, charterer, agent, master or pilot fails to execute the bond within seven days, he shall be liable to a penalty not exceeding one thousand rand recoverable summarily before the magistrate of the district in which the seaport or airport is, and the sea-vessel or aircraft shall not be cleared until the bond is executed.

Holding of enquiries under this Act

73. (1) Any magistrate, the Secretary or any other person appointed by any competent court or by the State President or by the Minister to make any enquiry under this Act or in respect of any patient may, if he deems it necessary, summon any person to appear before him to testify on oath with regard to any matter which the magistrate, Secretary or other person is under this Act or by any order of any such court or by the State President or the Minister authorized to enquire into, and such magistrate, Secretary or other person is hereby empowered to administer such oath.

(2) Any person who without sufficient cause fails to appear on a summons issued under subsection (1) shall be guilty of an offence.

(3) Any person summoned under subsection (1) shall be entitled to be paid his expenses as if he were a witness summoned to give evidence at a trial in a criminal case.

Execution of orders under this Act

74. (1) Any order, warrant or document which may be issued by the Minister under this Act shall be valid and of force if signed by an officer in the public service designated thereto by the Minister by notice in the *Gazette*, and shall, if so signed, be proof in any court of law and in any public office and for any other relevant purpose that it was issued under the provisions of this Act.

(2) Any such order and any order by a magistrate for the detention or removal of a patient may be executed by the person to whom it is addressed or by any police official, and, when it relates to a person not under detention, may be executed as if it were a warrant for the arrest of a person charged with an offence, and it shall be the duty of every police official to aid in the execution of any order under this Act.

Medical certificate evidence of certain facts

75. Any medical certificate given or medical report made under or for the purposes of this Act shall be *prima facie* proof of the facts stated therein, in so far as such facts are within the knowledge of the person giving the certificate or making the report, and shall be proof also of the opinion expressed therein by the certifying medical practitioner on such facts, to the same extent as if the matters appearing therein had been verified on oath.

Visitation of patients

76. Any person detained under the provisions of this Act may be visited at any time by the Secretary or by any person delegated thereto by the Minister, and such visit may be made without prior notice.

Regulations

77. (1) The Minister may make regulations, not inconsistent with this Act, in respect of the following matters -

- (a) the control of insulin coma, electro convulsive therapy, leucotomy or such other operations or medical or therapeutic treatment of patients in institutions as, in the opinion of the Minister, should be controlled by regulation;
- (b) the powers and functions of voluntary organisations relating to mental health services;
- (c) the establishment of maximum security hospitals for dangerous patients;
- (d) the establishment of institutions for psychopaths;
- (e) the establishment of institutions for President's patients;
- (f) the observation, detention and treatment of cases referred to an institution by courts of law;

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- (g) the observation and treatment of alcoholics and drug dependants who are mentally ill;
- (h) the establishment of child guidance clinics and child psychiatric units;
- (i) the provision of community psychiatric services, after-care and follow-up services;
- (j) the functions, powers and duties of employees in institutions under the control of the State, other than a provincial administration;
- (k) the discharge of patients on recovery or on the application of relatives or friends or on leave of absence, and the boarding out of patients from institutions;
- (l) the removal or transfer of patients to an institution or place or from one institution or place to another institution or place, including the temporary transfer of patients to any specified place for such period as may be deemed expedient;
- (m) the books which shall be kept in institutions or otherwise with reference to any patient and the entries which shall be made therein, and the accounts, returns, reports, extracts, copies, statements, notices, documents and information which shall be sent to the Minister or such other authority or person as the Minister may direct;
- (n) the persons by whom, the times when and the manner in which such entries shall be made or, as the case may be, such accounts, returns, reports, extracts, copies, statements, notices, documents and information are to be sent in regard to any institution or patient;
- (o) the payment of maintenance and expenses incurred in connection with the detention, treatment and maintenance of any person in a State institution, other than a provincial hospital;

[paragraph (o) substituted by Act 36 of 1977]

- (p) the management of licensed institutions and patients under single care;
- (q) the visitation of State institutions, other than provincial hospitals, under the control of the State where patients are detained;
- (r) the care and comfort of patients under the control of the State, other than a provincial hospital;
- (s) the forms which shall be used for the purposes of this Act;
- (t) any matter which may be prescribed under this Act or which may under this Act be regulated by regulation,

and generally in respect of any matter which, in the opinion of the Minister, is necessary for the better administration and achievement of the purposes of this Act.

(2) The Minister may make different regulations in respect of different classes of persons or different population groups.

Act to apply in South West Africa

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78. This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.

Repeal of laws

79. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) Any regulation, application, report, enquiry, finding, request, return, direction, examination or appointment made, held or given or any medical certificate or other certificate, reception order or other order, summons, warrant or authority issued, made or given, or any condition imposed or any board established or any other act done under any provision of any law repealed by this Act and which was of force immediately prior to the commencement of this Act, shall be deemed to have been made, held, issued, given, imposed, established or done, as the case may be, under the corresponding provision of this Act.

Short title and date of commencement

80. This Act shall be called the Mental Health Act, 1973, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule

LAWS REPEALED

Number and year of law	Title	Extent of repeal
Act No. 38 of 1916	Mental Disorders Act, 1916	The whole, except sections 27 to 29 <i>bis</i> inclusive.
Act No. 22 of 1926	South-West Africa Mental Disorders Act, 1926	The whole, except in so far as it applies sections 27 to 29 <i>bis</i> inclusive of Act No. 38 of 1916 to South West Africa.
Act No. 7 of 1944	Mental Disorders Amendment Act, 1944	The whole.
Act No. 13 of 1946	Mental Disorders Amendment Act, 1946	The whole.
Act No. 37 of 1957	Mental Disorders Amendment Act, 1957.	The whole.
Act No. 14 of 1961	Mental Disorders Amendment Act, 1961	The whole.
Act No. 78 of 1963	Mental Disorders Amendment Act, 1963.	The whole.
Act No. 32 of 1970	Mental Disorders Amendment Act, 1970	The whole.