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Act 615

MENTAL HEALTH ACT 2001

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LAWS OF MALAYSIA**Act 615*****MENTAL HEALTH ACT 2001**

An Act to consolidate the laws relating to mental disorder and to provide for the admission, detention, lodging, care, treatment, rehabilitation, control and protection of persons who are mentally disordered and for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I**PRELIMINARY****Short title and commencement**

1. (1) This Act may be cited as the Mental Health Act 2001.

(2) This Act comes into operation on such date as the Minister may appoint by notification in the *Gazette*, and the Minister may appoint different dates for the coming into operation of this Act, or of different provisions of this Act, in different parts of Malaysia.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“psychiatrist” means a registered medical practitioner with qualifications, training and experience in the discipline of psychiatry recognized by the Director General;

“prescribed” means prescribed by the Minister by regulations made under this Act;

*NOTE—This Act is not yet in force.

“psychiatric hospital” means a government psychiatric hospital or a private psychiatric hospital including a gazetted private psychiatric hospital;

“government psychiatric hospital” means any premises appointed to be a government psychiatric hospital under section 3;

“private psychiatric hospital” means any premises licensed as a private psychiatric hospital under the Private Healthcare Facilities and Services Act 1998 [*Act 586*];

“gazetted private psychiatric hospital” means a private psychiatric hospital gazetted under section 4;

“approved psychiatric hospital” means a government psychiatric hospital designated by the Minister under section 22;

“mental disorder” means any mental illness, arrested or incomplete development of the mind, psychiatric disorder or any other disorder or disability of the mind however acquired; and “mentally disordered” shall be construed accordingly;

“Ministry” means the Ministry of Health, Malaysia;

“Director General” means the Director General of Health, Malaysia;

“Board” means the Board of Visitors appointed under section 38;

“Court” means the High Court, a Sessions Court or a Magistrate’s Court or a Syariah Court as the context may require, and includes a Judge whether sitting in Court or in Chambers;

“Minister” means the Minister charged with the responsibility for health;

“person in charge” means the person responsible for the management and control of a psychiatric hospital or psychiatric nursing home or community mental health centre, as the case may be, and the supervision of the medical staff, nursing staff, technical staff and ancillary staff employed in the hospital, home or centre;

“social welfare officer” means any social welfare officer in the Ministry of Health, Malaysia or in the Ministry or Department responsible for welfare services;

“medical officer” means a registered medical practitioner in the service of the Government of Malaysia;

“police officer” means any member of the Royal Malaysian Police;

“Visitor” means a member of the Board of Visitors appointed under section 38;

“licensee” means a person to whom a licence for a private psychiatric hospital or a private psychiatric nursing home or a private community mental health centre, as the case may be, is issued under the Private Healthcare Facilities and Services Act 1998;

“Registrar” means the Registrar of a High Court, and includes any Deputy Registrar or Senior Assistant Registrar of the High Court;

“registered medical practitioner” means a person who is registered as such under the Medical Act 1971 [*Act 50*] and who holds a valid practising certificate under the Act;

“Medical Director” means—

- (a) the Medical Director of a psychiatric hospital appointed under subsection 5(1) or section 6, as the case may be, and includes a Deputy Medical Director appointed under the section; and
- (b) the Head of Psychiatry appointed under subsection 5(2);

“guardian”, in relation to a minor, means the parent or parents of the minor, or a person lawfully appointed by will or by an order of a competent Court to be the guardian of the minor, or a person who has lawful custody of the minor;

“voluntary patient” means a person admitted to a psychiatric hospital under section 9;

“involuntary patient” means a person admitted into a psychiatric hospital under section 10, or detained in the hospital under subsection 9(5) or 14(1) or 14(3), or received into a psychiatric hospital by an order of Court under section 73;

“community mental health centre” means a government community mental health centre or a private community mental health centre, and includes a gazetted private community mental health centre;

“government community mental health centre” means any premises appointed to be a government community mental health centre under section 33;

“private community mental health centre” means any premises licensed as a private community mental health centre under the Private Healthcare Facilities and Services Act 1998;

“gazetted private community mental health centre” means a private community mental health centre gazetted under section 34;

“friend”, in relation to a mentally disordered person, means—

- (a) a person, other than a relative, of or above eighteen years of age with whom the mentally disordered person ordinarily resides (or if the mentally disordered person is for the time being an inpatient in a psychiatric hospital, with whom he last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than two years; or
- (b) a body or an organization recognized by the Minister under subsection (4);

“psychiatric nursing home” means a government psychiatric nursing home or a private psychiatric nursing home, and includes a gazetted private psychiatric nursing home;

“government psychiatric nursing home” means any premises appointed to be a government psychiatric nursing home under section 27;

“private psychiatric nursing home” means any premises licensed as a private psychiatric nursing home under the Private Healthcare Facilities and Services Act 1998;

“gazetted private psychiatric nursing home” means a private psychiatric nursing home gazetted under section 28;

“relative” means any of the following persons of or above eighteen years of age:

- (a) husband or wife;
- (b) son or daughter;
- (c) father or mother;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;
- (g) maternal or paternal uncle or aunt;
- (h) nephew or niece.

(2) Nothing in the definition of “mental disorder” in subsection (1) shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder by reason only of his promiscuity or other immoral conduct, sexual deviancy, consumption of alcohol or drug, or where he expresses or refuses or fails to express a particular political or religious opinion or belief, or of his antisocial personality.

(3) Subsection (2) does not prevent the serious physiological, biochemical or psychological effects, temporary or permanent, of drug or alcohol consumption from being regarded as an indication that a person is mentally ill.

(4) The Minister may recognize a body or an organization as a “friend” if the Minister is satisfied as to the character and fitness of the members of the board of directors or committee or other governing body of the body or organization.

Appointment of government psychiatric hospital

3. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any premises to be a government psychiatric hospital for the admission, detention, lodging, care, treatment, rehabilitation, control and protection of persons who are mentally disordered.

Appointment of gazetted private psychiatric hospital

4. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any private psychiatric hospital to be a gazetted private psychiatric hospital for the admission, detention, lodging, care, treatment, rehabilitation, control and protection of involuntary patients under sections 11, 12, 13, 14, 55 and 73.

Appointment of Medical Director and Deputy Medical Director of government psychiatric hospital

5. (1) The Minister shall appoint in respect of every government psychiatric hospital—

(a) a Medical Director who shall be the person in charge;
and

(b) a Deputy Medical Director.

(2) Where any part of any premises is appointed as a government psychiatric hospital under section 3, the Minister shall appoint in respect of such part, a Head of Psychiatry who shall be the person in charge.

(3) The person to be appointed under subsection (1) or (2) shall be a medical officer and preferably a psychiatrist.

Appointment of Medical Director and Deputy Medical Director of private psychiatric hospital

6. (1) Without prejudice to the requirement of any other written law, the licensee of every private psychiatric hospital shall appoint—

(a) a Medical Director, who shall be the person in charge;
and

(b) a Deputy Medical Director.

(2) The person to be appointed under paragraph (1)(a) or (1)(b) shall be a psychiatrist.

(3) For the purpose of subsection (1), a licensee who is a psychiatrist may appoint himself to be the Medical Director of the private psychiatric hospital in respect of which the licence was issued.

(4) The licensee of a private psychiatric hospital shall notify the Director General as soon as practicable, but in any case not later than fourteen days from the date of the occurrence, of any change in the Medical Director or Deputy Medical Director of the private psychiatric hospital, and the qualifications, training and experience of the new Medical Director or Deputy Medical Director, as the case may be.

Licensee and Medical Director of private psychiatric hospital to comply with the Private Healthcare Facilities and Services Act 1998

7. (1) The licensee and Medical Director of a private psychiatric hospital, including a gazetted private psychiatric hospital, shall comply with the requirements of the Private Healthcare Facilities and Services Act 1998, but if the requirements of that Act are inconsistent with any provision of this Act, the provisions of this Act shall prevail.

(2) The licensee and Medical Director of a gazetted private psychiatric hospital shall comply with such other additional requirements as may be prescribed.

PART II

ADMISSION, DETENTION, LODGING, CARE, TREATMENT,
REHABILITATION, CONTROL AND PROTECTION OF
MENTALLY DISORDERED PERSONS IN, AND DISCHARGE OF
VOLUNTARY PATIENTS FROM, PSYCHIATRIC HOSPITAL

Admission of patient into psychiatric hospital

8. (1) Except as may be otherwise expressly provided in any other written law, no person shall be admitted into a psychiatric hospital otherwise than—

(a) upon the order of a medical officer or registered medical practitioner under section 14;

- (b) as a voluntary patient;
- (c) upon the order of a medical officer or registered medical practitioner under subsection 9(5) or 14(1) or 14(3);
- (d) in accordance with section 10;
- (e) by an order of Court under section 55 or 73;
- (f) upon the order of the Court or the Public Prosecutor under section 342 of the Criminal Procedure Code [*Act 593*] or the Yang di-Pertuan Agong or the Ruler or Yang di-Pertua Negeri of a State under section 344 or 348 of the Criminal Procedure Code, or by the order of the relevant authority under corresponding provisions in any other written law; or
- (g) on a transfer from another psychiatric hospital, or on return from leave, or on a reaprehension after being absent without leave.

(2) Nothing in this Act shall prohibit any voluntary patient from receiving care, treatment or rehabilitation in any other government hospital, or in any private hospital licensed under the Private Healthcare Facilities and Services Act 1998.

Admission of voluntary patient into psychiatric hospital

9. (1) A person may be admitted to a psychiatric hospital as a voluntary patient—

- (a) upon his own request; or
- (b) in the case of a minor, on an application in his behalf by his guardian to the Medical Director of the psychiatric hospital,

made in such form as may be prescribed.

(2) The Medical Director may refuse to admit a person as a voluntary patient if he is not satisfied that the person is likely to benefit from the care or treatment in the psychiatric hospital as a voluntary patient.

(3) A voluntary patient, or if the voluntary patient is a minor, his guardian, may give notice to the Medical Director requesting the discharge of the voluntary patient from the psychiatric hospital.

(4) Subject to an order made under subsection (5), a voluntary patient whose discharge has been requested under subsection (3) shall not be kept in the psychiatric hospital for more than seventy-two hours from the date of the notice given under that subsection.

(5) The voluntary patient whose discharge has been requested under subsection (3) shall be examined by a medical officer or registered medical practitioner not involved in the management of the patient, and if the medical officer or registered medical practitioner is satisfied that—

- (a) the patient is mentally disordered; and
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that he continues to receive further care and treatment in the psychiatric hospital,

the medical officer or registered medical practitioner shall make an order in the prescribed form signed by him for the further detention of the patient in the psychiatric hospital for a period not exceeding one month.

(6) The Medical Director may—

- (a) grant leave of absence to any voluntary patient; or
- (b) at any time discharge a voluntary patient if he is satisfied that—
 - (i) it is in the interest of the patient to discharge him; and
 - (ii) the patient is not in need of any further care and treatment in the psychiatric hospital.

Admission of involuntary patient into psychiatric hospital

10. (1) A person who is suspected to be mentally disordered may be admitted and detained in a psychiatric hospital upon—

- (a) an application made in the prescribed form to the Medical Director by a relative of the person; and

- (b) the production of a recommendation in the prescribed form of a medical officer or registered medical practitioner based on a personal examination of the person made not more than five days before the admission of the person that—
- (i) the person is suffering from mental disorder of a nature or degree which warrants his admission into a psychiatric hospital for the purposes of assessment or treatment; or
 - (ii) the person ought to be detained in the interest of his own health or safety or with a view to the protection of other persons.

(2) The application and the recommendation in subsection (1) are sufficient authority for the person making the application, or a police officer or any other person authorized by the person making the application, to take the person to whom the recommendation relates to a psychiatric hospital.

(3) Where a person is admitted to a psychiatric hospital under this section, the Medical Director of the psychiatric hospital shall, within twenty-four hours of the person's admission, make or cause to be made on him by a medical officer or a registered medical practitioner such examination as the Medical Director may consider necessary for determining whether or not the continued detention of the person is justified.

(4) The medical officer or registered medical practitioner who makes the recommendation under paragraph (1)(b) or who admits the patient under subsection (1) shall not examine the patient under this subsection.

(5) Where upon the examination of the person under subsection (3) the Medical Director—

- (a) is not satisfied that the continued detention of the person is justified, he shall discharge the person; or
- (b) is satisfied that the continued detention of the person is justified, he shall make an order in the prescribed form signed by him for the detention of the person for a period not exceeding one month.

(6) Where a person who is detained by order issued under paragraph (5)(b) or subsection 9(5) is not sooner discharged, the Medical Director of the psychiatric hospital shall, before the expiration of the order, cause to be made on the person such examination as he may consider necessary for determining whether or not the continued detention of the person is justified.

(7) The examination of the person under subsection (6) shall be done by two medical officers or registered medical practitioners, as the case may be, one of whom shall be a psychiatrist.

(8) Where upon the examination of the person under subsection (6), the medical officers or registered medical practitioners, as the case may be—

- (a) are not satisfied that the continued detention of the person is justified, they shall discharge the person; or
- (b) are satisfied that the continued detention of the person is justified, they shall make an order in the prescribed form signed by them for the detention of the person for a further period not exceeding three months.

Apprehension of mentally disordered person

11. (1) Any police officer or social welfare officer may apprehend any person whom he has reason to believe is mentally disordered and is, because of mental disorder, dangerous to himself or to other persons or property.

(2) The police officer or social welfare officer who has apprehended a person under subsection (1) shall as soon as practicable, but not later than twenty-four hours after the apprehension, bring the person to a medical officer in a government psychiatric hospital or a registered medical practitioner in a gazetted private psychiatric hospital for examination.

Procedure in cases of proved ill-treatment of suspected mentally disordered person

12. Where a person has been convicted of an offence under Chapter XVI of the Penal Code [*Act 574*] involving hurt, grievous hurt, wrongful restraint, wrongful confinement, assault or criminal force against any other person, and the Court has reason to

suspect that that other person is mentally disordered and is not under proper care and control, the Court may send that person before a medical officer in a government psychiatric hospital or a registered medical practitioner in a gazetted private psychiatric hospital for examination.

Procedure in cases of neglect or cruel treatment of suspected mentally disordered person

13. (1) If it appears to a Magistrate, on the report of a police officer or on the information of any person, that a person reasonably suspected of being mentally disordered—

(a) is not under proper care and control; or

(b) is neglected or cruelly treated by any relative or any other person having charge of him,

the Magistrate may send for the person suspected of being mentally disordered and summon the relative or the person who has, or ought to have, charge of him.

(2) Where the Magistrate is satisfied, after due inquiry, that the person summoned under subsection (1) is legally bound to maintain the suspected mentally disordered person, he may make an order requiring the suspected mentally disordered person to be properly cared for and treated by the person summoned.

(3) Where there is no person legally bound to maintain the suspected mentally disordered person, the Magistrate may make an order for the person to be sent to a medical officer in a government psychiatric hospital or a registered medical practitioner in a gazetted private psychiatric hospital.

(4) It shall be the duty of every police officer not below the rank of Inspector to report to a Magistrate every such case of neglect or cruel treatment of a suspected mentally disordered person which may come to his knowledge.

(5) If an order is made by the Magistrate under subsection (2), any medical officer in a government psychiatric hospital or any registered medical practitioner in a gazetted private psychiatric hospital, as the case may be, or any police officer not below the rank of Inspector, or any social welfare officer may, at such

reasonable time as the Magistrate shall fix, visit the suspected mentally disordered person for the purpose of ascertaining his condition; and the person who was ordered by the Magistrate to properly care for and treat the suspected mentally disordered person shall produce the suspected mentally disordered person for the inspection of the medical officer, registered medical practitioner, police inspector or social welfare officer.

(6) A person who fails to comply with an order made under subsection (2) or who refuses to produce the suspected mentally disordered person under subsection (5) commits an offence and shall on conviction be liable—

- (a) in the case of an offence under subsection (2), to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both; and
- (b) in the case of an offence under subsection (5), to a fine not exceeding five hundred ringgit.

Order of admission into psychiatric hospital by medical officer or registered medical practitioner or by order of Court under section 11, 12, 13 or 73

14. (1) Where a person is brought or sent before a medical officer or registered medical practitioner under section 11, 12, 13 or 73, the medical officer or registered medical practitioner shall examine the person and—

- (a) if he is satisfied that the person is not mentally disordered, he shall discharge him;
- (b) if he is satisfied that, though still mentally disordered, the person is not in need of further care or treatment in a psychiatric hospital and is not dangerous to himself or to other persons, he shall discharge the person; or
- (c) if he is satisfied that the person is mentally disordered, he shall make an order in the prescribed form signed by him for the person to be admitted and detained in government psychiatric hospital or a gazetted private psychiatric hospital, and send the person into suitable custody at the psychiatric hospital.

(2) No order shall be made under paragraph (1)(c) by a medical officer or registered medical practitioner who is a

relative, partner or assistant of the person to be admitted or of the person presenting the request for the person's admission into the psychiatric hospital.

(3) Where an order has been made under paragraph (1)(c)—

- (a) the person to whom the order relates shall be admitted to the psychiatric hospital by the medical officer or registered medical practitioner of the psychiatric hospital; and
- (b) the Medical Director of the psychiatric hospital shall, within twenty-four hours of the patient's admission, make or cause to be made on the patient such examination as he may consider necessary for determining whether or not the continued detention of the person is necessary.

(4) Where upon the examination of the person the Medical Director—

- (a) is not satisfied that the continued detention of the person is necessary, he shall discharge the person; or
- (b) is satisfied that the continued detention of the person is necessary for observation, care or treatment, he shall make an order in the prescribed form signed by him for the detention of the person for a further period not exceeding one month.

(5) Where a person is detained under paragraph (4)(b), the Medical Director of the psychiatric hospital shall, before the expiration of the order, cause to be made on the person such examination as he may consider necessary for determining whether or not the continued detention of the person is justified.

(6) The examination of the person under subsection (5) shall be done by two medical officers or registered medical practitioners, as the case may be, one of whom shall be a psychiatrist.

(7) Where upon the examination of the person under subsection (6) the medical officers or registered medical practitioners, as the case may be—

- (a) are not satisfied that the continued detention of the person is justified, they shall discharge the person; or

- (b) are satisfied that the continued detention of the person is justified, they shall make an order in the prescribed form signed by them for the detention of the person for a further period not exceeding three months.

PART III

DISCHARGE, LEAVE OF ABSENCE AND TRANSFER OF INVOLUNTARY PATIENTS FROM PSYCHIATRIC HOSPITAL

Discharge of involuntary patient by Medical Director

15. The Medical Director of a psychiatric hospital may at any time discharge an involuntary patient from the psychiatric hospital if he is satisfied that—

- (a) it is in the best interest of the patient to discharge him; and
- (b) the patient is not in need of further care or treatment in the psychiatric hospital.

Discharge of involuntary patient on application

16. (1) Subject to subsection (2), an involuntary patient or a relative of the patient may make an application in the prescribed form to the Medical Director requesting the patient's discharge.

(2) On receipt of an application made under subsection (1), the Medical Director shall examine the patient in respect of whom the application is made and shall record his findings in a report.

(3) The Medical Director shall not discharge the patient unless he is satisfied, based on the examination under subsection (2), that the patient—

- (a) is not mentally disordered; or
- (b) though still mentally disordered, is not in need of further care or treatment in the psychiatric hospital and is not dangerous to himself or to other persons.

(4) A person aggrieved by the decision of the Medical Director under subsection (3) refusing to discharge him may appeal in writing to the Visitors within fourteen days from the date of receipt of such decision.

(5) When an appeal is made under subsection (4), the Medical Director shall submit the report of his examination under subsection (2) to the Visitors.

(6) On receipt of an appeal made under subsection (4), the Visitors shall personally examine the person in respect of whom the appeal is made and record their findings in a report.

(7) The Visitors shall not discharge the patient unless they are satisfied, based on the examination under subsection (6) and the Medical Director's report, that the patient—

(a) is not mentally disordered; or

(b) though still mentally disordered, is not in need of further care or treatment in the psychiatric hospital and is not dangerous to himself or to other persons.

(8) A person aggrieved by the decision of the Visitors under subsection (7) may appeal in writing to the Director General within fourteen days from the date of receipt of the Visitor's refusal to grant his discharge.

(9) When an appeal is made under subsection (8), the Visitors shall submit the report of their examination under subsection (6) together with the report of the Medical Director to the Director General.

(10) If, having regard to the patient's current mental condition and upon considering the report of the Medical Director and that of the Visitors, the Director General is not satisfied that the continued detention of the patient is necessary, he shall order that the patient be discharged.

Leave of absence

17. (1) The Medical Director may, if he considers it to be in the best interest of the patient, allow an involuntary patient to be absent for a period of not more than one month, subject to

such conditions as the Medical Director considers appropriate, from the psychiatric hospital into which he is admitted.

(2) The Medical Director may extend the period of absence by further leave not exceeding one month in the absence of the patient.

(3) If it appears to the Medical Director that it is necessary to do so in the interest of the patient's health or safety or for the protection of other persons, or if the patient is in breach of any condition imposed under subsection (1), he may revoke the leave of absence allowed to an involuntary patient and require the patient to return to the psychiatric hospital.

Apprehension of involuntary patient

18. Where an involuntary patient is for the time being detained under this Act in a psychiatric hospital and he—

- (a) absents himself from the psychiatric hospital without leave granted under section 17; or
- (b) fails to return to the psychiatric hospital after the expiration of any period of leave of absence granted to him under section 17, or upon being recalled under that section,

he may be taken into custody by any police officer or social welfare officer or any person authorized in writing by the Medical Director for the purpose of being returned to the psychiatric hospital.

Transfer of involuntary patient to another government psychiatric hospital or gazetted private psychiatric hospital

19. (1) The Director General or any person authorized by him may, by order, direct the transfer of an involuntary patient from a government psychiatric hospital or a gazetted private psychiatric hospital to another government psychiatric hospital or a gazetted private psychiatric hospital if—

- (a) the Director General or the authorized person is satisfied, on the facts available, that the transfer will be of benefit to the patient or is necessary for the patient's care and treatment; and

(b) in the case of a proposed transfer to a gazetted private psychiatric hospital, the Medical Director of the hospital to which it is proposed to transfer the involuntary patient agrees to the transfer.

(2) Subject to paragraph (1)(b), the Medical Director of the government psychiatric hospital or the gazetted private psychiatric hospital, as the case may be, shall in all cases comply with the order of the Director General under subsection (1) but—

(a) if the Medical Director is satisfied that it will be of benefit to an involuntary patient under his care to be transferred to another psychiatric hospital other than that mentioned in the order; and

(b) arrangement for the transfer could be made or has been made with the Medical Director of the psychiatric hospital to which it is proposed to transfer the involuntary patient,

the Medical Director shall communicate his views in writing to the Director General whose decision on the matter is final.

(3) An order made under subsection (1) or (2) shall be sufficient authority for the reception and detention of the person to whom the order relates in the psychiatric hospital to which he is transferred.

Review of involuntary patient by Medical Director

20. It shall be the duty of the Medical Director of a psychiatric hospital to examine, or cause to be examined, at least once a week, involuntary patients detained in the psychiatric hospital under his charge to determine whether or not the continued detention of such persons is necessary.

Duty to notify Court of discharge of patient detained under subsection 55(1) or section 73

21. Where a patient received into a government psychiatric hospital or gazetted private psychiatric hospital by order of the Court under subsection 55(1) or section 73 is discharged from

such hospital, the Medical Director shall as soon as practicable notify the Court of the fact of the person's discharge in such form as may be prescribed.

PART IV

ADMISSION, DETENTION AND DISCHARGE OF PERSONS COMMITTED OR CONFINED IN PSYCHIATRIC HOSPITAL UNDER THE CRIMINAL PROCEDURE CODE

Designation of approved psychiatric hospital

22. The Minister may designate a government psychiatric hospital to be an approved psychiatric hospital for the purposes of the admission and detention of persons under section 342, 344 or 348 of the Criminal Procedure Code or corresponding provisions in any other written law.

Examination of persons detained or confined in an approved psychiatric hospital

23. (1) Where an order has been made under section 342, 344 or 348 of the Criminal Procedure Code or corresponding provisions in any other written law that a person be detained or confined in an approved psychiatric hospital, the Medical Director of the approved psychiatric hospital shall examine or cause to be examined the person within twenty-four hours of his admission.

(2) The Medical Director shall examine, or caused to be examined at least once in every four weeks, or within such shorter period as the Minister may specify, any person admitted and confined under section 344 or 348 of the Criminal Procedure Code or corresponding provisions in any other written law.

Review of persons confined under section 348 of the Criminal Procedure Code by Visitors

24. (1) Where the Medical Director of an approved psychiatric hospital under section 23 is satisfied that a person admitted and confined under section 348 of the Criminal Procedure Code or corresponding provisions in any other written law may be safely

discharged without any danger of his doing injury to himself or to any other person, he may, as soon as may be possible, cause the person to be brought before the Visitors for personal examination.

(2) If upon considering the report of the Medical Director and by the personal examination of the person, the Visitors are satisfied that the person poses no danger to himself or to any other person, the Visitors and the Medical Director shall jointly certify as required under section 350 of the Criminal Procedure Code that the person may be safely discharged without danger of his doing injury to himself or to any other person.

(3) The certificate referred to in subsection (2) shall be submitted to the State Secretary of the State of the Ruler or Yang di-Pertua Negeri by whose order the person is confined or the Chief Secretary to the Government if the person is confined by the order of the Yang di-Pertuan Agong.

Review of persons confined under section 344 or 348 of the Criminal Procedure Code by Visitors on an application of a relative or friend

25. (1) If a relative or friend of a person confined in an approved psychiatric hospital makes an application under section 351 of the Criminal Procedure Code for the person to be delivered over to his care or custody, that relative or friend may give a copy of that application to the Medical Director of the approved psychiatric hospital.

(2) Upon receiving a copy of the application, the Medical Director and the Visitors of the approved psychiatric hospital shall examine the person and prepare a report certifying whether in their judgment that person could be delivered over to the care or custody of the relative or friend without any danger of the person doing injury to himself or to any other person.

(3) The report referred to in subsection (2) shall be submitted to the State Secretary of the State of the Ruler or Yang di-Pertua Negeri by whose order the person is confined or the Chief Secretary to the Government if the person is confined by the order of the Yang di-Pertuan Agong.

PART V

ADMISSION, LODGING, NURSING CARE AND
REHABILITATION OF MENTALLY DISORDERED PERSONS IN
PSYCHIATRIC NURSING HOME

Psychiatric nursing home

26. A psychiatric nursing home is a home for the accommodation and provision of nursing and rehabilitative care for persons suffering or convalescing from mental disorders.

Appointment of government psychiatric nursing home

27. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any premises to be a government psychiatric nursing home.

Appointment of gazetted private psychiatric nursing home

28. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any premises to be a gazetted private psychiatric nursing home.

Person in charge of government psychiatric nursing home

29. (1) The Minister shall appoint in respect of every government psychiatric nursing home—

- (a) a medical officer, preferably with qualification or training and experience in psychiatry; or
- (b) a government staff nurse with qualification, training and experience in psychiatry, to be the person in charge of the government psychiatric nursing home.

(2) The qualification, training and experience referred to in subsection (1) must be qualification, training and experience recognized by the Minister on the advice of the Director General.

Duty of licensee and person in charge of private psychiatric nursing home

30. The licensees and persons in charge of private psychiatric nursing homes, including gazetted private psychiatric nursing homes, shall comply with the requirements of the Private Healthcare Facilities and Services Act 1998 relating to private psychiatric nursing homes, but if the requirements of that Act are inconsistent with any provision of this Act, the provisions of this Act shall prevail.

Admission of patient into government, private and gazetted private psychiatric nursing home

31. (1) Subject to subsections (2) and (3), a person who is suffering or convalescing from mental disorder may be admitted into a psychiatric nursing home as a voluntary patient—

(a) upon his own request;

(b) upon the request of a relative; or

(c) upon the request of a Medical Director of a psychiatric hospital.

(2) Notwithstanding subsection (1), no person shall be admitted into a psychiatric nursing home except under the direction of a medical officer or registered medical practitioner who is preferably a psychiatrist.

(3) The patient referred to in subsection (1) shall not be admitted into the psychiatric nursing home except for the purpose of providing him with accommodation and nursing and rehabilitative care.

(4) A patient admitted under this section or his relative may, on giving notice to the person in charge, request his discharge from the psychiatric nursing home and upon such request the patient shall not be kept in the psychiatric nursing home for more than twenty-four hours from the receipt by the person in charge of the notice.

(5) A patient admitted to a psychiatric nursing home under this section shall be examined by a medical officer or registered medical practitioner regularly, and in any case at least once in every two weeks.

(6) Where a medical officer or a registered medical practitioner is satisfied that—

- (a) the patient's mental condition has deteriorated; and
- (b) it is necessary for the health or safety of the patient or for the protection of other persons that he receives further care and treatment,

the medical officer or registered medical practitioner shall recommend that the patient be admitted to a psychiatric hospital either voluntarily or in accordance with section 10; and in the event that no relative of the person is available to make an application under section 10, the person in charge of the nursing home may make the application under paragraph 10(1)(a) as if the person in charge were a relative of the patient.

PART VI

RECEPTION, CARE, TREATMENT AND REHABILITATION OF MENTALLY DISORDERED PERSONS IN COMMUNITY MENTAL HEALTH CENTRE

Community mental health centre

32. A community mental health centre is a centre for community care treatment which includes the screening, diagnosis, treatment and rehabilitation of any person suffering from any mental disorder.

Appointment of government community mental health centre

33. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any premises to be a government community mental health centre.

Appointment of gazetted private community mental health centre

34. The Minister may, by notification in the *Gazette*, appoint the whole or any part of any premises to be a gazetted private community mental health centre.

Person in charge of government community mental health centre

35. (1) The Director General shall appoint in respect of every government community mental health centre a medical officer with training and experience in psychiatry to be the person in charge of the government community mental health centre.

(2) Notwithstanding subsection (1), a government community mental health centre which is under the direct supervision and authority of a government psychiatric hospital shall remain under the authority of the Medical Director of that psychiatric hospital.

Licensee and person in charge of private community mental health centre

36. The licensees and persons in charge of private community mental health centres, including gazetted private community mental health centres, shall comply with the requirements of the Private Healthcare Facilities and Services Act 1998 relating to private community mental health centres, but if the requirements of that Act are inconsistent with any provision of this Act, the provisions of this Act shall prevail.

Community care treatment at community mental health centre

37. (1) An involuntary patient who has been discharged or granted leave of absence from a psychiatric hospital may be required by the Medical Director or the Visitors, as the case may be, to undergo community care treatment at a government community mental health centre or a gazetted private community mental health centre.

(2) Any community mental health centre may provide community care treatment to voluntary and involuntary patients.

(3) The community care treatment referred to in subsections (1) and (2) shall be provided on an outpatient basis, and no patient shall be lodged in any part of a community mental health centre for more than twenty-four hours.

PART VII

BOARD OF VISITORS

Appointment of Board of Visitors

38. (1) The Minister shall appoint a Board of Visitors for each psychiatric hospital and psychiatric nursing home and shall nominate a Chairman in respect of each Board of Visitors.

(2) Subject to subsections 40(3) and 40(4), a Board of Visitors shall consist of not less than three members to be appointed by the Minister.

Terms and conditions of appointment

39. (1) A member of a Board shall, unless he sooner resigns, hold office for a period not exceeding three years and shall be eligible for reappointment.

(2) The Minister may in the instrument of appointment of a person as a Visitor specify the terms and conditions of appointment.

(3) A person shall not be appointed a Visitor if he has—

(a) any pecuniary interest, whether directly or indirectly;
or

(b) any other interest which conflicts or may conflict with the best interest of the patient,

in the psychiatric hospital or psychiatric nursing home.

Board to arrange roster for Visitors

40. (1) Subject to subsection (3) or (4), as the case may be, the Board, or if the Board so directs the Chairman, shall arrange a roster appointing three members of the Board to act in rotation for each month in the year; and references in this Act to “Visitors” shall be construed as references to Visitors appointed under this section to be the Visitors for the current month.

(2) Subject to this section, where a member appointed for any month is unable to act for that month or any part thereof, the Chairman shall appoint another member in his place.

(3) The Visitors for a psychiatric hospital shall at all times consist of a medical officer or a registered medical practitioner, preferably a psychiatrist, who does not work in that hospital and two other persons, and one of such Visitors shall be a female person.

(4) The Visitors for a psychiatric nursing home shall at all times consist of a medical officer or a registered medical practitioner, preferably a psychiatrist, and a government staff nurse or registered staff nurse who does not work in that nursing home or have patients in that nursing home and one other person, and one of such Visitors shall be a female person.

(5) Except where the decision of the Visitors to recommend the discharge of a person confined under section 344 or 348 of the Criminal Procedure Code or corresponding provisions of any other written law must be unanimous, the decision of the Visitors on any other matter before them may be unanimous or by a majority consisting of the concurring opinions of two Visitors.

Meetings of the Board

41. (1) The Board of a psychiatric hospital shall meet at least once a month and at such times as may be necessary or expedient for the carrying out of its functions.

(2) The Board of a psychiatric nursing home shall meet at least once in every three months and at such times as may be necessary or expedient for the carrying out of its functions.

Duty to visit psychiatric hospital or psychiatric nursing home

42. (1) The Visitors for a psychiatric hospital shall visit the psychiatric hospital at least once in every month and the Visitors for a psychiatric nursing home shall visit the psychiatric nursing home at least once in every three months to inquire into—

- (a) the welfare and health of persons detained in the psychiatric hospital or the welfare and health of persons admitted into the psychiatric nursing home, as the case may be;
- (b) the adequacy of opportunities and facilities for the persons detained in the psychiatric hospital or admitted in the psychiatric nursing home to observe their religions; and
- (c) any other matter that the Visitors consider necessary or expedient.

(2) When visiting a psychiatric hospital or a psychiatric nursing home the Visitors may—

- (a) inspect any part of the premises of the psychiatric hospital or psychiatric nursing home; and
- (b) inspect any register, book, order, certificate or other documents relating to the admission and discharge of persons detained or admitted into the psychiatric hospital or psychiatric nursing home.

Report of Visitors

43. The Visitors shall, as soon as practicable, after each visit to a psychiatric hospital or psychiatric nursing home—

- (a) enter any remark that they deem proper with regard to the physical well-being and welfare of the persons detained or admitted into the psychiatric hospital or psychiatric nursing home in a book to be kept at the hospital or nursing home for that purpose; and
- (b) if they deem necessary, submit to the Director General a report of each visit.

Examination of involuntary patient by Visitors

44. (1) Where a patient has been detained for treatment pursuant to an order made in accordance with subsection 9(5), 10(8) or 14(7) or section 73, he shall, before the expiration of the period of three months referred to in the subsection or section, be brought before the Visitors who shall examine the patient and make inquiries relating to the admission and detention of the patient.

(2) Where upon the examination and inquiry under subsection (1) the Visitors—

- (a) are not satisfied that the continued detention of the patient is justified, the Visitors shall order that the involuntary patient be discharged; or
- (b) are satisfied that the continued detention of the person is justified, the Visitors shall make an order in the prescribed form signed by them for the detention of the person in the psychiatric hospital for a period not exceeding six months from the date of the order or such shorter period as the Minister may specify.

Review of involuntary patient by Visitors

45. (1) Where the Visitors have made an order under paragraph 44(2)(b) and the patient to whom the order relates is, before the expiration of the period specified in the order, still being detained in the psychiatric hospital, the Medical Director of the psychiatric hospital shall as soon as may be cause the patient to be brought before the visitors.

(2) Where the patient is brought before the Visitors under subsection (1), the Visitors may, upon considering the report of the Medical Director and by a personal examination of the patient, direct that—

- (a) the patient be discharged;
- (b) the patient be discharged at a future date as specified in the direction; or
- (c) the patient be detained for care and treatment for a further period not exceeding twelve months as may be specified in the direction.

(3) Where the Visitors have made a direction under paragraph (2)(c), the patient to whom the order relates, if he is not sooner discharged, shall—

- (a) notwithstanding section 20, be examined by the Medical Director at least once in four weeks; and
- (b) be reviewed by the Visitors at least once,

before the end of the period of his detention in the psychiatric hospital to determine whether or not the continued detention of the patient is necessary.

(4) At each review of a patient by the Visitors under paragraph (3)(b), the Visitors may, upon considering the report of the Medical Director and by a personal examination of the patient, direct that—

- (a) the patient be discharged;
- (b) the patient be discharged at a future date as specified in the direction; or
- (c) the patient be detained for care and treatment for a further period not exceeding twelve months as may be specified in the direction.

(5) The review under subsection (4) shall continue for as long as the patient is detained in the psychiatric hospital and the provisions of subsection (3) shall continue to apply with every detention of the patient for a further period not exceeding twelve months.

Confidentiality of information by Visitor

46. (1) Except for any of the purposes of this Act or for the purpose of any civil or criminal proceedings under this Act, no Visitor shall disclose any information which has been obtained by him in the course of his duties under this Act.

(2) A Visitor who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Allowances, etc., for Board members

47. (1) There shall be paid to each member of the Board for every attendance at meetings of the Board and for every visit to the psychiatric hospital or psychiatric nursing home undertaken in the discharge of his duties under this Act such reasonable travelling expenses, lodging and subsistence allowances as the Minister may from time to time specify.

(2) The payment referred to in subsection (1) shall be made by the Government in the case of a government psychiatric hospital or a government psychiatric nursing home, and by the licensee in the case of a private psychiatric hospital, gazetted private psychiatric hospital, private psychiatric nursing home or gazetted private psychiatric nursing home.

PART VIII

MORTALITY ASSESSMENT

Application of Part XII of the Private Healthcare Facilities and Services Act 1998

48. Part XII of the Private Healthcare Facilities and Services Act 1998 on Mortality Assessment shall apply to psychiatric hospitals, psychiatric nursing homes and community mental health centres, subject to the modifications in Schedule I.

PART IX

QUALITY OF PSYCHIATRIC HEALTHCARE FACILITIES AND SERVICES

Quality of psychiatric healthcare facilities and services

49. (1) Every psychiatric hospital, psychiatric nursing home and community mental health centre shall have programmes and activities to ensure the quality and appropriateness of the healthcare facilities and services provided.

(2) Information regarding such programmes and activities shall be furnished to the Director General as and when required by him.

Power of Director General to issue directives, orders or guidelines relating to quality assurance

50. The Director General may issue directives, orders, or guidelines relating to the quality and standards of psychiatric hospitals, psychiatric nursing homes or community mental health centres as he deems necessary.

PART X

PROCEEDINGS IN INQUIRIES INTO MENTAL DISORDER

Interpretation

51. In this Part—

“Court” means the High Court;

“mentally disordered person” means any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.

Court may order inquiry

52. (1) The Court may, on an application made before it, make an order directing an inquiry to determine whether a person subject to the jurisdiction of the Court and alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.

(2) The order of the Court under subsection (1) may also contain directions for inquiries to be made concerning—

- (a) the nature of the property belonging to the person alleged to be mentally disordered;
- (b) the persons who are his relatives;
- (c) the period during which he has been mentally disordered;
or
- (d) such other questions as the Court deems proper.

(3) The application for such an inquiry may be made by a relative of the person alleged to be mentally disordered, or by

any public officer nominated by the Minister for the purpose of making the application.

Notice of inquiry

53. (1) The Court shall give reasonable notice to the person alleged to be mentally disordered and the applicant of the time and place fixed for the inquiry.

(2) Where it appears to the Court that the person alleged to be mentally disordered is in such a state that personal service on him of the notice would be ineffectual, the Court may, for the purpose of bringing the person to the inquiry, direct that the service of the notice be made on the person having charge of him or on any adult person or the owner or occupier of the premises wherein the mentally disordered person lives.

Power to examine person alleged to be mentally disordered

54. (1) At any time after the application for the inquiry is made, the Court may—

- (a) require the applicant to produce the person alleged to be mentally disordered at such time and place as the Court may appoint, for the purpose of being personally examined by the Court or by a psychiatrist from whom the Court may desire to have a report of his mental capacity and condition; and
- (b) make an order authorizing any person or persons named in the order to have access to the person alleged to be mentally disordered for the purpose of a personal examination and making the report referred to in paragraph (a).

(2) The psychiatrist making a report under paragraph (1)(a) in respect of the person alleged to be mentally disordered shall consider—

- (a) the nature and degree of the person's condition;
- (b) the complexity of his estate;
- (c) the effect of the condition of the person upon his conduct in administering his estate; and

(d) any other circumstances the psychiatrist considers relevant to the estate and the person and his condition.

(3) The report referred to in paragraph (1)(a) shall be admissible in evidence at the inquiry to be held by the Court under this Part.

Power to send person alleged to be mentally disordered to a government psychiatric hospital or a gazetted private psychiatric hospital for purpose of observation

55. (1) The Court may, in lieu of or in addition to its powers under section 54, and on such evidence as it deems sufficient, make an order that the person alleged to be mentally disordered be admitted into a government psychiatric hospital or a gazetted private psychiatric hospital for observation for a period not exceeding one month; and the Court may on subsequent application by the Medical Director order an extension for a further period of observation not exceeding one month.

(2) The order of the Court shall also provide that if the person concerned is certified prior to the expiry of the period of observation to be not mentally disordered, the person shall be discharged by the Medical Director into the care of the person making the application under subsection 52(3) and shall appear before the Court at the time and place appointed by the Court.

(3) Upon the admission of the person concerned to the psychiatric hospital under subsection (1), the Medical Director shall keep the person under observation and shall, before the expiry of the period mentioned in the order, certify in writing to the Court his opinion as to the state of mind of the person.

(4) In making his certification under subsection (3) the Medical Director shall consider the matters set out in subsection 54(2).

(5) The certificate under subsection (3) shall be admissible in evidence at the inquiry to be held by the Court under this Part.

(6) If, at any time after certification, the person is or becomes mentally disordered, the applicant under subsection 52(3) under whose care the person is placed upon being discharged under subsection (2) shall ensure that the person appear before the Court at the time and place appointed by the Court.

Questions to be decided by Court

56. At the inquiry, after receiving the report under section 54 or the certification of the Medical Director under section 55 and upon hearing such evidence and arguments as it may think fit, the Court shall decide whether the person alleged to be mentally disordered is, due to his mental disorder, incapable of managing himself and his affairs, and shall also decide any other questions as to which an inquiry has been directed.

Order as to costs

57. The Court may make such order as to the costs of the inquiry and may include in the order such remuneration to any medical officer or registered medical practitioner as the Court deems reasonable but no order for the payment of costs shall be made against the Minister or against any public officer nominated by the Minister under subsection 52(3).

Appointment of committees

58. (1) If the Court finds that the person who is alleged to be mentally disordered is incapable of managing himself and his affairs due to his mental disorder, the Court may appoint a committee or committees of the person and of the estate of the person and may, as the Court deems fit, make an order—

(a) as to the remuneration, if any, of the committee or committees out of the person's estate; or

(b) as to the giving of security by the committee or committees.

(2) Where the Court finds that the person alleged to be mentally disordered is incapable of managing his affairs due to his mental disorder but is not dangerous to himself or to others, the Court may appoint a committee of his estate without appointing a committee of his person.

Powers of management of estate of mentally disordered person

59. (1) Subject to subsection (2), the Court may, on the appointment of a committee of the estate of a mentally disordered

person, direct by the appointment or by any subsequent order that the person to whom the charge of the estate is committed shall have such powers for the management of the estate as the Court deems necessary and proper, regard being had to the nature of the property, whether movable or immovable, of which the estate may consist.

(2) The powers of management conferred under subsection (1) shall not extend to the sale or charge of the estate or any part of the estate or to the letting of any immovable property for a term exceeding three years.

Power of Registrar to receive proposal

60. (1) The Registrar of the High Court may, without an order of reference, receive any proposal and conduct an inquiry in respect of the management of the estate of a mentally disordered person if the proposal relates to any matter which the committee of the estate has not been empowered under section 59 to dispose of.

(2) The Registrar may, without an order of reference, receive and inquire into any proposal relating to the sale or charge of the estate or any part of the estate of a mentally disordered person or to the letting of any immovable property for a term exceeding three years.

(3) The Registrar shall report to the Court on the proposal and the Court shall, subject to this Act, make an order on the report and award such costs as under the circumstances seem just.

Relatives who may attend proceedings

61. (1) The Court shall once in the matter of each inquiry, and may afterwards from time to time, determine which of the relatives or next-of-kin of the mentally disordered person who shall attend before the Registrar in any proceedings connected with the management of the estate of the person.

(2) Where a relative or next-of-kin is a minor, the Court may appoint a fit and proper person to be his guardian for the purpose of the proceedings.

(3) The attendance of the relatives or next-of-kin before the Registrar shall be at the cost of the estate.

Orders may be made on application

62. Subject to this Act, the Court may, on an application made to it concerning any matter connected with an inquiry, make such order in respect of the application and the costs of the application and of the consequent proceedings as under the circumstances seem just but no order for costs shall be made under this section against any public officer.

Dealing with mentally disordered person's property

63. The Court may, if it appears to the Court to be just or for the benefit of the mentally disordered person, order that any property, movable or immovable, and whether in possession, reversion, remainder, contingency or expectancy, be sold or charged or otherwise disposed of as seem most expedient for the purpose of raising money to be applied for any of the following purposes:

- (a) the payment of his debts, including any debt or expenditure incurred for his maintenance or for his benefit;
- (b) the discharge of any encumbrance on his estate;
- (c) the payment of or provision for the expenses of his future maintenance and the maintenance of his family, including the expenses of his removal to any place in or outside Malaysia and all related expenses;
- (d) the payment of the costs of any proceedings under this Act and of any costs incurred by order or under the authority of the Court.

Committee to execute instrument

64. (1) The committee of the estate of a mentally disordered person shall, in his name and on his behalf, execute all such conveyances and instruments of transfer in relation to any sale, charge, or other disposition of the estate of the mentally disordered person as may be ordered by the Court.

(2) The committee shall also, under the order of the Court, exercise all powers vested in a mentally disordered person, whether the powers are vested in him for his own benefit or in his capacity as a trustee or guardian.

Performance of contract

65. Where a person who has contracted to sell or dispose of his estate or any part of his estate subsequently becomes mentally disordered, the Court may, if the contract is such as the Court deems ought to be performed, direct the committee of the estate of the mentally disordered person to execute such conveyances and to do such other acts in fulfilment of the contract as it deems proper.

Dissolution and disposal of property or partnership

66. (1) Where a member of a partnership is mentally disordered person, the Court may, on an application of the other partners or of any other person who appears to the Court to be entitled to require the dissolution, dissolve the partnership.

(2) Upon the dissolution of the partnership under subsection (1) or upon the dissolution of the partnership by an order of any Court or by due course of law, the committee of the estate of the mentally disordered person may, in the name and on behalf of the mentally disordered person, join with the other partners in disposing of the partnership property upon such terms, and shall do all acts for carrying into effect the dissolution of the partnership, as the Court deems proper.

Disposal of business premises

67. Where a mentally disordered person has been engaged in business the Court may, if it appears to be for the benefit of his estate that the business premises should be disposed of, order the committee of the estate of the mentally disordered person to sell and dispose of the business premises, and the proceeds of the sale shall be applied in such manner as the Court directs.

Committee may dispose of lease

68. Where a mentally disordered person is entitled to a lease or sublease the Court may, if it appears to be for the benefit of his estate that the lease or sublease should be disposed of, order the committee of the estate of the mentally disordered person to surrender, assign or dispose of the lease or sublease upon such terms as the Court deems fit.

Transfer of stock, securities, etc., of mentally disordered person

69. Where any stock or Government securities or any share or debenture in a public company, transferable within Malaysia or the dividends of which are payable in Malaysia, are standing in the name of, or are vested in, a mentally disordered person beneficially entitled to the stock, securities, shares or debentures, or a committee of the estate of the mentally disordered person, or a trustee for him, and the committee or trustee dies intestate or himself becomes mentally disordered or is out of the jurisdiction of the Court, or it is uncertain whether the committee or trustee is living or dead or he neglects or refuses to transfer the stock, securities, shares or debentures or to receive and pay the dividends to a new committee or trustee, or as he directs, within fourteen days after being required by him to do so, the Court may order some fit and proper person to make the transfer or to transfer the stock, securities, shares or debentures and to receive and pay over the dividends in such manner as the Court may direct, and the transfer or payment shall be valid and effectual for all purposes.

Transfer of property of mentally disordered person residing outside Malaysia

70. Where any property situated in Malaysia is standing in the name of or vested in any person residing outside Malaysia, the Court, if satisfied—

- (a) that the person has been declared to be a mentally disordered person; and
- (b) that his personal estate has been vested in a committee, curator or manager according to the laws of the place where he is residing,

may order some fit and proper person to make such transfer of the property or of any part of the property to the committee, curator or manager or otherwise, and also to receive and pay over any proceeds or profits of the property as the Court deems fit; and any act done in pursuance of the order shall be valid and effectual for all purposes.

Power to order maintenance without appointing committee

71. If it appears to the Court, having regard to the situation and condition in life of the mentally disordered person and his family and other relevant circumstances of the case, to be expedient that his property should be made available for his or their maintenance in a direct and inexpensive manner, the Court may, instead of appointing a committee of the estate, order that the property, if money, or, if of any other description, the produce thereof when realized, be paid to such person as the Court may deem fit to appoint to be applied for the maintenance of the mentally disordered person and his family and all payments so made shall be a good discharge to the person making the payment.

Temporary provision for maintenance

72. If it appears to the Court that the incapability of a mentally disordered person to manage himself and his affairs is temporary in nature, and that it is expedient to make temporary provision for his maintenance or the maintenance of his family, the Court may, in like manner as under section 71, direct that his property or a sufficient part of the property be applied for that purpose.

Order for reception of mentally disordered person

73. (1) Where upon an inquiry under this Part a person is found by the Court to be incapable of managing himself and his affairs due to his mental disorder but the Court does not appoint a committee of his person, the Court shall make an order for the person to be received into a government psychiatric hospital or a gazetted private psychiatric hospital and send him in suitable custody, together with the order for his reception, to the psychiatric hospital named in the order.

(2) Notwithstanding subsection (1), if a friend or relative of the mentally disordered person satisfies the Court that he undertakes

to take proper care of the person and prevent him from injuring himself or others, the Court may, instead of making an order under the subsection, make an order handing him over to the care of the friend or relative.

(3) A person received into a psychiatric hospital by an order of the Court under subsection (1) shall, for the purpose of this Act, be deemed to be an involuntary patient.

Annulling proceedings

74. (1) Where a person has been found to be incapable of managing himself and his affairs due to his mental disorder and it is subsequently shown to the Court—

- (a) on the application of that person;
- (b) on the application of a person acting on his behalf; or
- (c) on the information of any other person,

that there is reason to believe that such incapability has ceased, the Court may make an order for an inquiry to determine whether the person is now capable of managing himself and his affairs.

(2) The inquiry under subsection (1) shall be conducted in the same manner as that prescribed for an inquiry into whether a person alleged to be mentally disordered is incapable of managing himself and his affairs.

(3) Where upon an inquiry under this section the Court finds that the person is now capable of managing himself and his affairs the Court shall order all proceedings in the matter to cease or to be set aside on such terms and conditions as it deems proper.

Discharge of person found on inquiry to be capable of managing himself and his affairs

75. Where after an inquiry into the capability of a person detained in a psychiatric hospital to manage himself and his affairs the Court has made an order under subsection 74(3), the Medical Director of the psychiatric hospital shall, immediately on the production of a certified copy of the order, discharge that person from the hospital.

PART XI

ENFORCEMENT

Application of Part XVI of the Private Healthcare Facilities and Services Act 1998

76. Part XVI of the Private Healthcare Facilities and Services Act 1998 on enforcement shall apply for the enforcement of this Act subject to the modifications in Schedule II.

PART XII

GENERAL

Giving of consent for surgery, etc.

77. (1) Where a mentally disordered person is required to undergo surgery, electroconvulsive therapy or clinical trials, consent for any of them may be given—

- (a) by the patient himself if he is capable of giving consent as assessed by a psychiatrist;
- (b) by his guardian in the case of a minor or a relative in the case of an adult, if the patient is incapable of giving consent;
- (c) by two psychiatrists, one of whom shall be the attending psychiatrist, if there is no guardian or relative of the patient available or traceable and the patient himself is incapable of giving consent.

(2) For purposes of subsection (1), it shall be the duty of the registered medical practitioner concerned to ensure that informed consent is first obtained from the patient himself under paragraph (1)(a) before invoking paragraph (1)(b) or (1)(c).

(3) In cases of emergencies, consent for surgery or electroconvulsive therapy may be given—

- (a) by the guardian or a relative of the patient; or
- (b) by two medical officers or two registered medical practitioners, as the case may be, one of whom shall

preferably be a psychiatrist, if there is no guardian or relative of the patient immediately available or traceable.

(4) Except for subsections (1) and (2), no consent is required for other forms of conventional treatment.

(5) In determining whether or not a mentally disordered person is capable of giving consent under paragraph (1)(a), the examining psychiatrist shall consider whether or not the person examined understands—

- (a) the condition for which the treatment is proposed;
- (b) the nature and purpose of the treatment;
- (c) the risks involved in undergoing the treatment;
- (d) the risks involved in not undergoing the treatment; and
- (e) whether or not his ability to consent is affected by his condition.

Duty to give information to persons detained

78. The Medical Director of every psychiatric hospital shall take such steps as are reasonably practicable to ensure that every patient in the hospital and a relative of the patient, understand—

- (a) under which provision of this Act the patient is for the time being detained and the effect of the provision; and
- (b) what rights are available to the patient for him to apply for his discharge.

Indemnity and protection against suit and legal proceedings

79. No action shall lie or prosecution shall be brought, instituted or maintained against any person in any court for any thing done or omitted to be done under this Act—

- (a) in good faith;
- (b) in the reasonable belief that it was necessary for the purpose intended to be served thereby; or

(c) for carrying into effect the provisions of this Act.

Copy of reception order to be sent to Medical Director of government psychiatric hospital or gazetted private psychiatric hospital

80. A medical officer or registered medical practitioner making an order under section 14 or a Court making an order under section 55 or 73 shall immediately send a certified copy of the order to the Medical Director of the government psychiatric hospital or gazetted private psychiatric hospital into which the person who is the subject of the order is to be received.

Medical certificate, order, etc., may be amended

81. If upon the admission of an involuntary patient to a psychiatric hospital it appears that any medical certificate, order or other documents relating to the admission are in any respect incorrect, the certificate, order or other document may, with the approval of the Medical Director, be amended by the person who signed it within fourteen days of the admission of the patient for the purpose of correcting any clerical error or an obvious mistake or for any other reason acceptable to the Medical Director.

Sums payable by the Government to mentally disordered person

82. Where any sum is payable in respect of pay, pension, gratuity, or other similar allowance to any person by the Government or the Government of any State, and that person is found under this Act to be mentally disordered, the officer under whose authority such sum would be payable if the payee were not mentally disordered may pay so much of that sum as he deems fit to the person having charge of the mentally disordered person, and may pay the surplus, if any, or such part of the surplus as he deems fit, for the maintenance of the members of the family of the mentally disordered person as are dependent on him for maintenance.

Incident reporting

83. (1) Notwithstanding any other report required by any other written law, a psychiatric hospital, psychiatric nursing home or

community mental health centre shall report to the Director General, or any person authorized by him in that behalf, such unforeseeable and unanticipated incidents as may be prescribed.

(2) This section shall apply to any unforeseeable or unanticipated incident that occurs on or after the date of commencement of this Act.

Policy statement

84. (1) The Medical Director, licensee or person in charge of a psychiatric hospital, psychiatric nursing home or community mental health centre shall make available, upon registration or admission, as the case may be, the policy statement of the hospital, home or centre with respect to the obligations of the Medical Director or licensee or person in charge of the psychiatric hospital, psychiatric nursing home or community mental health centre to patients using the facilities or services of the hospital, home or centre.

(2) A policy statement shall cover such matters as may be prescribed.

Construction of written law

85. Unless a contrary intention appears, a reference in any written law—

- (a) to a lunatic or mental person shall be construed as a reference to a mentally disordered person;
- (b) to a lunacy shall be construed as a reference to mental disorder;
- (c) to an asylum, a lunatic asylum, an approved hospital or a mental hospital shall be construed as a reference to a psychiatric hospital.

Ill-treatment of patient

86. (1) Any Medical Director or person in charge of, or an officer or a staff of, or persons otherwise employed in or engaged

by, a psychiatric hospital, psychiatric nursing home, community mental health centre, or any other government or private healthcare premises who—

- (a) ill-treats or wilfully neglects a patient for the time being receiving treatment for mental disorder as an in-patient in that psychiatric hospital, psychiatric nursing home, community mental health centre or government or private healthcare premises; or
- (b) ill-treats or wilfully neglects, on the premises of which such psychiatric hospital, psychiatric nursing home, community mental health centre, or government or private healthcare facility forms a part, a patient for the time being receiving treatment there as an out-patient,

commits an offence.

(2) A person who ill-treats or wilfully neglects a mentally disordered person who is in his custody or under his care and protection commits an offence.

(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Abetment of escape of patient

87. Any attendant, nurse, servant or other person employed in, or otherwise engaged by, any government psychiatric hospital or gazetted private psychiatric hospital who permits or abets the escape or attempted escape of any patient commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Penalty for improper reception and detention

88. Subject to section 79, any person who—

- (a) otherwise than in accordance with the provisions of this Act or any other written law, receives or detains in a

psychiatric hospital a person who is or is alleged to be mentally disordered; or

(b) for gain, detains in any place, not being a psychiatric hospital, any number of mentally disordered persons,

commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

Institution of prosecution

89. No prosecution in respect of any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Magistrate of the First Class to have full jurisdiction

90. Notwithstanding the provisions of any written law to the contrary, a court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

Contravention of subsidiary legislation

91. Any subsidiary legislation made under this Act may provide that the contravention of any provision in the subsidiary legislation shall be an offence and that the person who commits the offence is liable on conviction to a fine or a term of imprisonment or both but may not provide for the fine to exceed ten thousand ringgit or the term of imprisonment to exceed six months.

Power to make regulations

92. (1) The Minister may make such regulations as appear to him to be necessary or expedient for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the powers conferred by subsection (1) regulations may be made for all or any of the following purposes:

(a) to prescribe the forms and certificates to be used for the purposes of this Act;

- (b) to prescribe the standards and specifications in respect of the siting, design and construction of government or private psychiatric hospitals including gazetted private psychiatric hospitals, psychiatric nursing homes or community mental health centres;
- (c) to prescribe the standards of accommodation, sanitation or other amenities in government or private psychiatric hospitals including gazetted private psychiatric hospitals, psychiatric nursing homes and community mental health centres;
- (d) to prescribe the standards of the apparatus, appliance, equipment, instrument, substance, furnishing, and other things to be provided by government or private psychiatric hospitals including gazetted private psychiatric hospitals, psychiatric nursing homes and community mental health centres;
- (e) to prescribe the standards for the maintenance, administration or staffing of, and the provisions of facilities and services by, government or private psychiatric hospitals including gazetted private psychiatric hospitals, psychiatric nursing homes and community mental health centres;
- (f) to regulate the keeping of such books, records, registers or other documents or the furnishing of such reports or statistics as may be necessary for the purposes of this Act;
- (g) to prescribe the management, control, superintendence and care of government or private psychiatric hospitals including gazetted private psychiatric hospitals, psychiatric nursing homes and community mental health centres, including the functions, responsibilities, duties and powers of Medical Directors, Deputy Medical Directors or persons in charge of the psychiatric hospitals, psychiatric nursing homes and community mental health centres;
- (h) to prescribe all matters relating to the rights and privileges of patients;
- (i) to prescribe all matters relating to the issue of communication by and with persons detained in psychiatric hospitals;

- (j) to prescribe the conditions and circumstances under which physical and chemical means of restraint or seclusion may be applied to persons detained in psychiatric hospitals;
- (k) to prescribe the duties and powers of, and the procedure to be followed by, the Board;
- (l) to provide for acceptable quality assurance and quality control in respect of psychiatric hospitals, psychiatric nursing homes and community mental health centres;
- (m) to prescribe the type of unforeseeable or unanticipated incidents to be reported, the procedure for reporting, the manner of investigation to be conducted, the report and statistical data to be submitted;
- (n) to prescribe all matters relating to policy statements and matters relating to grievance mechanism;
- (o) to prescribe anything which is to be or which may be prescribed under this Act.

Repeal and savings

93. (1) The Mental Disorders Ordinance 1952 [*Ord. 31 of 1952*], the Mental Health Ordinance (Sarawak) 1961 [*Sarawak Ord. 16 of 1961*] and the Lunatics Ordinance (Sabah) 1951 [*Sabah Cap. 74*] are repealed.

(2) Notwithstanding the repeal of the Ordinances in subsection (1)—

- (a) any mental hospital established and maintained, or hospital approved, under the repealed Ordinances immediately before the commencement of this Act shall be deemed to have been established, approved or appointed as a government psychiatric hospital under section 3 of this Act;
- (b) any appointment, subsidiary legislation, warrant or certificate made or issued under the repealed Ordinances and in force immediately before the commencement of this Act shall continue to be in force and have effect as if it had been made or issued under this Act until superseded by an appointment, subsidiary legislation, warrant or certificate made or issued under this Act;

- (c) any such appointment, subsidiary legislation, warrant or certificate which is expressed to remain in force for a definite period shall not remain in force after the expiration of that period unless it is renewed in accordance with the provisions of this Act; and
- (d) any inquiry, trial or proceedings done, taken or commenced under the repealed Ordinances immediately before the commencement of this Act may be continued or concluded under and in accordance with the provisions of this Act.

Prevention of anomalies

94. (1) The Minister may, whenever it appears to him necessary or expedient to do so, whether for the purpose of removing difficulties or preventing anomalies in consequence of the enactment of this Act, by order published in the *Gazette* make such modifications to any provision in this Act or in any existing law as he thinks fit but the Minister shall not exercise the powers conferred by this section after the expiration of two years from the date on which this Act comes into operation.

(2) In this section, “modifications” includes amendments, additions, deletions, substitutions, adaptations, variations, alterations and non-application of any provision of this Act.

SCHEDULE I

[Section 48]

MODIFICATIONS TO THE PROVISIONS OF THE PRIVATE
HEALTHCARE FACILITIES AND SERVICES ACT 1998 ON
MORTALITY ASSESSMENT

(1) <i>Provisions of the Act</i>	(2) <i>Modifications</i>
General	Substitute for the words “National Mortality Assessment Committee” wherever they appear the words “National Psychiatric Mortality Assessment Committee”.
Section 64	<p>1. In the definition of “assessable death”, substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”.</p> <p>2. In the definition of “Committee”, insert after the word “National” the word “Psychiatric”.</p>
Section 66	In subsection (3), substitute for the words “or dental practitioner” the words “officer or registered medical practitioner”.
Section 67	<p>In subsection (1)—</p> <p>(a) substitute for the words “A person in charge of a private healthcare facility or service” the words “The Medical Director of a psychiatric hospital or person in charge of a psychiatric nursing home or community mental health centre”;</p> <p>(b) substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”;</p> <p>and</p> <p>(c) insert after the words “medical technology on a” the words “mentally disordered”.</p>
Section 68	1. In the marginal note, substitute for the words “and dental practitioners” the words “officer and registered medical practitioner”.

(1)
Provisions of the Act

(2)
Modifications

2. In subsection (1)—
- (a) substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”; and
 - (b) delete the words “subsection 112(4) or”.
3. In subsection (2), substitute for the words “practitioner and dental practitioner” the words “officer and registered medical practitioner”.
4. In subsection (3)—
- (a) in paragraph (b), substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”; and
 - (b) in paragraph (c), substitute for the words “private healthcare facility” the words “psychiatric hospital or psychiatric nursing home or community mental health centre”.
- Section 69
- In subsections (2) and (3), substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”.
- Section 70
1. In subsection (1)—
- (a) insert after the words “Committee or a” the word “psychiatric”; and
 - (b) substitute for the words “private healthcare facility” the words “psychiatric hospitals, psychiatric nursing homes or community mental health centres”.
2. Delete subsection (3).
- Section 71
- In subsection (1), insert after the words “in connection with the function of a” the word “psychiatric”.

(1)
Provisions of the Act

Section 72

(2)
Modifications

1. Substitute for the marginal note the following marginal note:

“Psychiatric mortality assessment committee at psychiatric hospital, psychiatric nursing home or community mental health centre.”.

2. In subsection (1)—

(a) substitute for the words “private healthcare facility or service” the words “psychiatric hospital, psychiatric nursing home or community mental health centre”; and

(b) insert after the words “level any” the word “psychiatric”.

3. In subsection (2)—

(a) substitute for the words “person in charge of a private healthcare facility or service” the words “Medical Director or person in charge of a psychiatric hospital, psychiatric nursing home or community mental health centre”; and

(b) insert after the words “of each” the word “psychiatric”.

4. In subsection (3)—

(a) insert after the words “subsection (4), a” the word “psychiatric”;

(b) insert after the words “directions as the” the words “Medical Director or”; and

(c) insert after the words “person as the” the words “Medical Director or”.

5. In subsection (4), substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”.

(1)
Provisions of the Act

(2)
Modifications

6. In subsection (5)—

- (a) substitute for the words “practitioner or dental practitioner” the words “officer or registered medical practitioner”; and
- (b) insert after the word “whose” the words “mentally disordered”.

7. In subsection (6)—

- (a) insert after the words “carried out by a” the word “psychiatric”; and
- (b) substitute for the words “private healthcare facility or service” the words “psychiatric hospital, psychiatric nursing home or community mental health centre”.

SCHEDULE II

[Section 76]

MODIFICATIONS TO THE PROVISIONS OF THE PRIVATE
HEALTHCARE FACILITIES AND SERVICES ACT 1998 ON
ENFORCEMENT

(1)
Provisions of the Act

(2)
Modifications

General

Except for sections 91 and 93, substitute for the words “facility”, “private healthcare facility or service”, “private healthcare facility” or “healthcare facility” wherever they appear in Part XVI the words “psychiatric hospital, psychiatric nursing home or community mental health centre”.

Section 88

Substitute for subsection (1) the following subsection:

“(1) An Inspector shall have the power to enter and inspect at any time any psychiatric hospital, psychiatric

(1)
Provisions of the Act

(2)
Modifications

nursing home or community mental health centre, or any premises which he suspects or has reason to believe is being used to house, treat or detain any number of persons who are mentally disordered or suspected to be mentally disordered.”.

Section 91

1. Substitute for the words “healthcare facility or to provide any private healthcare services”, “healthcare facility or for providing private healthcare service” and “healthcare facility or service” wherever they appear the words “psychiatric hospital, psychiatric nursing home or community mental health centre”.

2. In paragraph (1)(a), substitute for the words “this Act” the words “the Private Healthcare Facilities and Services Act 1998”.

3. In paragraph (1)(b), insert after the words “Director General” the words “under that Act”.

Section 92

In subsection (2), insert after the words “an offence” the words “and shall on conviction be liable to a fine not exceeding thirty thousand ringgit or to imprisonment for a term not exceeding six months or to both”.

Section 93

Substitute for that section the following section:

“Duty to assist Inspector. 93. Whenever an Inspector exercise his powers under sections 88, 89, 90, 91 and 92 it shall be the duty of the person in charge, the licensee, owner or occupier, and any employee or servant of the psychiatric hospital, psychiatric nursing home or community mental health centre, and any person found therein—

(a) to provide the Inspector with all such facilities and assistance and Inspector

(1)
Provisions of the Act

(2)
Modifications

may reasonably require;

(b) to give the Inspector all reasonable information required by him in respect of the psychiatric hospital, psychiatric nursing home or community mental health centre, as the case may be, relating to its management or any other matter connected therewith; and

(c) to produce any book, record or document in his possession or custody or under his control or within his power to furnish relating to the affairs of the psychiatric hospital, psychiatric nursing home or community mental health centre.”.

Section 99

1. In subsection (1), substitute for the words “the holder of the approval or the licensee or holder of a certificate of registration” wherever they appear the words “the person in default”.

2. In subsection (4), substitute for the words “the holder of the approval, licensee, holder of a certificate of registration” appearing in paragraph (a) the words “the person in default”.

3. In subsection (6), substitute for the words “the holder of the approval or the licensee or holder of the certificate of registration” the words “the person in default”.

Section 100

Delete subsection (1).

LAWS OF MALAYSIA

Act 615

MENTAL HEALTH ACT 2001

LIST OF AMENDMENTS

Amending law

Short title

In force from

— NIL —
