

Intellectually Disabled Persons' Services (Amendment) Bill

No.

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Clause

1. Purpose.
2. Commencement.

PART 2—AMENDMENTS TO THE *INTELLECTUALLY DISABLED PERSONS' SERVICES ACT 1986*

3. Restraint, seclusion and aversive therapy.
4. Separate trust accounts.
5. Application to review decision.
6. President may act as a member of a division.

PART 3—AMENDMENTS TO THE *GUARDIANSHIP AND ADMINISTRATION BOARD ACT 1986*

7. Delegation of powers.
8. Persons entitled to notice of the hearing.
9. Guardianship and Administration Board Fund.
10. Matters before a Court.

PART 4—AMENDMENTS TO THE *MENTAL HEALTH ACT 1986*

11. Functions of the Chief General Manager.
12. Giving of notice.
13. Review of existing patients.

LEGISLATIVE COUNCIL

Read 1° 8 September 1987

(Brought in by the Honourable C. J. Hogg)

A BILL

to amend the *Intellectually Disabled Persons' Services Act 1986*, the *Guardianship and Administration Board Act 1986* and the *Mental Health Act 1986* and for other purposes.

Intellectually Disabled Persons' Services (Amendment) Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to amend the *Intellectually Disabled Persons' Services Act 1986*, the *Guardianship and Administration Board Act 1986* and the *Mental Health Act 1986* to enable the effective implementation of those Acts.

Commencement.

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

**PART 2—AMENDMENTS TO THE INTELLECTUALLY DISABLED
PERSONS' SERVICES ACT 1986**

Restraint, seclusion and aversive therapy.

3. Section 44 of the *Intellectually Disabled Persons' Services Act 1986* is amended as follows: 5

(a) In sub-section (2) for “who attend” substitute “while attending”;

(b) For sub-section (3) (b) substitute:

“(b) if the use and form of restraint—

(i) is included in the eligible person's individual program plan and has been approved by the authorised program officer; or 10

(ii) is in the case of an emergency authorised by the person in charge and notified to the authorised program officer without delay.”. 15

Separate trust accounts.

4. The *Intellectually Disabled Persons' Services Act 1986* is amended as follows:

(a) For section 45 substitute:

Trust accounts for eligible persons. 20

“45. (1) The designated officer of a registered residential service and the senior officer of a residential program must open and maintain with a bank a trust account for each eligible person.

(2) The senior officer of a residential institution must—

(a) operate a Residents Trust Account with a bank recommended by the Director-General; and 25

(b) maintain a financial management information system which separately records individual transactions on each eligible person's account and includes an Interest Account, a Residents Amenities Account and any other accounts which may be established at the residential institution.”. 30

(b) For section 46 (1) substitute:

“(1) Where the designated officer of a registered residential service or the senior officer of a residential program or of a residential institution receives any money from an eligible person to be held on behalf of the eligible person or from any person to be held for the benefit, use or enjoyment of a specified eligible person— 35

(a) the designated officer of a registered residential service or the senior officer of a residential program must pay the money into the eligible person's trust account; or 40

(b) the senior officer of a residential institution must pay the money into the Residents Trust Account and record the transaction in each eligible person's account.”;

(c) Section 46 (2) is repealed;

5 (d) For sections 47, 48 and 49 substitute:

Investment of money.

10 “47. (1) The designated officer of a registered residential service or the senior officer of a residential program may invest any money to the credit of an eligible person's trust account which is not immediately required for use by the eligible person in any manner in which trust funds may be invested under section 4 (1) of the *Trustee Act* 1958.

15 (2) The Director-General may invest any money to the credit of the Residents Trust Account which is not immediately required for use by eligible persons in any manner in which trust funds may be invested under section 4 (1) of the *Trustee Act* 1958.”

Interest on any money invested.

“48. (1) Where any money is invested under section 47 (1) interest at the prescribed rate on that amount must be paid into that eligible person's trust account.

20 (2) Where any money is invested under section 47 (2)—

(a) the income from the investment; and

(b) any capital gain upon the realization of the investment—
must be paid into the Residents Trust Account and credited to the Interest Account.

25 (3) The senior officer of a residential institution may apply from the Interest Account—

(a) any loss incurred upon the realization of the investment;
and

30 (b) any expenses necessarily incurred in making or as a result of the investment.

(4) At least once a year the senior officer of a residential institution must after making any payments under sub-section (3) transfer from the Interest Account an amount of money representing interest at the prescribed rate on the amount invested under section 47 (2).

35 (5) The senior officer of a residential institution must credit the interest under sub-section (4) proportionately to each eligible person's account according to—

40 (a) the amount standing to the credit of the eligible person's account during the period for which the amount was invested under section 47 (2); and

(b) the period for which that amount was invested.

(6) If at the commencement of this section an eligible person has money to his or her credit and that money has been invested on his or her behalf by the residential institution since 1 July 1986 interest as from that date calculated in accordance with sub-sections (4) and (5) is to be credited to that eligible person's account." 5

Residents Amenities Account.

"49. (1) There must be paid into the Residents Trust Account and credited to the Residents Amenities Account—

(a) any money received by the senior officer of a residential institution for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of eligible persons generally; and 10

(b) any surplus money in the Interest Account after a distribution has been made under section 48 (4).

(2) The senior officer of a residential institution must pay out of the Residents Amenities Account such amounts as the senior officer of the residential institution after consulting the standing committee established under sub-section (3) considers appropriate for the purpose of providing goods and services or other amenities for the benefit, use or enjoyment of eligible persons generally. 15 20

(3) For the purposes of this section there is to be established in each residential institution a standing committee appointed by the Director-General consisting of eligible persons, relatives of eligible persons and members of staff." 25

Application to review decision.

5. In section 52 (3) (c) of the *Intellectually Disabled Persons' Services Act 1986* for "sub-section (1) (a) or (1) (b)" substitute "sub-section (2) (a) or (2) (b)".

President may act as a member of a division.

6. In Schedule 2 of the *Intellectually Disabled Persons' Services Act 1986* after clause 1 (3) insert: 30

"(4) The President may act as a member of any division."

PART 3—AMENDMENTS TO THE GUARDIANSHIP AND ADMINISTRATION BOARD ACT 1986

Delegation of powers.

7. The *Guardianship and Administration Board Act 1986* is amended as follows: 35

(a) In sections 32 (4) and 59 (4) after "President" insert "or another member acting under a delegation from the President"; 40

(b) In clause 4 of Schedule 2 after “4” insert “(1)”;

(c) At the end of clause 4 of Schedule 2 insert:

“(2) The President may delegate to a member any power or function of the President under this Act other than this power of delegation.”.

5

Persons entitled to notice of the hearing.

8. In section 44 (1) of the *Guardianship and Administration Board Act 1986* for “21” substitute “14”.

Guardianship and Administration Board Fund.

10 9. After section 58 (9) of the *Guardianship and Administration Board Act 1986* insert:

“(9A) The Guardianship and Administration Board Fund is to be used to meet the costs and expenses of administering this Act.”.

Matters before a Court.

15 10. After section 66 (9) (b) of the *Guardianship and Administration Board Act 1986* insert:

“; or

(c) a Magistrates’ Court.”.

PART 4—AMENDMENTS TO THE MENTAL HEALTH ACT 1986

20 **Functions of the Chief General Manager.**

11. In section 6 of the *Mental Health Act 1986* for “Department” substitute “Chief General Manager”.

Giving of notice.

12. The *Mental Health Act 1986* is amended as follows:

25

(a) In section 132 (1) after “this section” insert:

“unless—

(a) the person is absent from a psychiatric in-patient service in accordance with section 14, 40 or 41; or

(b) the Board has dispensed with the requirement to give notice under section 32 (3) (b).”;

30

(b) In section 133 after “68 (2) (b)” insert “as required by section 132”.

Review of existing patients.

13. After section 143 of the *Mental Health Act 1986* insert:

Review of existing patients.

'144. (1) In this section—

“*Mental Health Act 1959*” means the *Mental Health Act 1959* 5
as in force immediately before the commencement of section
143.

“*Prescribed period*” means the period ending 3 months after the
commencement of section 143 or ending at a subsequent 10
day as may be determined by the Minister and specified in
a notice published in the *Government Gazette*.

(2) A person admitted and detained as at the commencement of
section 143 as—

(a) a recommended patient under the *Mental Health Act 1959* 15
is deemed to be an involuntary patient admitted under this
Act; and

(b) a repatriation patient under the *Mental Health Act 1959* is
deemed to be a repatriation patient admitted under this Act;
and

(c) a security patient under the *Mental Health Act 1959* is 20
deemed to be a security patient admitted under this Act—

for the prescribed period or until the person is reviewed under sub-
section (5).

(3) A person admitted and detained as at the commencement of
section 143 as a voluntary patient under the *Mental Health Act 1959* is 25
deemed to be a voluntary patient admitted under this Act.

(4) Section 30 (a) does not apply to an involuntary patient or
security patient referred to in this section.

(5) Within the prescribed period, the authorised psychiatrist at
each psychiatric in-patient service must review the admission of each 30
involuntary patient or repatriation patient admitted as an involuntary
patient to which sub-section (2) applies and cause the person to be—

(a) admitted as a patient in accordance with this Act; or 35
(b) discharged.’.

4,

