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# STAATSKOERANT

## VAN DIE REPUBLIEK VAN SUID-AFRIKA

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### REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

*As 'n Nuusblad by die Poskantoor Geregistreer*

*Registered at the Post Office as a Newspaper*

Prys 20c Price  
Oorsee 30c Overseas  
POSVRY—POST FREE

Vol. 153]

KAAPSTAD, 10 MAART 1978  
CAPE TOWN, 10 MARCH 1978

[No. 5908

DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 439. 10 Maart 1978.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 10 van 1978: Wysigingswet op Geestesgesondheid, 1978.

No. 439. 10 March 1978.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 10 of 1978: Mental Health Amendment Act, 1978.

## MENTAL HEALTH AMENDMENT ACT, 1978.

Act No. 10, 1978

## GENERAL EXPLANATORY NOTE:

**[** Words in bold type in square brackets indicate omissions from existing enactments.

       Words underlined with solid line indicate insertions in existing enactments.

## ACT

To amend the Mental Health Act, 1973, with regard to definitions; in order to extend the category of persons with regard to whom an attorney-general is the official *curator ad litem*; to empower hospital boards to discharge a certain category of President's patient and to order that such patient be no longer treated as such; to do away with the necessity of obtaining a report from a hospital board prior to the discharge of a mentally ill prisoner; and to provide for consent in certain circumstances by other persons to medical treatment or surgical operation of certain mentally ill persons; for measures where the conditions of a conditional discharge are complied with or not complied with and for the review of such conditions; and for the delegation of powers and duties; and to provide for incidental matters.

(Afrikaans text signed by the State President.)  
(Assented to 3 March 1978.)

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

1. Section 1 of the Mental Health Act, 1973 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "Minister" of the following definition: Amendment of section 1 of Act 18 of 1973.

10 "Minister" means the Minister of Health, except in sections 28 and 30 to 41 inclusive, where it means the Minister of Prisons **[**, and the Minister of Justice in section **29]**."

2. The following section is hereby substituted for section 17 of the principal Act: Amendment of section 17 of Act 18 of 1973.

15 "Official *curator ad litem*. 17. An attorney-general shall, within the area for which he has been appointed, be the official *curator ad litem* of—

- 20 (a) any patient detained under a reception order issued by a magistrate or further detained under the order of a judge under section 19;
- (b) a President's patient; and
- (c) a patient referred to in paragraph (a) or (b) who has been conditionally discharged,

25 if the institution or place where the patient is being detained or the place where the patient is being detained as a single patient or where a patient referred to in paragraph (c) finds himself, is situated within such area."

## MENTAL HEALTH AMENDMENT ACT, 1978.

Act No. 10, 1978

## 3. Section 29 of the principal Act is hereby amended—

Amendment of  
section 29 of  
Act 18 of 1973.

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

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

(b) by the substitution for subsection (4) of the following subsection:

10 “(4) The Minister may order the discharge of a President’s patient referred to in subsection (1) either absolutely or conditionally or that he cease to be treated as such

15 **[(a)]** on receipt of authority for such an order under subsection (2)

20 **[(b) in the case of a President’s patient detained as such in respect of a charge not referred to in subsection (1) (a), after obtaining a report from the hospital board concerned and a report from the official *curator ad litem*].**”;

(c) by the insertion of the following subsection after subsection (4):

25 “(4A) (a) The hospital board may, by resolution duly adopted and recorded after proper enquiry, and after obtaining a report from the official *curator ad litem*, conditionally or unconditionally discharge a President’s patient, other than a President’s patient referred to in subsection (1), or order that he shall no longer be treated as such.

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

35 (c) A resolution referred to in paragraph (b) shall not be put into effect unless—

40 (i) it is the unanimous resolution of the board; and

(ii) it has been confirmed by the Minister, whose **decision in this regard shall be final.**”;

(d) by the substitution for subsection (5) of the following subsection:

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

(e) by the substitution for subsection (6) of the following subsection:

50 “(6) On receipt of the order of the Minister under subsection (4) or of the hospital board under subsection

55 **(4A) (a) that a President’s patient shall cease to be treated as such, the superintendent of the institution or the person in charge of the place in which the patient is being detained shall forthwith transmit a report as to the condition of the patient to the official *curator ad litem* who shall without delay transmit the report, together with such other documents as may be deemed necessary, to the registrar of the court for submission to a judge in chambers.**”

4. Section 37 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of  
section 37 of  
Act 18 of 1973.

65 “(2) The discharge of a mentally ill prisoner who has been convicted of murder, culpable homicide or an offence

MENTAL HEALTH AMENDMENT ACT, 1978.

Act No. 10, 1978

involving serious violence, shall not be ordered under subsection (1) unless a report on the advisability of such discharge has been obtained [from the hospital board concerned and] from the official *curator ad litem*."

5 5. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: Amendment of section 53 of Act 18 of 1973.  
 10 "(1) The board may, by resolution duly adopted and recorded after proper enquiry, conditionally or unconditionally discharge any patient, other than a mentally ill prisoner and a President's patient referred to in section 29 (1), detained in an institution; whether such patient has recovered or has not recovered from his mental illness."

6. The principal Act is hereby amended by the insertion of the following section after section 60: Insertion of section 60A in Act 18 of 1973.

15 **60A. (1) (a)** If a patient is on account of his mental illness not capable of consenting to medical treatment to, or an operation on, himself, then a curator referred to in section 60 (1) or the patient's spouse, parent, major child or brother or sister may consent to the treatment or operation. Consent to medical treatment of or operation on patient.  
 20 (b) The persons referred to in paragraph (a) shall in the order in which they are enumerated have precedence the one over the other to consent to the medical treatment or operation, and such precedence shall stand unless the consent is being withheld unreasonably or the medical treatment or operation is urgent and the person having precedence cannot, with due regard to the urgency of the medical treatment or operation, be found timeously, in which event the person following in precedence may consent to the medical treatment or operation.  
 25 (2) If there are no such persons as are referred to in subsection (1) or if such persons cannot after reasonable inquiry be found and the superintendent of the institution where the patient finds himself is on reasonable grounds of the opinion that the life of the patient is being endangered or that his health is being seriously threatened by his condition and that the patient's condition necessitates the treatment or operation in question, the superintendent may consent to the required treatment or operation.  
 30 (3) The consent envisaged in subsections (1) and (2) shall be given in writing."

45 7. The principal Act is hereby amended by the insertion of the following sections after section 74: Insertion of sections 74A and 74B in Act 18 of 1973.

50 **74A. (1)** If a President's patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37, respectively— Non-compliance with conditions of discharge and review of conditions.  
 (a) does not comply with any condition of his discharge, the Minister may—  
 (i) revoke the conditional discharge;  
 (ii) amend or revoke any condition of discharge;  
 55 (b) complies with the conditions of his discharge, he shall be deemed to have been unconditionally discharged.  
 (2) A President's patient or a mentally ill prisoner who has been discharged conditionally under sections 29 and 37, respectively, may apply to the Minister that the Minister review the conditions of his discharge, and the Minister may make any order he deems fit.  
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## MENTAL HEALTH AMENDMENT ACT, 1978.

Act No. 10, 1978

Delegation  
of powers  
and duties.

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74B. (1) Where the Minister deems it necessary for the proper exercise of any power or performance of any duty under this Act he may in writing authorize the Secretary or any other officer in the Department of Health to exercise such power or perform such duty, except the power to make regulations.

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(2) The Secretary may in writing authorize any officer in the Department of Health to exercise or perform in general or in a particular case or in cases of a particular nature, any power or duty conferred or imposed on the Secretary by or under this Act.

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(3) The superintendent of an institution may, with the approval of the Secretary, in writing authorize any medical practitioner attached to that institution to exercise or perform in general or in a particular case or in cases of a particular nature, any power or duty conferred or imposed on the superintendent by or under this Act."

8. This Act shall be called the Mental Health Amendment Act, Short title.  
20 1978.