

MENTAL HEALTH AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Mental Health Act 1969.

Clause 1 relates to the Short Title.

Clause 2 inserts a new definition of the term "Maori" for the purposes of Part VII of the principal Act which deals with the management of the estate of mentally disordered patients.

Clause 3: Section 83 (1) of the principal Act provides that the Maori Trustee is to manage the estates of Maoris who are committed patients or special patients under Part VII of the principal Act and for that purpose is to have the same powers as the Public Trustee.

This amendment provides only that the Maori Trustee is to have the same powers as the Public Trustee when managing the estates of such patients. The proposed new section 86A, as inserted by *clause 5*, provides for the cases when the Maori Trustee is to act as administrator.

Clause 4: Section 85 of the principal Act provides that notice of any reception order made, and notice of the admission, transfer, death, or discharge of any protected patient shall be sent to the Public Trustee, or, if the patient is a Maori, to the Maori Trustee.

This amendment provides that all such notices are to be sent to the Public Trustee only. However, in any case where the Maori Trustee is managing the estate, the amendments made by *clause 3* provide that the notice is to be sent to the Maori Trustee.

Clause 5 inserts a new section 86A in the principal Act to provide for the cases in which the Maori Trustee is to act under Part VII of the principal Act as the manager of the estate of any protected patient. At present the Maori Trustee acts in all cases where the patient is a Maori (as defined in section 82).

The new section provides that the Maori Trustee is to act in any case where the patient is a Maori and—

- (a) The patient, being competent to do so, expresses in writing his wish that the Maori Trustee is to act; or
- (b) The patient, not being so competent, is married and the spouse of the patient expresses in writing his or her wish that the Maori Trustee is to act; or
- (c) The patient, not being so competent, is unmarried and one or more of his near relations expresses in writing their wish that the Maori Trustee is to so act and none of his near relations dissent thereto; or

(d) The Public Trustee and the Maori Trustee agree that it is in the interests of the patient that the Maori Trustee should act.

The estates of Maoris which are managed by the Maori Trustee when the Bill is enacted are to continue to be managed by the Maori Trustee.

Clause 6 increases various maximum limits on the powers of the Public Trustee to deal with the estate of a protected person without Court consent. The maximum annual amount payable by way of charity or bounty is increased from \$400 to \$2,000. The maximum amount payable for the improvement or development of a property is increased from \$10,000 to \$40,000. The maximum amount expendable in purchasing a home, the maximum value of an interest in property which may be sold, the maximum value of property which may be exchanged, the maximum value of property of which a lease containing an optional or compulsory purchasing clause may be granted, and the maximum amount which the Public Trustee may advance to the estate of a protected person, are all increased from \$15,000 to \$40,000.

Provision is also made for the amounts increased to \$40,000 to be capable of being further altered by Order in Council.

Clause 7: Section 39~~x~~ of the Criminal Justice Act 1954 provides that notice of any order made under that Act for the detention of any person to hospital as a special patient or a committed patient shall be sent to the Public Trustee or, in the case of a Maori, to the Maori Trustee.

This clause amends the section to provide that all such notices are to be sent to the Public Trustee only. This amendment parallels the amendment made by *clause 4* of the Bill.

Hon. Mr McGuigan

MENTAL HEALTH AMENDMENT

ANALYSIS

Title	5. When Maori Trustee to administer estate
1. Short Title	6. Increase of limits
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A BILL INTITULED

An Act to amend the Mental Health Act 1969

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

1. Short Title—This Act may be cited as the Mental
Health Amendment Act 1975 and shall be read together with
and deemed part of the Mental Health Act 1969 (hereinafter
referred to as the principal Act).

10 2. Interpretation—(1) Section 82 of the principal Act is
hereby amended by omitting the definition of the term
“Maori” (as inserted by section 79 (1) of the Maori Affairs
Amendment Act 1974), and substituting the following
definition:

15 “Maori” means a person of the Maori race of New
Zealand; and includes any descendant of such a
person.”

(2) Section 79 (1) of the Maori Affairs Amendment Act 1974 is hereby consequentially repealed.

3. Application of Part VII of principal Act—(1) Section 83 of the principal Act is hereby amended by repealing subsection (1) (as substituted by section 10 (1) of the Mental Health Amendment Act 1972 and amended by section 79 (3) of the Maori Affairs Amendment Act 1974), and substituting the following subsection: 5

“(1) Whenever the Maori Trustee is the manager of the estate of a Maori every reference in this Part of this Act (except in subsection (1) of section 86) and in the Third Schedule to this Act— 10

“(a) To the Public Trustee shall be read as a reference to the Maori Trustee; and

“(b) To the Public Trust Office shall be read as a reference to the Maori Trust Office; and 15

“(c) To any provision of the Public Trust Office Act 1957 shall be read as a reference to the corresponding provision in the Maori Affairs Act 1953 or if there is no such corresponding provision shall be disregarded.” 20

(2) Section 10 (1) of the Mental Health Amendment Act 1972 and section 79 (3) of the Maori Affairs Amendment Act 1974 are hereby consequentially repealed.

4. Notices to be sent to Public Trustee—Section 85 of the principal Act is hereby amended— 25

(a) By omitting from subsection (1) the words “or, if the person in respect of whom the order was made is a Maori, to the Maori Trustee”; and

(b) By omitting from subsection (2) the words “or, if that person is a Maori, to the Maori Trustee.” 30

5. When Maori Trustee to administer estate—The principal Act is hereby further amended by inserting, after section 86, the following section:

“86A. (1) Whenever a Maori becomes a protected patient after the commencement of this section the Maori Trustee shall be the manager and shall have the custody and administration of his estate, and shall have in respect of that estate the same powers, duties, and functions as if he had been so appointed, if— 35 40

- “ (a) The protected patient is competent to do so and expresses in writing his wish, within 2 months after the Public Trustee’s authority to administer the estate commences pursuant to this Act, that the Maori Trustee be the manager of his estate; or
- 5 “ (b) The protected patient is not so competent and is married and his or her spouse expresses her or his wish in writing, within the aforesaid period of 2 months, that the Maori Trustee be the manager of the estate; or
- 10 “ (c) The protected patient is not so competent and is unmarried and one or more of his near relations express their wish in writing, within the aforesaid period of 2 months, that the Maori Trustee be the manager of the estate and none of the near relations of the protected patient dissent thereto within such period; or
- 15 “ (d) The Public Trustee and the Maori Trustee agree that it is in the interests of the protected patient that the Maori Trustee shall be the manager of the estate.
- 20 “ (2) In relation to the estates of Maoris of which the Maori Trustee is manager at the commencement of this section, the Maori Trustee shall continue to be the manager until his powers, duties, and functions shall cease pursuant to this Part of this Act.
- 25 “ (3) A protected patient shall be deemed to be competent to express his wish that the Maori Trustee be manager if the Medical Superintendent of the hospital in which the protected patient is an inmate so certifies.”
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6. Increase of limits—(1) The Third Schedule of the principal Act is hereby amended as follows:

- (a) By omitting from the proviso to clause 2 (b) (ii) the words “four hundred dollars” and substituting the expression “\$2,000”:
- 35 (b) By omitting from the proviso to clause 2 (b) (iii) the words “fifteen thousand dollars” and substituting the words “the specified sum”:
- (c) By omitting from the proviso to clause 2 (b) (ix) the words “ten thousand dollars” and substituting the words “the specified sum”:
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- (d) By omitting from the proviso to clause 2 (l) in each place where they appear the words "fifteen thousand dollars" and substituting in each case the words "the specified sum":
- (e) By omitting from the proviso to clause 2 (m) the words "fifteen thousand dollars" and substituting the words "the specified sum": 5
- (f) By omitting from the proviso to clause 2 (p) the words "fifteen thousand dollars" and substituting the words "the specified sum": 10
- (g) By omitting from the proviso to clause 3 (b) the words "fifteen thousand dollars" and substituting the words "the specified sum".
- (2) The Third Schedule to the principal Act is hereby further amended by adding the following clause: 15
- "4. In this Schedule the expression 'the specified sum' means \$40,000 or such other amount as the Governor-General may by Order in Council from time to time prescribe as the specified sum."

7. Notices to be sent to Public Trustee of certain orders pursuant to Criminal Justice Act 1954—Section 39k of the Criminal Justice Act 1954 (as inserted by section 2 of the Criminal Justice Amendment Act 1969 and amended by section 10 (3) of the Mental Health Amendment Act 1972) is hereby consequentially amended— 25

- (a) By omitting the words "or, if the person is a Maori within the meaning of the Maori Affairs Act 1953, to the Maori Trustee":
- (b) By omitting the words "or the Maori Trustee".