

1998  
THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Health and Community Care)

**Mental Health (Treatment and Care)  
(Amendment) Bill 1998**

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**A BILL  
FOR**

**An Act to amend the *Mental Health (Treatment and  
Care) Act 1994* and for related purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1. Short title**

5 This Act may be cited as the *Mental Health (Treatment and Care)  
(Amendment) Act 1998*.

**2. Commencement**

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

**3. Principal Act**

In this Act, “Principal Act” means the *Mental Health (Treatment and Care) Act 1994*.<sup>1</sup>

**4. Long title**

5 The title of the Principal Act is amended by inserting “or mentally ill” after “dysfunctional”.

**5. Repeal**

Section 3 of the Principal Act is repealed.

**6. Interpretation**

10 Section 4 of the Principal Act is amended—

- (a) by omitting “section 29” from the definition of “mental health order” and substituting “section 26 or 27”;
- (b) by inserting “or ‘mentally ill offender’ ” before “means” in the definition of “mentally dysfunctional offender”;
- 15 (c) by omitting the definitions of “Council”, “Director” and “psychiatric illness”; and
- (d) by inserting the following definitions:

“ ‘Chief Psychiatrist’ means the Chief Psychiatrist appointed under section 112;

20 ‘community care facility’ means a facility for the care, protection, rehabilitation or accommodation of mentally dysfunctional persons, but does not include a psychiatric institution or a facility in which a person may be lawfully detained;

25 ‘community care order’ means an order under subsection 26 (2);

‘custodian’ means a person holding an office specified in a mental health order into whose custody a person subject to an involuntary psychiatric treatment order is placed;

30 ‘mental illness’ means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms:

- (a) delusions;
- 35 (b) hallucinations;
- (c) serious disorder of thought form;

- (d) a severe disturbance of mood;
- (e) sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d);

5           ‘official visitor’ means an official visitor appointed under section 121;

          ‘prescribed custodian’ means a public servant into whose care a person subject to a community care order is placed;

10          ‘psychiatric treatment order’ means an order under subsection 26 (1);

          ‘restriction order’ means a restriction order under subsection 27 (1);”.

## 7. Objectives of Territory

15          Section 8 of the Principal Act is amended by omitting paragraph (e) and substituting the following paragraph:

          “(e) to consult with persons who are receiving or have received such services, their carers and the community about—

20           (i) the provision of services and facilities for mentally dysfunctional or mentally ill persons and to establish formal and informal consultative mechanisms for this purpose;

          (ii) the development of mental health policy;

          (iii) planning for mental health services;

          (iv) the delivery of services and facilities; and

          (v) the evaluation and review of policies and services;”.

## 25 8. Applications by other persons

          Section 14 of the Principal Act is amended by inserting after subsection (2) the following subsection:

          “(2A) An application under subsection (1) made by a person other than a doctor or mental health officer shall be in a form approved by the Minister.”.

## 30 9. Insertion

          After section 16 of the Principal Act the following section is inserted:

### “16A. Determination of ability to consent

35          An assessment shall include a determination of the ability of the person being assessed to consent to psychiatric treatment, so far as it can be ascertained, or is relevant in the circumstances to be ascertained.”.

**10. Assessments to be conducted as soon as practicable**

Section 17 of the Principal Act is amended—

- (a) by inserting “or such further period pursuant to subsection (2)” after “days”; and
- 5 (b) by adding at the end the following subsection:

“(2) Despite subsection (1), if the Tribunal is satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment can not be completed within the period of 7 days referred to in that subsection, the  
10 Tribunal may, by order made before the expiry of that period, extend the period for conducting the assessment for a further period, not exceeding 7 days, commencing on the expiry of the first period.”.

**11. Insertion**

15 After section 24 of the Principal Act the following section is inserted:

**“24A. Consultation**

“(1) Before making a mental health order the Tribunal shall, as far as practicable, consult—

- 20 (a) the person most likely to be responsible for providing the treatment, programs and other services proposed to be ordered;
- (b) if the person who is to be the subject of the order is a child—the Director of Family Services;
- (c) if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian; and
- 25 (d) if the person has an attorney appointed under the *Powers of Attorney Act 1956* and the Tribunal considers it appropriate to do so—the attorney.

“(2) Before making a mental health order for the provision of a particular treatment, program or other service (including an assessment) at a specified  
30 facility or by a specified person, the Tribunal shall confirm that the treatment, program or service can be provided or performed at that facility or by that person in accordance with the proposed order.”.

**12. Matters to be taken into account**

Section 25 of the Principal Act is amended—

- 35 (a) by inserting before paragraph (a) the following paragraph:

“(aa) whether the person consents, refuses to consent or is capable of making a decision to consent, to a proposed course of treatment, care or support;”;

- (b) by omitting from paragraph (d) “103” and substituting “24A”; and
- (c) by inserting after paragraph (q) the following paragraph:  
“(qa) the religious, cultural and language needs of the person;”.

### **13. Substitution**

Sections 26, 27, 28 and 29 of the Principal Act are repealed and the following sections substituted:

#### **“26. Types of orders**

“(1) The Tribunal may make an involuntary psychiatric treatment order in respect of a person if—

- (a) the person has a mental illness;
- (b) the Tribunal has reasonable grounds for believing that, by reason of that illness, the person is or is likely to be a danger to himself or herself or the community;
- (c) the Tribunal is satisfied that psychiatric treatment is likely to significantly reduce the danger referred to in paragraph (b) and result in an improvement in his or her psychiatric condition; and
- (d) the treatment can not be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

“(2) Subject to section 28, the Tribunal may make a community care order in respect of a person if—

- (a) the person is mentally dysfunctional or has a mental illness;
- (b) the Tribunal has reasonable grounds for believing that, by reason of that dysfunction or illness, the person is or is likely to be a danger to himself or herself or the community;
- (c) satisfied that care and support is likely to reduce the danger referred to in paragraph (b);
- (d) in the circumstances, an order under subsection (1) should not be made; and
- (e) the community care can not be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.

#### **“27. Restriction order**

“(1) The Tribunal may, in addition to making an order under section 26, make a restriction order in respect of a person if the Tribunal is satisfied that,



in the interests of public safety, the person should not be discharged from the restriction order unless the Tribunal has reviewed the restriction order.

“(2) A restriction order may require the person the subject of the order—

- (a) if the person has a mental illness—to reside at a specified place;
- 5 (b) if the person has a mental dysfunction, other than a mental illness—to reside at a community care facility; or
- (c) not to approach a specified person or specified place or undertake specified activities.

**“28. Certain requirements in relation to orders**

10 “(1) An order under section 26 shall specify the custodian into whose care the person to whom the order relates is to be placed.

“(2) An order under subsection 26 (1) may specify a health facility to which the person to whom the order relates may be taken.

15 “(3) An order under subsection 26 (2) shall specify the prescribed custodian into whose care the person to whom the order relates is to be placed.

“(4) A mental health order made in respect of a person may—

- (a) in the case of a psychiatric treatment order—specify that the person is required to do either or both of the following:
  - 20 (i) to undergo psychiatric treatment, other than convulsive therapy or psychiatric surgery;
  - (ii) to undertake a counselling, training, therapeutic or rehabilitation program; or
- (b) in the case of a community care order—specify that the person is to  
25 be given or provided care and support.

“(5) A mental health order shall include a statement that the person the subject of the order—

- (a) has the capacity to consent to the order, but refuses to do so; or
  - (b) does not have the capacity to consent to the order;
- 30 as the case requires.

“(6) Where the Tribunal makes an order under section 27, it shall give a copy of the order to the custodian.

“(7) A restriction order ceases to have effect at the expiration of 3 months after the date of the making of the order.

35 “(8) Where—

- (a) an order is in force in respect of a person under section 26 (1) or (2) and section 27; and
- (b) the custodian is satisfied that—
  - (i) the person is no longer a person in respect of whom the Tribunal could make an order under subsection 26 (1) or (2); and
  - (ii) the person should be discharged from the order;

the custodian shall notify the Tribunal in writing of his or her intention to discharge the person from the order under subsection 26 (1) or (2), as the case requires.

“(9) The Tribunal shall, within 72 hours after receipt of a notification under subsection (8), review the restriction order in force in respect of the person.

“(10) A restriction order is not revocable otherwise than by the Tribunal.

**“29. Role etc. of custodian**

“(1) A custodian is responsible for determining—

- (a) the times during which and the place at which the person the subject of an order is required to attend to receive treatment, care or support in accordance with the order;
- (b) in the case of a psychiatric treatment order—the nature of the psychiatric treatment to be given to the person the subject of the order;
- (c) the place at which a person the subject of an order under subsection 26 (1) shall reside; and
- (d) in the case of an order under section 27—whether the person the subject of the order has contravened the order.

“(2) In determining a matter under subsection (1), the custodian shall, whenever practicable, consult with the person the subject of the order.

“(3) For the purposes of paragraph (1) (b), a custodian shall not determine treatment that has, or is likely to have, the effect of subjecting the person to whom it is administered to undue stress or deprivation, having regard to the benefit likely to result from the administration of the treatment.

“(4) A custodian shall discharge a person in respect of whom an order under section 26 applies, if the custodian is satisfied that the person is no longer a person in respect of whom the Tribunal could make an order under section 26 (1) or (2).

“(5) If a custodian discharges a person in accordance with subsection (4), the custodian or prescribed custodian shall, within 72 hours of discharging the person, notify the Tribunal in writing.”.

#### **14. Power under custodial orders**

5 Section 32 of the Principal Act is amended by adding at the end the following subsections:

“(2) A custodian shall ensure that a person is subjected to involuntary seclusion—

- 10 (a) if satisfied that it is the only means in the circumstances to prevent the person from causing harm to himself or herself or to another person; and
- (b) only for so long as it is the least restrictive form of treatment or care.

15 “(3) Where a custodian subjects a person to involuntary seclusion, the custodian shall—

- (a) enter the fact in the patient’s record;
- (b) inform the Community Advocate in writing; and
- (c) keep a register of such seclusion in a form approved by the Minister.

20 “(4) Where, under paragraph 29 (1) (c), a custodian determines a place at which a person shall reside, being a different place from that determined by the custodian at the time the order was made, the custodian shall notify the Tribunal.”.

#### **15. Insertion**

25 After section 32 of the Principal Act the following section is inserted:

##### **“32A. Contravention of mental health orders**

“(1) Where a mental health order is in force in respect of a person, and the person refuses to comply with the order, a custodian is—

- 30 (a) authorised to orally inform the person that refusal to comply with the order may result in the person being apprehended and being taken to a mental health facility for treatment;
- (b) if the refusal continues after the taking of action under paragraph (a)—authorised to inform the person in writing that refusal to comply with the order will result in the person being apprehended and being taken to a mental health facility for treatment; and
- 35 (c) if the refusal continues after the taking of action under paragraph (b)—authorised to require the person to be detained in an approved mental health facility to ensure compliance with the order.

“(2) Where the custodian authorises the detention of a person under subsection (1), the custodian shall notify the Tribunal of—

- (a) the name of the person detained;
- (b) the reasons for authorising the detention; and
- 5 (c) the name and address of the approved mental health facility at which the person is detained.”.

## **16. Review, variation and revocation**

Section 36 of the Principal Act is amended by adding at the end the following subsections:

10 “(3) Where, in relation to a person who is subject to a restriction order, the Tribunal receives—

- (a) notice of intention of a custodian to discharge the person from a psychiatric treatment order or a community care order; or
- (b) notice of contravention of the restriction order;

15 the Tribunal shall, within 72 hours after being notified, review the order.

“(4) After reviewing a restriction order, the Tribunal—

- (a) if satisfied that the person is no longer a person in respect of whom the Tribunal could make an order under section 26—shall revoke the restriction order;
- 20 (b) if not satisfied that the person is not a person in respect of whom the Tribunal could make a mental health order may make an order for an assessment under section 16; or
- (c) may refer the matter to the Supreme Court for a preventive detention order, if satisfied that—

25 (i) all other forms of treatment, care and support of the person that may be available have been tried but have not proved successful; and

30 (ii) by reason of the person’s mental dysfunction or mental illness, the person poses an unacceptable risk to the community.

“(5) If the Tribunal refers a matter to the Supreme Court under paragraph (4) (c), the Tribunal shall order an assessment under section 16.

35 “(6) Despite any other provision of this Act, a person in respect of whom an application is made under paragraph (4) (c) may be detained for a period not exceeding 20 days for the purposes of the application being determined.”.

## **17. Insertion**

After section 36 of the Principal Act the following section is inserted in Part IV:

### **“36A. Preventive detention orders**

- 5 “(1) The Supreme Court has power to hear and determine an application for a preventive detention order referred to it under subsection 36 (4).
- “(2) The Supreme Court shall conduct the hearing within 20 days after the date of application.
- “(3) The prescribed custodian is the applicant in a hearing.
- 10 “(4) The Supreme Court may, after conducting a hearing—
- (a) make a preventive detention order;
  - (b) make any order that the Tribunal can make;
  - (c) refer the matter back to the Tribunal for further consideration; or
  - (d) by order, discharge the person from the restriction order.
- 15 “(5) The Court shall not make a preventive detention order under paragraph (4) (a) unless satisfied that—
- (a) the person in respect of whom the application is made is mentally dysfunctional or has a mental illness;
  - 20 (b) there are reasonable grounds for believing that, by reason of that dysfunction or illness, the person poses an unacceptable risk to the community;
  - (c) all other forms of treatment, care and support of the person that may be available have been tried but have not proved successful; and
  - 25 (d) in the circumstances, a preventive detention order should be made.
- “(6) Where the Supreme Court makes a preventive detention order under paragraph (4) (a), it may order the person to be detained in—
- (a) a prescribed detention facility; or
  - (b) any other facility in which a person may be lawfully detained.
- 30 “(7) A person who is detained in accordance with subsection (6) is, by virtue of this subsection, in the custody of the person in charge of the facility.
- “(8) A preventive detention order remains in force for a period specified in the order, not exceeding 3 months, commencing on the date of the order.
- 35 “(9) Before a preventive detention order ceases to have effect, the Supreme Court shall review the order and may—

- (a) extend the period for which the preventive detention order is in force for a period not exceeding 6 months, or a further period not exceeding 6 months, commencing on the date of expiry of the order being reviewed;
- 5 (b) make any order that the Tribunal can make;
- (c) refer the matter back to the Tribunal for further consideration; or
- (d) by order, discharge the person from the order.

“(10) Despite subsection (9), the Supreme Court may, on application or of its own motion, order the extension of a preventive detention order pending  
10 the completion of a review of the order by the Court.”.

## **18. Apprehension**

Section 37 of the Principal Act is amended—

- (a) by omitting paragraph (2) (a) and substituting the following paragraph:  
15 “(a) the person is mentally dysfunctional or mentally ill and—
  - (i) as a consequence, requires immediate treatment or care; or
  - (ii) in the opinion of the doctor or mental health officer, the person’s condition will deteriorate  
20 within 3 days to such an extent that the person would require immediate treatment or care;”; and
- (b) by inserting in paragraph (2) (c) “, social or financial well-being,” after “safety”.

## **19. Authorisation of involuntary detention**

25 Section 41 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:  
“ (a) the person is mentally dysfunctional or mentally ill and—
  - (i) as a consequence, requires immediate treatment or  
30 care; or
  - (ii) in the opinion of the doctor or mental health officer, the person’s condition will deteriorate within 3 days to such an extent that the person would require immediate treatment or care;”;
- 35 (b) by inserting in paragraph (1) (c) “, social or financial well-being,” after “safety”;
- (c) by inserting in paragraph (2) (b) “by a psychiatrist” after “made”; and

(d) by adding at the end the following subsections:

“(3) An application for further detention shall be in a form approved by the Minister.

5       “(4) On receipt of an application under paragraph (2) (b), the Tribunal shall review an order under subsection (2) within 2 working days after the date of the application.”.

## **20. Notification of certain persons about detention**

Section 42 of the Principal Act is amended by adding at the end the following subsection:

10       “(2) The person in charge of a facility in which a person is detained under section 41 shall ensure that the person has adequate opportunity to notify a relative or friend of the person’s detention.”.

## **21. Psychiatric examination**

15       Section 43 of the Principal Act is amended by omitting “doctor” and substituting “psychiatrist”.

## **22. Treatment during detention**

Section 44 of the Principal Act is amended by inserting at the end the following subsections:

20       “(2) Subsection (1) does not apply where a person has a mental illness for which, in the opinion of a psychiatrist, the most appropriate treatment is long acting medication.

      “(3) In determining whether to administer long acting medication, the psychiatrist shall take into account the likely deterioration in the person’s condition within 3 days of his or her examination of the person.”.

## **23. Approved facilities**

Section 48 of the Principal Act is amended—

(a) by inserting in paragraph (a) “subsection 26 (1) or” after “under”; and

(b) by adding at the end the following subsection:

30       “(2) An instrument under paragraph (1) (b) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

## **24. Heading—Part VI**

35       The heading to Part VI of the Principal Act is amended by inserting “OR MENTALLY ILL” after “DYSFUNCTIONAL”.

**25. Restriction on use**

Section 55 of the Principal Act is amended by omitting from paragraph (5) (b) all the words after “satisfied” and substituting the following:

- 5 “that the administration of the therapy is likely to result in substantial benefit to the person and—
- (i) all other reasonable forms of treatment that may be available have been tried but have not proved successful; or
  - (ii) it is the most appropriate form of treatment reasonably available.”.

10 **26. Determination of fitness to plead**

Section 68 of the Principal Act is amended by omitting subsection (3) and substituting the following subsections:

- 15 “(3) The Tribunal shall make a determination that a person is unfit to plead to a charge if satisfied that the person’s mental processes are disordered or impaired to the extent that the person is—
- (a) unable to understand the nature of the charge;
  - (b) unable to enter a plea to the charge and to exercise the right to challenge jurors or the jury;
  - (c) unable to understand that the proceedings are an inquiry as to whether the person committed the offence;
  - 20 (d) unable to follow the course of the proceedings;
  - (e) unable to understand the substantial effect of any evidence that may be given in support of the prosecution; or
  - (f) unable to give instructions to his or her legal representative.
- 25 “(3A) A person is not unfit to plead only because he or she is suffering from memory loss.”.

**27. Substitution**

Sections 76 and 77 of the Principal Act are repealed and the following section is substituted:

30 **“76. Membership**

The Tribunal shall consist of a President who shall be a Magistrate.”.

**28. Terms and conditions**

Section 79 of the Principal Act is amended—

- (a) by omitting subsections (2) and (3); and
- 35 (b) by omitting from subsection (4) “a member” and substituting “the President”.



**29. Repeal**

Section 80 of the Principal Act is repealed.

**30. Acting members**

5 Section 82 of the Principal Act is amended by omitting subsection (3).

**31. Repeal**

Section 103 of the Principal Act is repealed.

**32. Heading—Part X**

10 The heading to Part X of the Principal Act is amended by omitting “DIRECTOR OF MENTAL HEALTH” and substituting “CHIEF PSYCHIATRIST”.

**33. Chief Psychiatrist**

Section 112 of the Principal Act is amended—

- 15 (a) by omitting from subsection (1) “Director of Mental Health Services” and substituting “Chief Psychiatrist”; and  
(b) by omitting from subsection (2) “Director” and substituting “Chief Psychiatrist”.

**34. Functions**

Section 113 of the Principal Act is amended—

- 20 (a) by omitting from paragraphs (a) and (f) “psychiatric” and substituting “mental”; and  
(b) by omitting paragraphs (b), (c), (d), (e) and (g).

**35. Mental Health Officers**

25 Section 119 of the Principal Act is amended by adding at the end the following subsections:

“(4) The Minister shall issue to each Mental Health Officer an identity card that specifies the name and appointment of the person as a Mental Health Officer and on which appears a recent photograph of the officer.

30 “(5) A person appointed to be a Mental Health Officer shall not, without reasonable excuse, fail to return his or her identity card to the Minister on ceasing to be a Mental Health Officer.

Penalty for contravention of subsection (5): 1 penalty unit.”.

### **36. Substitution**

Part XI of the Principal Act is repealed and the following Part substituted:

#### **“PART XI—OFFICIAL VISITORS**

5   **“121. Appointment etc.**

““(1) For the purposes of this Act, the Minister may appoint 1 or more official visitors for an approved mental health facility.

““(2) A person is eligible for appointment as an official visitor if the person—

- 10       (a) is a legal practitioner who has not less than 5 years practising experience;
- (b) is a medical practitioner;
- (c) has been nominated by a body representing consumers of mental health services; or
- 15       (d) has experience and skill in the care of persons with a mental dysfunction or mental illness.

““(3) A person shall not be appointed an official visitor if the person—

- (a) is a public servant;
- 20       (b) has a direct interest in a contract with an approved mental health facility or a mental health care provider; or
- (c) has a financial interest in a private hospital (being a private hospital within the meaning of the *Public Health (Private Hospitals) Regulations*).

25   ““(4) A person shall not be appointed as an official visitor unless the Minister is satisfied that the person has appropriate qualifications and experience to perform the duties of an official visitor.

““(5) The Minister may terminate the appointment of an official visitor—

- (a) for misbehaviour;
- (b) for physical or mental incapacity;
- 30       (c) who is convicted, in Australia or elsewhere, of an offence punishable on conviction by imprisonment for 1 year or longer; or
- (d) if the person ceases to be a person who is eligible for appointment.

#### **“122. Official visitor—functions and duties**

““(1) An official visitor—

- 35       (a) shall visit and inspect mental health facilities;

(b) shall inquire into—

- (i) the adequacy of services for the assessment and treatment of persons with mental dysfunction or a mental illness;
- (ii) the appropriateness and standard of facilities for the recreation, occupation, education, training and rehabilitation of persons receiving treatment or care for mental dysfunction or a mental illness;
- (iii) the extent to which people receiving treatment or care for mental dysfunction or a mental illness are being provided the best possible treatment or care appropriate to their needs in the least possible restrictive environment and least possible intrusive manner consistent with the effective giving of that treatment or care;
- (iv) any contravention of this Act;
- (v) any other matter that an official visitor considers appropriate having regard to the objectives in sections 7 and 8; and
- (vi) any complaint made to an official visitor by a person receiving treatment or care for mental dysfunction or a mental illness; and

(c) has such other functions as are conferred on the official visitor by this or another Act.

“(2) An official visitor—

- (a) may, with or without prior notice given to a responsible person for a mental health facility (within the meaning of Part VI), visit the mental health facility at such times and for such periods as the visitor thinks fit; and
- (b) shall visit a mental health facility at least once every 3 months.

“(3) The Minister may, in writing, direct an official visitor to visit a mental health facility at such times as the Minister directs.

“122A. **Official visitor—powers etc.**

“(1) An official visitor may, when visiting a mental health facility—

- (a) inspect any part of the facility;
- (b) see any person who is receiving treatment or care for mental dysfunction or a mental illness unless the person has asked not to be seen;
- (c) make inquiries relating to the admission, detention, care, treatment and control of persons receiving treatment or care for mental dysfunction or a mental illness; and

- (d) inspect any document or medical record relating to any person receiving treatment or care for mental dysfunction or a mental illness if he or she has given consent in writing, and any records required to be kept under this Act.

5 “(2) If an official visitor to a mental health facility wishes to exercise or perform, or is exercising or performing, any power, duty or function under this Act, the person in charge of the facility shall provide, or shall ensure that there is provided, to the official visitor such reasonable assistance as the official visitor requires to exercise or perform that power, function or duty  
10 effectively.

“(3) A person in charge of a mental health facility shall not, without reasonable excuse—

- (a) refuse or neglect to render assistance when required under subsection (2); or
- 15 (b) fail to answer any question when asked by an official visitor in the exercise of his or her powers under this Act.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

20 “(4) A person in charge of a mental health facility shall not, without reasonable excuse, obstruct or hinder an official visitor in the exercise of his or her powers under this Act.

Penalty:

- 25 (a) if the offender is a natural person—50 penalty units or imprisonment for 6 months, or both;
- (b) if the offender is a body corporate—250 penalty units.

“(5) A person in charge of a mental health facility shall keep a record of each visit by an official visitor to the facility.

Penalty: 5 penalty units.

30 “(6) A record kept under subsection (5) shall be in a form approved by the Minister.

#### “122B. Reports by official visitors

“(1) An official visitor may, of his or her own motion make a report to the Minister relating to the exercise of his or her powers under this Act.

35 “(2) An official visitor shall, when requested to do so by the Minister, report in writing to the Minister in accordance with that request.

“(3) An official visitor shall, after each visit to a mental health facility, report in writing to the Minister and the Community Advocate in relation to the exercise of his or her powers, functions or duties under section 122 or 122A.

5 “(4) Where, in a report, an official visitor is critical of the services provided by a mental health facility, the official visitor shall advise the person in charge of the facility in writing, within 7 days of making that report.

10 “(5) A person in charge of a mental health facility shall, within 21 days after receipt of a report of the kind referred to in subsection (4), give to the official visitor and the Community Advocate a written response to the report, including any action taken, or to be taken, in response to any criticism contained in the report.”.

### **37. Interpretation**

15 Section 123 of the Principal Act is amended by omitting “or are addicted to alcohol or another drug” from the definition of “psychiatric institution”.

### **38. Addition**

20 The Principal Act is amended by adding at the end the following section:

#### **“148. Review of Act**

The Minister shall—

- 25 (a) review the operation of this Act as soon as possible after the end of the period of 10 years commencing on the date of commencement of the *Mental Health (Treatment and Care) (Amendment) Act 1998*; and
- (b) table in the Legislative Assembly a report on the outcome of the review within 6 months after the end of that period of 10 years.”.

### **39. Further amendments of Principal Act**

30 The Principal Act is amended as set out in Schedule 1.

### **40. Consequential amendments of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

### **41. Savings and transitional provisions**

35 (1) In subsection (2)—

“amended Act” means the Principal Act as amended by this Act.

5 (2) The person who, immediately before the commencement of this Act, held office as the Director of Mental Health Services under the Principal Act holds office as the Chief Psychiatrist under and subject to the amended Act, for the unexpired period of the person's appointment to the first-mentioned office, as if the person had been appointed as Chief Psychiatrist under section 112 of the amended Act for that period.

10 (3) A mental health order made under the Principal Act, in force immediately before the commencement of this section, continues in force as if the amendments effected by this Act had not been made according to its tenor.

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**SCHEDULE 1**

Section 39

**CONSEQUENTIAL AMENDMENTS OF PRINCIPAL ACT**

**Section 4 (definition of “psychiatric institution”)—**

Omit “psychiatric” (second occurring), substitute “mental”.

5 **Section 24—**

Omit “29”, substitute “26”.

**Section 32—**

Omit “paragraph 27 (2) (a)”, substitute “subsection 26 (1)”.

**Paragraph 33 (1) (a)—**

10 Omit “paragraph 27 (2) (a)”, substitute “subsection 26 (1)”.

**Section 35—**

Omit “paragraph 27 (2) (c)”, substitute “subsection 26 (1)”.

**Paragraph 37 (1) (a)—**

Insert “or mentally ill” after “dysfunctional”.

15 **Subsections 41 (1) and (2)—**

Insert “working” before “days”.

**Section 48B (definition of “custodial officer”)—**

Omit “paragraph 27 (2) (a)”, substitute “subsection 26 (1)”.

**Subsections 55 (2) and (3)—**

20 Omit “paragraph 29 (a)”, substitute “subsection 26 (1)”.

**Paragraph 55 (5) (b)—**

Omit “psychiatric”, substitute “mental”.

**Paragraph 65 (a)—**

Omit “psychiatric”, substitute “mental”.

25 **Paragraphs 89 (1) (g) and (ga)—**

Omit “psychiatric”, substitute “mental”.

**Paragraphs 94 (h) and (ha)—**

Omit “psychiatric”, substitute “mental”.

**SCHEDULE 1—continued**

**Subsection 99 (2)—**

Omit the subsection.

**Paragraph 120 (a)—**

Omit “psychiatric”, substitute “mental”.

5 **Section 123 (definition of “psychiatric institution”)—**

Omit “psychiatric” (last occurring), substitute “mental”.

**Section 138—**

Omit “psychiatric” (first occurring), substitute “mental”.

**Further amendments—**

10 The following provisions are amended by omitting “Director” (wherever occurring) and substituting “Chief Psychiatrist”:

Section 35, paragraph 46 (b), section 49 (paragraph (b) of the definition of “responsible person”), subparagraph 51 (d) (v), paragraphs 55 (4) (a) and 60 (a), section 61, subsections 62 (1), (2) and (3) and 63 (1), (2), (3) and (4), section 64, subsections 66 (1), (2), (3) and (4), paragraphs 89 (1) (f) and 94 (g), section 113, subsections 114 (1), (2) and (3), section 115, subsections 116 (1) and (2) and 117 (1) and (2), section 118, subsection 119 (3), section 120 and subsection 132 (2).

**Further amendments—**

20 The following provisions are amended by inserting “or mentally ill” after “mentally dysfunctional” (wherever occurring):

Section 4 (definitions of “mental health facility” and “mental health professional”), sections 7, 8 and 9, paragraphs 11 (a), 16 (1) (a) and 25 (r), (s) and (t), subsections 30 (1) and (2), paragraphs 32 (a) and (b), subparagraphs 33 (1) (a) (i) and (ii), paragraphs 35 (a) and (b), 36 (2) (a) and (b), 37 (1) (a), 37 (2) (a) and 41 (1) (a), subsections 52 (3) and (4), subparagraphs 70 (1) (b) (i) and (ii) and paragraphs 70 (3) (a) and (b) and 72 (1) (a).

**Further amendments—**

30 The following provisions are amended by inserting “or mental illness” after “mental dysfunction” (wherever occurring):

Subparagraphs 8 (a) (iii), (v) and (vi), paragraphs 13 (1) (a) and (b), 14 (1) (a) and (b), 15 (1) (a), 25 (s) and 72 (3) (a).



## SCHEDULE 2

Section 40

### AMENDMENTS OF OTHER ACTS

#### *Children's Services Act 1986*

**Subsection 4 (1) (definition of "mental health order")—**

5 Omit "section 29", substitute "sections 26 and 27".

#### *Coroners Act 1997*

**Subsection 3 (1) (definition of "custodial officer", paragraph (d))—**

Omit "Director of Mental Health", substitute, "Chief Psychiatrist".

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## NOTES

### Principal Act

1. Reprinted as at 1 June 1998.

### Penalty units

See section 33AA of the *Interpretation Act 1967*

### Section headings

On the day on which the *Mental Health (Treatment and Care) Act 1994* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

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Section	Alteration
13 and 70	Insert " <b>or mentally ill</b> " after " <b>dysfunctional</b> ".
35, 63, 64 and 120	Omit from the heading " <b>Director</b> " and substitute " <b>Chief Psychiatrist</b> ".

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